



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

████████████████████
Marcel M.,
Complainant,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service
(Western Area),
Agency.

Appeal No. 0120151062

Hearing No. 443-2013-00091X

Agency No. 4E-570-0014-07

DECISION

The Commission accepts Complainant's appeal from the Agency's December 26, 2014, final order concerning his 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. For the following reasons, the Commission **AFFIRMS** the Agency's final order as to discrimination and reprisal and **MODIFIES** the Agency's final order regarding compensatory damages.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Letter Carrier at the Agency's Post Office in Valley City, North Dakota. On January 3, 2007, Complainant was delivering mail at a housing development for elderly, low-income, and disabled individuals. The housing development was operated by the County's Housing Authority. Complainant's postal vehicle blocked access for a snow plow and the Housing Authority Maintenance Supervisor asked Complainant to move his vehicle. The two began arguing. Complainant took the outgoing mail, slammed the delivery box doors, and stopped placing mail in the delivery boxes. On his

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.

way back to his vehicle, Complainant told the Maintenance Supervisor in the presence of numerous residents that they would not receive their mail until the next day.

The Maintenance Supervisor notified the Director of the Housing Authority that Complainant had left the facility angry. Additionally, several residents reported the incident to the Director. The Director contacted the Postmaster and complained that Complainant had left the facility without completing delivery of the mail and said he would not come back until the next day. The Director requested that the Postmaster ensure that the residents timely received their mail.

The Postmaster went to the housing development to investigate the matter. While there, the Postmaster saw Complainant delivering mail on a nearby street. The Postmaster approached Complainant and gave him a direct order to complete delivery at the housing development. Complainant followed the directive. Later that day, the Postmaster asked to discuss the incident with Complainant and for him to prepare a written statement. During their discussion, Complainant alleged that he was being harassed and subjected to discrimination. Complainant claims that the Postmaster compared him to a local African-American resident during the conversation.

On January 9, 2007, the Postmaster held an investigative interview with Complainant and his union representative regarding the incident. On January 22, 2007, the Postmaster issued Complainant a Letter of Warning for Failure to Follow Instructions/Unacceptable Conduct/Delay of Mail for the January 3, 2007, incident.

Complainant filed a grievance challenging the Letter of Warning. On March 8, 2007, the union and management settled the grievance. The settlement provided that the Letter of Warning would be removed from Complainant's personnel file after one year if Complainant received no other discipline. Complainant did not receive any additional discipline following the Letter of Warning; however, it was not removed until October 18, 2011. Complainant believes that the Letter of Warning was issued based on discrimination and allowed to remain in his personnel folder beyond its expiration date based on discrimination and reprisal.

On April 13, 2009², Complainant filed a formal complaint alleging that the Agency discriminated against him and subjected him to a hostile work environment on the bases of race (Asian), sex (male), color (Brown), and in reprisal for prior protected EEO activity when:

1. On January 3, 2007, the Postmaster made a derogatory comment about him comparing him to a local criminal;

² Prior to filing a formal complaint, Complainant and the Agency entered into a settlement agreement in March 2007 resolving the matter. Complainant subsequently alleged that the Agency breached the settlement and, in Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120090317 (Mar. 6, 2009), the Commission determined that the settlement agreement was void as too vague. The Commission ordered the Agency to reinstate the complaint and resume processing.

2. On January 22, 2007, Complainant received a Letter of Warning (LOW) for Failure to Follow Instructions and Unacceptable Conduct/Delay of Mail;
3. Since January 2006, the Postmaster subjected him to daily harassment; and
4. He was denied eight hours of annual leave for December 26, 2008.

On April 29, 2009, the Agency dismissed the complaint for failure to state a claim and untimely EEO counselor contact. Complainant appealed and, in Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120092693 (May 28, 2010), the Commission affirmed the Agency's dismissal. Complainant filed a request for reconsideration and in Complainant v. U.S. Postal Serv., EEOC Request No. 0520120050 (Sept. 12, 2012) the Commission vacated only the portion of the previous decision regarding the Letter of Warning claim and remanded the claim for further processing. Complainant subsequently amended his complaint to allege that since 2007, the Postmaster has subjected him to gossip and insults on the work floor and he has not been considered for training.

