



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 77960
Washington, DC 20013

[REDACTED]
Jenna P.,¹
Complainant,

v.

Dr. David J. Shulkin,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 0120150825

Hearing No. 451-2014-00220X

Agency No. 2003-0116-2013104197

DECISION

The Equal Employment Opportunity Commission (EEOC or Commission) accepts Complainant's appeal from the November 18, 2014 final Agency decision (FAD) concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. The Commission's review is de novo. For the following reasons, the Commission REVERSES the FAD in part and AFFIRMS the FAD in part.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Management Analyst, GS-11, in the Office of Information and Technology at the Agency's National Service Desk in Austin, Texas. Complainant entered duty with the Agency in August 2012, under a one-year probationary period. In the first few weeks of her employment, Complainant claimed that her first-level supervisor (S1) began making comments about her appearance and clothing. Soon thereafter, in September 2012, S1's comments became more sexual in nature. S1 began asking Complainant to have sex with him and/or have sex with him and another Agency management official. Complainant alleged that when she was alone with S1, he would talk about his sexual feelings for her. On several occasions, Complainant claimed that S1 exposed his penis to her and

¹ This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

said she should touch it. Complainant alleged that on some occasions, S1 walked behind her while she sat at her desk and groped her. Complainant stated that S1 once took a video of her walking down the hall in the office and later told her that he masturbated while looking at the video of her. Complainant claimed that S1 referred to her as “Sexy Lady” and asked her to call him “Daddy” or “Big Daddy.” Complainant stated that S1 made it clear to her that she could be terminated without any reason as she was still in a probationary period and that he was close to her second-level supervisor (S2). Complainant asserted that she attempted to avoid S1 as much as possible, expressed to him that what he was doing was not right, and reminded him that he was married.

Complainant stated that S1 sent her several links to videos containing extremely graphic sexual acts involving S1 and another Agency manager. Complainant claimed that the last sexual video S1 sent her occurred on or around May 23, 2013. Around the same time, Complainant’s fiancée discovered numerous sexually-explicit messages from S1 on Complainant’s phone. Complainant’s fiancée was an Agency employee as well. Complainant informed S1 that her fiancée had discovered the messages he had sent to her and was threatening to call off their wedding. On May 28, 2013, Complainant’s fiancée notified his supervisor of S1’s conduct, and the Human Resources Office was immediately notified. Thereafter, Complainant met with her second-level supervisor (S2) and officials in Human Resources and submitted a Report of Contact detailing S1’s harassment. S2 immediately placed S1 on administrative leave that same day pending an investigation into his conduct. By May 30, 2013, S2 had assumed direct supervision over the employees formerly supervised by S1. Additionally, S2 granted Complainant indefinite telework and arranged for workplace harassment training for all management officials. On May 30, 2013, S2 met with S1 to discuss his conduct. Later that day, S2 accepted S1’s voluntary resignation.

In May 2013, Complainant informed S2 that she would complete her one-year probationary period in August 2013. Complainant requested a promotion to GS-12. S2 responded that he was not yet ready to promote Complainant, and would need additional time to evaluate her performance. In July 2013, S2 advised Complainant of performance deficiencies that he had observed. S2 scheduled weekly meetings to address those deficiencies with Complainant. On July 29, 2013, S2 issued Complainant a “Fully Successful” performance rating. S2 and Complainant continued to meet to discuss ways to improve her performance through December 2013. In December 2013, S2 determined that Complainant had demonstrated the ability to perform at the next grade level and recommended Complainant for a promotion. Complainant was promoted to the GS-12 level on December 15, 2013.

On November 25, 2013, Complainant filed a formal complaint alleging that the Agency discriminated against her on the bases of sex (female) and in reprisal for prior protected EEO activity when:

1. From September 2012 through May 28, 2013, S1 subjected her to sexual harassment; and

2. On August 6, 2013, S2 informed Complainant that she was not going to be promoted to GS-12, as part of her career ladder.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of her right to request a hearing before a Commission Administrative Judge (AJ). Complainant timely requested a hearing, but subsequently withdrew her request. Consequently, the Agency issued a FAD pursuant to 29 C.F.R. § 1614.110(b).

