



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

[REDACTED]
Ross R.,¹
Complainant,

v.

Kirstjen M. Nielsen,
Secretary,
Department of Homeland Security
(Immigration and Customs Enforcement),
Agency.

Appeal No. 0120162491

Hearing No. 430-2016-00152X

Agency No. HS-ICE-00991-2011

DECISION

The Equal Employment Opportunity Commission (EEOC or Commission) accepts Complainant's appeal from the Agency's June 23, 2016 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 final order.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Criminal Investigator, Special Agent, GS-1811-13, at the Agency's Office of Investigations in Norfolk, Virginia. Complainant began his career in Denver, Colorado before accepting an assignment to Wilmington, North Carolina. While assigned to the Wilmington office, Complainant married a Customs and Border Protection Office employee in June 2006. Complainant's wife was subsequently hired by the Agency in 2007, and was assigned to the Richmond, Virginia Office in the Norfolk Area. Complainant applied for a transfer to the Norfolk Office. Complainant was transferred to the Norfolk Office in November 2009. Complainant worked out of an office in Newport News, Virginia. Complainant claimed that other married couples were permitted to

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.

work in the same office, but he and his wife were not allowed to do so. Neither Complainant nor his wife, however, requested transfers.

In March 2009, prior to Complainant's arrival in Norfolk, the agents from that office participated in an undercover operation at a concert. Complainant learned approximately two years later from another agent that his eventual second-level supervisor (S2) passed out beers to the agents as part of their "cover," gave an African-American agent a 40-ounce bottle of malt liquor, and said "You people drink this." In addition, Complainant was informed that an employee had referred to the same agent as the "big Black shiny guy." Additionally, an agent told Complainant about an incident that occurred four years ago at a retirement party at a private residence. The agent told Complainant that S2 once commented, "There comes the two monkeys with their white wives," about a Hispanic agent and an African-American agent and their wives. Complainant learned another co-worker had commented to an agent that she did not expect Complainant's wife (who is Caucasian) to be married to a Black man.

Around January 2010, Complainant presented his theories about an "international fraudulent document organization" to his first-level supervisor (S1). Specifically, Complainant discussed cases he had worked on while employed in the Wilmington area and believed it was a part of an international fraudulent ring. S1 raised the matter with another agent (SA-1) who specialized in fraudulent document investigations. SA-1 doubted Complainant's theories, and the matter was dismissed. Six months later, however, SA-1 pursued an investigation of a fraudulent document organization. SA-1 worked as lead on the case and Complainant assisted by coordinating activities in the Wilmington area.

Between March 16, 2011 and March 18, 2011, Complainant believed that his Acting Supervisor (AS) did not "give appropriate attention" to his case involving a corrupt agency official. Specifically, Complainant alleged that he was working with a confidential informant and needed to procure funds to keep the informant actively participating. Complainant claimed that he filed a Purchase of Evidence that he believed should have been issued within seven business days. Complainant claimed that, due to supervisory interference, he did not receive the money until May 4, 2011. Management explained that the delay was caused by Complainant's errors, including opening the case under the incorrect designation and Complainant's failure to properly and timely sign the request documents. Complainant believed that management exhibited no faith in his investigative and decision-making abilities.

On or about March 16, 2011, a special agent told Complainant that while he and another special agent were performing an operation, they found a cell phone in an Agency vehicle. While trying to determine its owner, the agent discovered a photograph of a Black baby in a Kentucky Fried Chicken bucket. The agents later determined that the cell phone belonged to SA-1. Complainant did not see the photograph, but was told about it from another agent. After learning of the incident, Complainant reported the matter to AS. AS consulted with S2 and the Employee and Labor Relations Office for guidance. Management subsequently gave SA-1 a verbal counseling regarding the incident.