Complainant's remaining allegations were that the Agency discriminated against him and subjected him to a hostile work environment on the bases of race (Asian), sex (male), color (Brown), and in reprisal for prior protected EEO activity when:

1. On January 22, 2007, Complainant received a Letter of Warning (LOW) for Failure to Follow Instructions and Unacceptable Conduct/Delay of Mail;
2. The Postmaster subjected him to gossip and insults on the workroom floor; and
3. He was not considered for training and denied opportunities to serve as a 204B acting supervisor.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. The AJ granted summary judgment in favor of the Agency as to claims (2) and (3), and held a hearing as to claim (1). The AJ issued a bench decision addressing all the claims on September 10, 2014.

In the decision, as to claim (2), the AJ initially noted that Complainant claimed that the Postmaster gossiped about him and insulted him to prove that he was the one in authority at the Post Office. The two individuals that Complainant alleged were the recipients of the gossip denied hearing any gossip about Complainant. Complainant further alleged that the Postmaster compared Complainant to a local African-American man who had recently been found guilty of murder. The AJ found that there was no evidence that the incidents alleged in claim (2) were based on discriminatory animus.

With regard to claim (3), the AJ noted that Complainant's spouse worked at the same facility. If Complainant served as an acting supervisor, he would have direct supervisory authority over his spouse in violation of Agency policy. The AJ determined that Complainant failed to show that management was motivated by discriminatory animus. As a result, the AJ found that Complainant had not been discriminated against or subjected to a hostile work environment as to claims (2) and (3).

With respect to claim (1), the AJ determined that the Agency articulated legitimate, nondiscriminatory reasons for issuing the Letter of Warning. Namely, Complainant was involved in a dispute with an employee of the housing development and advised the employee, in front of several residents, that the residents would not receive their mail until the next day. As a result, Complainant was issued the Letter of Warning for the incident on January 3, 2007. However, the Agency was under an affirmative obligation to remove the Letter of Warning from Complainant's personnel file in January 2008, and failed to do so. Once management became aware that the discipline was still in Complainant's official personnel file, it still refused to remove it. The Agency argued that it was Complainant's burden to submit a written request to have the Letter of Warning removed and that absent the written request, the Letter of Warning remained in his official personnel file. The AJ concluded that the Agency's reason for not removing it was unworthy of belief. As a result, the AJ found that the Agency had subjected Complainant to retaliation.

The AJ then addressed Complainant's entitlement to relief. The AJ found that the record supported that Complainant suffered humiliation and embarrassment because of the Letter of Warning remaining in his file more than five years longer than warranted. The AJ noted, however, that Complainant failed to adequately supplement the record with more extensive evidence of damages. While Complainant argued that he was deterred from pursuing further career advancement opportunities, the record did not support that he was deterred to the extent he claimed. As a result, the AJ awarded Complainant \$500.00 in non-pecuniary compensatory damages.

The Agency subsequently issued a final action fully implementing the AJ's decision. The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that the hearing focused on the Letter of Warning rather than the actual discrimination that occurred. Complainant argues that the AJ did not consider the testimony of his witnesses and that Agency officials provided false testimony and documents. Complainant claims that as the only person of color at the Post Office, he is treated less favorably. Accordingly, Complainant requests that the Commission find that the Agency discriminated against him. The Agency submitted a brief in opposition to Complainant's appeal in which it urges the Commission to affirm its final order.

ANALYSIS AND FINDINGS

The AJ's Summary Judgment Decision

The Commission's regulations allow an AJ to grant summary judgment when he or she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). An issue of fact is "genuine" if the evidence is such that a reasonable fact finder could find in favor of the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A fact is "material" if it has the potential to affect the outcome of the case.