In the FAD, the Agency assumed without deciding, that Complainant established that she was subjected to sexual harassment as alleged in claim (1). The Agency determined, however, it should not be held liable. More specifically, the Agency found that management officials took prompt remedial action upon learning of S1's misconduct. Complainant's fiancée reported the behavior on May 28, 2013, and S2 immediately placed S1 on administrative leave pending an investigation. Further, within two days, S2 had assumed direct supervision of all employees who had previously been supervised by S1; provided Complainant with the opportunity to work from home; and secured harassment training for all division employees. On May 30, 2013, S1 met with S2. S2 made clear to S1 that his behavior was inappropriate, that an investigation was being launched into his alleged harassment, and that he would be subject to the strongest possible disciplinary action. That same day, S2 accepted S1's resignation. The Agency concluded that since S1 was the only alleged harasser, his resignation effectively ended the harassment.

Additionally, the Agency concluded that Complainant unreasonably delayed reporting S1's inappropriate behavior. The Agency noted that Complainant alleged that S1 had sexually harassed her for almost a year; however, Complainant did not complain to management until after her fiancée notified management of S1's sexually-charged communications in May 2013. Complainant stated that her delay in reporting S1's conduct was not unreasonable because she needed time to collect tangible evidence so that management would believe her. The Agency determined that Complainant's credibility was undermined by her communication with S1 on the morning of May 28, 2013, notifying him that her fiancée had discovered the messages and a link to a sexual video. The Agency noted that Complainant long possessed tangible evidence of S1's misconduct in the form of sexually explicit emails and text messages. Thus, the Agency concluded that Complainant unreasonably delayed reporting S1's conduct, and that once management learned of the conduct, it took immediate action resulting in the complete cessation of the harassment. Accordingly, the Agency found that there was no basis for imputing liability to the Agency for S1's harassing conduct.

With respect to claim (2), the Agency assumed *arguendo* that Complainant established a *prima facie* case of discrimination and reprisal and found that management had articulated legitimate, nondiscriminatory reasons for its action. S2 began supervising Complainant two months before she completed one year in grade. Based on his observation of Complainant's performance during the first two months in which he supervised her, S2 determined that Complainant had not demonstrated the ability to perform at the next higher grade level. Furthermore, career ladder promotions are not automatic, and employees must demonstrate their ability to perform at the next higher grade level before qualifying for a promotion. As a result, S2 did not recommend

Complainant for a promotion at that time. S2 explained to Complainant that he met with her on a weekly basis to discuss ways to improve her performance, and he would recommend her for promotion if she demonstrated the ability to perform at the next higher grade level. After working closely with Complainant for four months, Complainant's performance showed marked improvement, and S2 recommended her for promotion.

The Agency concluded that Complainant failed to show that management's reasons for its actions were pretextual. As a result, the Agency found that Complainant had not been subjected to discrimination or reprisal as alleged in claim (2). The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant initially notes that the FAD conceded that S1's conduct constituted sexual harassment; however, Complainant challenges the FAD's finding that the Agency had met both prongs of its affirmative defense. Complainant denies that she unreasonably delayed reporting the sexual harassment. Complainant adds that S1 sent her a total of four sexual videos in May 2013, and she complained promptly on May 28, 2013. Complainant contends that S1's inappropriate behavior had intensified and the sexually explicit videos amounted to a new category of inappropriate behavior leading to her prompt complaint. Complainant asserts that S1's sexual banter was one-sided, unwelcome, and unreciprocated. Complainant contends she had to politely rebuff the unwanted attention of S1 without sacrificing positive work relations and that she attempted to redirect S1's inappropriate interest. Further, Complainant stated that she was afraid to speak up sooner because she felt no one would believe her, because she was still within her probationary period, and because S1 reminded her of her probationary job status and his relationship with S2. Complainant claims that management did nothing to prevent S1 from harassing her even when an official knew that S1 was sexually interested in one or more Agency employees. Further, Complainant questions the adequacy of the Agency's investigation into S1's harassment as management officials stopped the investigation immediately after S1 resigned. Additionally, Complainant argues that the Agency's affirmative defense fails because management failed to restore the sick leave and leave without pay she was forced to take or otherwise compensate her for her losses to correct the effects of the harassment. Finally, Complainant submits additional evidence of similar sexual conduct by S1 with other women at the Agency.