Complainant's wife had communicated with a confidential informant who lived in Richmond and learned about potential criminal acts that were occurring in the Norfolk area. Complainant and his wife wished to work together on the case, with Complainant's wife meeting with the informant in Richmond while Complainant assisted with surveillance and investigation in Norfolk. On March 31, 2011, Complainant was informed that he and his wife could not work on the same team due to safety and conflict of interest concerns. As a result, Complainant's wife was removed from the investigation.

The Agency planned to consolidate and move its employees in the Norfolk area to the Norfolk Federal Building. Complainant claimed that he was told by S2 that the Department of Justice wanted the use of their Newport News office; therefore, the agents assigned to the Newport News office needed to vacate it and return to the Norfolk, Virginia office. Complainant claimed they were not given any assistance in moving their office items. Instead, Complainant alleged that they packed the office themselves, loaded their items into Agency-provided vehicles, and moved themselves. Complainant claimed that another agent had been provided assistance when he was required to move.

Complainant was working with an informant located in Richmond, Virginia and requested \$2,000.00 as "buy money" to provide to the informant. Agents are required to complete a Form 293 when requesting buy money. On the day of the scheduled meeting with the informant, Complainant traveled to a Richmond location, but forgot the Form 293 and left it on his work desk in Norfolk. Complainant, his wife, and approximately 13 other agents were involved in the operation. Complainant's wife suggested that he use a handwritten receipt with essentially the same information as the Form 293. Complainant created a handwritten receipt on a napkin, gave it to the informant, the informant signed the receipt and the money was provided to the informant. The exchange was videotaped, audiotaped, and witnessed by all of the agents present.

Approximately one week later, Complainant went out on leave for three months. The case was passed on to another agent while Complainant was out on leave. Management raised concerns about whether the informant had been paid the buy money. The informant was picked up in Richmond and brought to the Norfolk Federal Building. The informant initially did not recall signing the paper in exchange for the money, but later confirmed that Complainant and his wife were the officers who paid him. After learning that management had questioned the payment, Complainant called the office and explained the circumstances behind the handwritten receipt.

On June 10, 2011, 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 (African-American) and in reprisal for prior protected EEO activity as evidenced by multiple incidents including, inter alia, since November 2009, he and his spouse have been assigned to different Virginia offices; he was made aware that his second-level supervisor (S2) gave an African-American employee malt liquor; he heard about an employee referring to an African-American Agent as "the big Black shiny guy;" a coworker commented that she did not expect his spouse to be married to an African-American man; his theories about an "international fraudulent document organization" were dismissed and not acted upon, but six months later, management

pursued investigation of just such an organization; between March 16 and 18, 2011, management did not “give appropriate attention” to his case involving a corrupt agency official and exhibited no faith in his investigative and decision-making abilities; he learned of a racially inappropriate photograph on a co-worker’s personal cell phone; he was told that he and his wife could not be control and second agents on a confidential file nor could married agents be designated as the primary and secondary contact agents for a source; he was reassigned from Newport News, Virginia, to Norfolk, Virginia; and he became aware that he was not advised of an investigation into the alleged theft of informant-related money.

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 EEOC Administrative Judge (AJ). Complainant timely requested a hearing. The AJ assigned to the matter (AJ-1) granted the Agency’s motion for summary judgment, and issued a decision on June 6, 2013. In the decision, AJ-1 found that Complainant failed to show that the Agency subjected him to discrimination as alleged. The Agency issued a final order fully implementing the AJ’s decision.

Complainant appealed and, in Complainant v. Dep’t of Homeland Sec., EEOC Appeal No. 0120132831 (Sept. 10, 2015), the Commission vacated the Agency’s final order, finding that genuine issues of material fact remained in dispute. The Commission remanded the matter for a hearing before an EEOC AJ. The AJ (AJ-2) held a hearing on March 2 and 4, 2016, and issued a decision on June 15, 2016.