Hostile Work Environment

To establish a claim of harassment a complainant must show that: (1) he belongs to a statutorily protected class; (2) he was subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on his statutorily protected class; (4) the harassment affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982). Further, the incidents must have been "sufficiently severe or pervasive to alter the conditions of [complainant's] employment and create an abusive working environment." Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993).

Therefore, to prove his harassment claim, Complainant must establish that he was subjected to conduct that was either so severe or so pervasive that a "reasonable person" in Complainant's position would have found the conduct to be hostile or abusive. Complainant must also prove that the conduct was taken because of his protected classes. Only if Complainant establishes both of those elements, hostility and motive, will the question of Agency liability present itself.

The Commission agrees with the AJ that, construing the evidence in the light most favorable to Complainant, the alleged incidents were not sufficiently severe or pervasive to establish a hostile work environment. The record appears to indicate that Complainant and the Postmaster had a contentious work relationship; however, the Commission notes that Title VII is not a civility code. Rather, it forbids "only behavior so objectively offensive as to alter the conditions of the victim's employment." Oncale v. Sundowner Offshore Serv., Inc., 523 U.S. 75, 81 (1998).

Even assuming that the alleged conduct was sufficiently severe or pervasive to create a hostile work environment, Complainant failed to show that the Agency's actions were based on discriminatory or retaliatory animus. The record reflects that the alleged incidents were more likely the result of routine supervision and general workplace disputes and tribulations. For example, the Postmaster denied gossiping about or insulting Complainant on the work floor. The Postmaster stated that she only shared information with supervisory officials that would be essential in the performance of their duties. ROI, at 380. The record contains no corroborating

evidence in support of Complainant's claim. With respect to training opportunities, the Postmaster noted that Complainant was offered an opportunity to train and act as a 204B acting supervisor at another facility in 2007, but declined. *Id.* at 382. Furthermore, the Postmaster noted that Complainant's spouse worked at the same facility and, pursuant to Agency policy, Complainant could not be considered for 204B opportunities at the facility as he would then be in a supervisory position over her. *Id.* at 84.

Construing the evidence in the light most favorable to Complainant, the Commission agrees with the AJ that Complainant has not shown he was subjected to a hostile work environment. Moreover, to the extent Complainant claims that he was subjected to disparate treatment, the Commission finds that Complainant has not proffered any evidence from which a reasonable fact finder could conclude that the Agency's explanation was pretext for discrimination or reprisal. As a result, the Commission finds no basis to disturb the AJ's summary judgment decision finding that Complainant was not subjected to discrimination, reprisal, or a hostile work environment as alleged in claims (2) and (3).

The AJ's Decision Following a Hearing

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. Nat'l Labor Relations Bd., 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held. See 29 C.F.R. § 1614.405(a).

An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See EEOC Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), Chap. 9, at § VI.B. (Aug. 5, 2015).

Disparate Treatment

To prevail in a disparate treatment claim such as this, Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Complainant must initially establish a prima facie case by demonstrating that he was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Corp. v. Waters, 438 U.S. 567, 576 (1978). Proof of a prima facie case will vary depending on the facts of the particular case. McDonnell Douglas, 411 U.S. at 802 n. 13. To establish a prima facie case of reprisal, Complainant must show that (1) he engaged in protected EEO activity; (2) the Agency was aware of the protected activity; (3) subsequently, he was subjected to adverse treatment by the Agency; and (4) a nexus exists

between his protected activity and the adverse treatment. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000).

The burden 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). To ultimately prevail, Complainant must prove, by a preponderance of the evidence, that the Agency's explanation is pretextual. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993).