With respect to her delayed promotion, Complainant argues that the Agency's reasons for delaying her promotion are pretextual. Complainant contends that S2 had her performance evaluation documents and could have promoted her on this basis. Complainant claims that a "normal" time frame for a promotion would have been approximately two to four weeks after her first-year anniversary, while her promotion was not approved until months later. Complainant asserts that S2 could have placed her on a formal Performance Improvement Plan to indicate that she was failing to perform at a satisfactory fashion, but he chose not to do so which indicates that she was performing satisfactorily. Accordingly, Complainant requests that the Commission reverse the FAD.

In response, the Agency asserts that Complainant claimed to have been harassed for approximately nine months, but chose not to complain until her fiancée discovered the inappropriate text messages. The Agency argues that it appeared that Complainant's main concern was that her fiancée discovered an inappropriate relationship, not that she was sexually harassed. The Agency further claims that if Complainant was truly interested in preserving the evidence of the sex videos, she would not have warned S1 that her fiancée had discovered the inappropriate texts. The Agency alleges that prior to her fiancée's discovery of the inappropriate texts in May 2013, the record is devoid of any evidence that Complainant considered S1's actions unwelcome sexual harassment. The Agency argues that, assuming *arguendo* that Complainant established that she was subjected to sexual harassment, the record supports that management took immediate and appropriate action once it was notified of the alleged harassment and, thus, there is no basis for imputing liability to the Agency. Finally, the Agency argues that Complainant has not established that S2's reasons for delaying her promotion were pretextual. Accordingly, the Agency requests that the Commission affirm the FAD.

ANALYSIS AND FINDINGS

Sexual Harassment

To establish a claim of sexual harassment, Complainant must show that: (1) she belongs to a statutorily protected class; (2) she was subjected to unwelcome conduct related to her sex, including sexual advances, requests for favors, or other verbal or physical conduct of a sexual nature; (3) the harassment complained of was based on sex; (4) the harassment had the purpose or effect of unreasonably interfering with her work performance and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer, in other words, did the agency know or have reason to know of the sexual harassment and fail to take prompt remedial action. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); Humphrey v. U.S. Postal Serv., EEOC Appeal No. 01965238 (Oct. 16, 1998). The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the complainant's circumstances. Enforcement Guidance on Harris v. Forklift Systems Inc., EEOC Notice No. 915.002 (Mar. 8, 1994).

In the instant case, the record is clear that S1 subjected Complainant to frequent offensive and sexually-charged text messages, emails, and comments over the course of approximately nine months. ROI, at 314-21, 326. The conduct intensified in May 2013, when S1 sent Complainant sexually-explicit videos of himself and another Agency employee. *Id.* at 326. The Agency contends that the record is devoid of evidence that S1's behavior was unwelcome as Complainant did not complain to anyone and maintained a friendly relationship with S1, even inviting him to her upcoming wedding. The Commission disagrees. The challenged conduct must be unwelcome in the sense that the employee did not solicit or incite it, and in the sense that the employee regarded the conduct as undesirable or offensive. EEOC Policy Guidance on Current Issues of Sexual Harassment, No. N-915-050, at Guidance, § A. (Mar. 19, 1990). Here, there is no evidence that Complainant solicited S1's sexual comments, advances, or physical contact. Complainant did not reciprocate or participate in S1's sexual conversations and often

either ignored or redirected his attention to other matters. See Hr’g Discovery, Documents 384, 397. Additionally, there is no evidence that Complainant solicited or in any way encouraged the sexual videos S1 sent or S1’s inappropriate touching and hugging. ROI, at 211-12. Thus, the Commission finds that Complainant has established that she was subjected to unwelcome sexual conduct from S1 which created an offensive and hostile work environment.