After a careful review of the record, the Commission discerns no basis to disturb the AJ's decision finding that Complainant failed to establish that he was subjected to discrimination or retaliation as to the issuance of the Letter of Warning. Substantial record evidence shows that the Letter of Warning was issued following Complainant's conduct on January 3, 2007, in which he argued with the housing development's Maintenance Supervisor and initially refused to deliver their mail. Hr'g Tr., at 78-83; ROI, Ex. 9. Complainant admitted during the investigative interview that he closed the boxes and announced to the residents that he was not going to deliver the mail and that they would "get it tomorrow." ROI, Ex.9. Consequently, Complainant was issued the Letter of Warning for Failure to Follow Instructions/Unacceptable Conduct/Delay of Mail. Furthermore, the Commission finds that substantial record evidence supports the AJ's determination that Complainant had not shown that the Agency's reasons for issuing the Letter of Warning were a pretext for discrimination or reprisal. As a result, the Commission finds that Complainant has not established that he was subjected to discrimination or reprisal as to the issuance of the Letter of Warning. The findings of fact are supported by substantial evidence, and the AJ correctly applied the appropriate regulations, policies, and laws.

Neither party appears to challenge the Agency's finding of reprisal as to the Agency's failure to remove the Letter of Warning from Complainant's personnel file after one year as it was required to do. Therefore, the Commission will now address the AJ's award of relief.

Remedies

When discrimination is found, the Agency must provide the complainant with a remedy that constitutes full, make-whole relief to restore him as nearly as possible to the position he would have occupied absent the discrimination. See, e.g., Franks v. Bowman Transp. Co., 424 U.S. 747, 764 (1976); Albemarle Paper Co. v. Moody, 422 U.S. 405, 418-19 (1975); Adesanya v. U.S. Postal Serv., EEOC Appeal No. 01933395 (July 21, 1994). Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes unlawful intentional discrimination under either Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., or Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. may receive compensatory damages for past and future pecuniary losses (i.e., out-of-pocket expenses) and non-pecuniary losses (e.g., pain and suffering, mental anguish) as part of this "make whole" relief. 42 U.S.C. § 1981a(b)(3). In West v. Gibson, 119 S.Ct. 1906 (1999), the Supreme Court held that Congress afforded the Commission the authority to award compensatory damages in the administrative process. For an employer with more than 500

employees, such as the Agency, the limit of liability for future pecuniary and non-pecuniary damages is \$300,000. 42 U.S.C. § 1981a(b)(3).

Non-Pecuniary Damages

Non-pecuniary damages are losses that are not subject to precise quantification, i.e., emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, injury to credit standing, and loss of health. See EEOC Notice No. 915.302 at 10 (July 14, 1992). There is no precise formula for determining the amount of damages for non-pecuniary losses except that the award should reflect the nature and severity of the harm and the duration or expected duration of the harm. See Loving v. Dep't of the Treasury, EEOC Appeal No. 01955789 (Aug. 29, 1997). The Commission notes that non-pecuniary compensatory damages are designed to remedy the harm caused by the discriminatory event rather than punish the Agency for the discriminatory action. Furthermore, compensatory damages should not be motivated by passion or prejudice or be “monstrously excessive” standing alone, but should be consistent with the amounts awarded in similar cases. See Ward-Jenkins v. Dep't of the Interior, EEOC Appeal No. 01961483 (Mar. 4, 1999).

Evidence from a health care provider or other expert is not a mandatory prerequisite for recovery of compensatory damages for emotional harm. See Lawrence v. U.S. Postal Serv., EEOC Appeal No. 01952288 (Apr. 18, 1996) (citing Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993)). Objective evidence of compensatory damages can include statements from complainant concerning his emotional pain or suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character or reputation, injury to credit standing, loss of health, and any other non-pecuniary losses that are incurred as a result of the discriminatory conduct. Id.

Statements from others including family members, friends, health care providers, and other counselors (including clergy) could address the outward manifestations or physical consequences of emotional distress, including sleeplessness, anxiety, stress, depression, marital strain, humiliation, emotional distress, loss of self-esteem, excessive fatigue, or a nervous breakdown. Id. Complainant's own testimony, along with the circumstances of a particular case, can suffice to sustain his burden in this regard. Id. The more inherently degrading or humiliating the defendant's action is, the more reasonable it is to infer that a person would suffer humiliation or distress from that action. Id. The absence of supporting evidence, however, may affect the amount of damages appropriate in specific cases. Id.

Here, the AJ awarded Complainant \$500.00 in non-pecuniary compensatory damages, finding that Complainant presented evidence establishing that he was embarrassed and humiliated because the Letter of Warning remained in his file longer than warranted. Additionally, Complainant claimed that he was deterred from further career advancement for fear that hiring officials would review his personnel file and find the letter.

After careful consideration of the evidence of record, the Commission concludes that the AJ's award of \$500.00 in non-pecuniary compensatory damages is insufficient to remedy the harm the Agency's action caused Complainant. The Commission finds \$1,500.00 to be an appropriate amount. See Seda v. U.S. Postal Serv., Appeal No. 0720050090 (Mar. 20, 2007) (Complainant awarded \$1,500.00 in non-pecuniary compensatory damages for reprisal discrimination where Complainant provided only limited and non-descriptive testimony concerning emotional pain); Loren M. v. Dep't of Agric., Appeal No. 0120131546 (June 10, 2015) (non-pecuniary award of \$2,000 where complainant only stated that he was unhappy with the treatment he received by the Agency and as a result, his health and welfare were affected); Weatherspoon v. Dep't of Agric., EEOC Appeal No. 01966395 (Mar. 4, 1999) (\$1,000.00 awarded where the agency's discrimination caused complainant anguish, humiliation and torment). Bagwell v. U.S. Postal Serv., EEOC Appeal No. 01A04047 (Dec. 23, 2002) (\$1,500.00 awarded in reprisal action where limited evidence in the record, but complainant was embarrassed); Wiggins v. U.S. Postal Serv., EEOC Appeal No. 01A15177 (Apr. 2, 2002) (\$1,000.00 awarded in reprisal action in which complainant experienced increased stress and there was limited evidence to support claim). The Commission finds that this amount takes into account the severity of the harm suffered, and is consistent with prior Commission precedent. Finally, the Commission finds this award is not "monstrously excessive" standing alone, is not the product of passion or prejudice, and is consistent with the amount awarded in similar cases. See Jackson v. U.S. Postal Serv., EEOC Appeal No. 01972555 (Apr. 15, 1999) (citing Cygnar v. City of Chicago, 865 F. 2d 827, 848 (7th Cir. 1989)).

CONCLUSION

After a review of the record in its entirety, including consideration of all statements submitted on appeal, the Commission AFFIRMS the Agency's final order regarding discrimination and reprisal and MODIFIES the Agency's final order regarding remedial actions. The Agency shall comply with the Order herein.

ORDER

Within **sixty (60) calendar days** of the date this decision is issued, the Agency is ordered to take the following remedial action to the extent that it has not already done so:

1. Pay Complainant \$1,500.00 in non-pecuniary compensatory damages.
2. Provide at least eight (8) hours of training to the Management Official responsible for the failure to remove the Letter of Warning from Complainant's personnel file after one year as it was required to do regarding their responsibilities under EEO laws, particularly with respect to reprisal and Title VII.
3. Consider taking appropriate disciplinary action against the Management Official responsible for the failure to remove the Letter of Warning. The Commission does not consider training to be disciplinary action. The Agency shall report its decision to the

Compliance Officer. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If the Postmaster has left the Agency's employ, the Agency shall furnish documentation of their departure dates.

The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation verifying that the corrective action has been implemented.

POSTING ORDER (G1016)

The Agency is ordered to post at its Valley City Post Office 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 at the address cited in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0610)

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 submitted to the Compliance Officer, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 77960, Washington, DC 20013. 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 (M0416)

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 or **within twenty (20) calendar days** of receipt of another party's timely request for reconsideration. 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. The requests 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 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

May 17, 2017
Date