The Commission will now turn to whether there is a basis for imputing liability to the Agency. With respect to element (5), described above, an employer is subject to vicarious liability for harassment when it is created by a supervisor with immediate (or successively higher) authority over the employee. See Vance v. Ball State Univ., 133 S. Ct. 2434, 2443 (2013); Burlington Indus., Inc., v. Ellerth, 524 U.S. 742 (1998); Faragher v. City of Boca Raton, 524 U.S. 775 (1998). Where the harassment results in a tangible employment action, such as a supervisor disciplining an employee for refusing the supervisor’s advances, the action of the supervisor is viewed as the action of the employer, and strict liability attaches. See, e.g., Ellerth, 524 U.S. at 762-63. Here, where the harassment does not result in a tangible employment action, the employer can raise an affirmative defense, which is subject to proof by a preponderance of the evidence, by demonstrating: (1) that it exercised reasonable care to prevent and correct promptly any harassing behavior; and (2) that the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. See Burlington Indust., supra; Faragher, supra; Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors, EEOC Notice No. 915.002 (June 18, 1999).

The Agency argues that it should not be held liable for the actions of S1 because it had an anti-harassment policy and procedure in place, and once it was informed of S1’s conduct, it took prompt action to correct the actions of S1, including accepting his resignation and allowing Complainant to telework and take leave as necessary. Furthermore, the Agency contends that S1’s resignation effectively ended the harassment. While the record is clear that no further harassment occurred, Complainant contends that the Agency still did not take sufficient remedial measures and corrective action. For example, Complainant argues that the Agency failed to restore the sick leave and leave without pay that she used as a result of S1’s harassment. Further, Complainant claims that the Agency took no steps to correct other harm she experienced following S1’s conduct.

The Agency is under an obligation to do “whatever is necessary” to end harassment, *to make a victim whole*, and to prevent the misconduct from recurring. See EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, EEOC Notice No. 915.002 (June 18, 1999) (stating that “remedial measures should be designed to stop the harassment, *correct its effects on the employee*, and ensure that the harassment does not recur”) (emphasis added). Restoration of leave and correction of any other harm caused by the harassment are specific examples of measures to correct the effects of the harassment. Id. Taking only some remedial action does not absolve the agency of liability where that action is ineffective. See Logsdon v. Dep’t of Agric., EEOC Appeal No. 07A40120 (Feb. 28, 2006). Accordingly, as the record suggests that the Agency’s actions have not fully and effectively corrected the effects of the discriminatory harassment on Complainant, the Agency has not

satisfied the element of its affirmative defense. This finding is consistent with liability standards under the anti-discrimination statutes which generally make employers responsible for the discriminatory acts of their supervisors. Harassment is the only type of discrimination carried out by a supervisor for which an employer can avoid liability, and that limitation must be construed narrowly. Accordingly, because the Agency cannot establish its affirmative defense, the Commission finds that it is liable for the hostile and offensive work environment created by S1.

Disparate Treatment – Claim (2)

With respect to claim (2), to prevail in a disparate treatment claim, Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). She must generally establish a prima facie case by demonstrating that she was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Co. v. Waters, 438 U.S. 567, 576 (1978). Once Complainant has established a prima facie case, the burden of production then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Tx. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). If the Agency is successful, the burden reverts back to Complainant to demonstrate by a preponderance of the evidence that the Agency's reasons for its actions are pretext for discrimination. Id. At all times, Complainant retains the burden of persuasion, and it is her obligation to show by a preponderance of the evidence that the Agency acted on the basis of a prohibited reason. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993).

In the instant case, assuming arguendo that Complainant established a prima facie case of discrimination and reprisal, the Commission finds that Complainant failed to present evidence to rebut the Agency's legitimate, nondiscriminatory reasons for its actions. More specifically, S2 affirmed that Human Resources initially indicated that Complainant was not in a career ladder position; however, he worked with Human Resources to correct this as her position description indicated that it was career ladder. ROI, at 228. S2 stated that he then informed Complainant that she was not yet performing at the level necessary to be promoted. Id. S2 noted several deficiencies in Complainant's performance including timely responses to management, her management of the Personnel Management Database, and ensuring personnel actions were reflected in all of the appropriate areas. Id. at 253. S2 set up weekly meetings to address and improve Complainant's performance. Id. at 253-54. S2 met with Complainant from July 2013 through December 2013, to improve her performance and enhance her ability to receive a promotion. ROI, Ex. C-2. In December 2013, S2 recommended Complainant for promotion to the GS-12 level based on her improved work performance. Id. at 229, 249.

Complainant now bears the burden of establishing that the Agency's stated reasons are merely a pretext for discrimination. Shapiro v. Soc. Sec. Admin., EEOC Request No. 05960403 (Dec. 6, 1996). Complainant can do this directly by showing that the Agency's proffered explanation is unworthy of credence. Tx. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 256 (1981).

The Commission finds no evidence that Complainant's protected classes were a factor in S2's decision to delay Complainant's promotion. Complainant's subjective belief that the management action at issue was the result of discrimination or reprisal is insufficient to prove pretext. At all times, the ultimate burden remains with Complainant to demonstrate by a preponderance of the evidence that the Agency's reasons were not the real reasons and that the Agency acted on the basis of discriminatory or retaliatory animus. Complainant failed to carry this burden. As a result, the Commission finds that Complainant has not established that she was subjected to discrimination or reprisal as alleged in claim (2).

CONCLUSION

After a review of the record in its entirety, including consideration of all statements submitted on appeal, it is the decision of the Equal Employment Opportunity Commission to REVERSE the Agency's final decision as to claim (1) and AFFIRM the Agency's final decision as to claim (2). The Commission REMANDS the matter for further processing in accordance with the Order below.

ORDER

1. Within 90 calendar days of the date this decision is issued, the Agency shall conduct a supplemental investigation into Complainant's entitlement to compensatory damages and determine the amount of compensatory damages to which Complainant is entitled. The Agency shall pay Complainant the determined amount of compensatory damages within 30 calendar days of the date of the determination.
2. Within 30 days of the date this decision is issued, the Agency shall restore to Complainant any leave used as the result of the unlawful discriminatory harassment, and shall compensate Complainant for any leave without pay taken as the result of the discriminatory harassment. Complainant shall cooperate with the Agency and provide it with information respecting what leave and leave without pay she took as a result of the harassment.
3. Within 90 calendar days of the date this decision is issued, the Agency shall provide eight hours of in-person or interactive training to all management staff in the Office of Information and Technology, National Service Desk with a focus on preventing sexual harassment in the workplace and management's obligation after receiving a complaint of sexual harassment.
4. The Agency shall post a notice in accordance with the Order below.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Office of Information and Technology of the National Service Desk in Austin, Texas copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

ATTORNEY'S FEES (H1016)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of the date this decision was issued. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0617)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report **within thirty (30) calendar days** of the completion of all ordered corrective action. The report shall be in the digital format required by the Commission, and submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the Agency.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

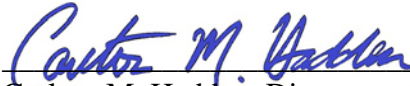
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or your appeal with the Commission, until such time as the Agency issues its final decision on your complaint.

If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. “Agency” or “department” means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant’s Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

March 9, 2018

Date