In the decision, AJ-2 initially determined that the alleged incidents were insufficiently severe or pervasive to establish a hostile work environment. In addition, AJ-2 found that there was no evidence that the Agency was on notice that most of the incidents occurred. Specifically, with regard to reassignment with his wife, the record established that he did not request a reassignment to the Richmond office and his wife did not request a reassignment to the Norfolk office. The malt liquor incident was not reported to management by the offended employee or any employee at or near the time it occurred. The racially insensitive comments were not reported to management by the offended employee at or near the occurrence. As to the fraudulent documents matter, Agency officials admitted not pursuing the case based solely on Complainant’s theories. Management officials decided to pursue the case after another agent, deemed the “go-to agent,” worked the case, determined solid information, and was ready to move forward. With respect to his claim that management did not give “appropriate attention” to one of his cases, management officials testified that any delays in the case progressing were caused by Complainant’s errors or omissions in completing required documents.

As to the inappropriate, racially insensitive photograph found on agent’s cell phone, it was housed on a personal cell phone, accessed by removing a SIM card from the personal cell phone, and reviewing numerous files which included the photograph. AJ-2 found that there was no evidence that the Agency was aware of the photograph stored on an employee’s personal cell phone. In addition, Complainant admitted never seeing the photograph and only learning of it in a third-hand conversation. Nonetheless, management investigated the matter and the agent was

counseled. With respect to management not allowing Complainant and his wife to work together on a case, management officials relied upon Agency protocol and policy. Finally, as to the decision to move Complainant to Norfolk, AJ-2 found that it was a work-based decision made by management based on previous office planning, policy, protocol, and/or a business decision. Furthermore, the evidence supported that Complainant and the other agent were required to move from the office with little support. Complainant, however, did not refute the Agency's reasons (no planning, no approved moving funds) for asking him and the other agent to move their office items.

As to the investigation into the informant-related money, AJ-2 found that the record demonstrated that Complainant was not subjected to a formal investigation; rather, it was a briefing to ascertain and discuss the proper protocol for documenting "buy money." Further, the record evidence supported that Complainant's confidential informant was summoned to the Agency only in order to corroborate the payment.

Finally, AJ-2 addressed several of the incidents as third-party harassment. AJ-2 noted that in some cases, harassment of one or more employees could create a hostile work environment for another employee who was not the target of the harassment. Third-party harassment has been found as a potential claim where the complainant had some kind of personal connection to the offensive behavior. Here, Complainant did not observe the offensive racial conduct. Moreover, Complainant was not even employed at the facility when it occurred. AJ-2 added that some of the claims alleged were reflective of a racially intense, insensitive, and perhaps, discriminatory environment; however, AJ-2 found that Complainant was not a victim of these incidents. Here, Complainant attempted to claim discrimination based on the harm done to others. AJ-2 concluded that this particular Agency office was wrought with racial insensitivity, racial stereotyping, office gossip, personality conflicts and, perhaps, discriminatory behavior. However, Complainant failed to demonstrate that he was subjected to discrimination, reprisal, or a hostile work environment as alleged. AJ-2 strongly suggested, however, that the office engage in related training.

The Agency subsequently issued a final order fully implementing AJ-2's decision. The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that he and other African-American employees in the Norfolk Office were subjected to a hostile work environment. Complainant argues that the AJ erred in finding that Complainant was not subjected to a hostile work environment because he was not personally present when the discriminatory actions occurred. In addition, Complainant contends that the Agency did not do enough once the racist image was found on SA-1's cell phone. Complainant argues that management stymied his attempts to investigate a fraudulent document organization, but six months later used the information he gathered to launch an investigation. Further, Complainant contends that Agency management conducted an improper investigation to

embarrass him while he was out on leave recovering from surgery. Accordingly, Complainant requests that the Commission reverse the final order.

STANDARD OF REVIEW

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 Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), Ch. 9, at § VI.B. (Aug. 5, 2015).

ANALYSIS AND FINDINGS

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.

Complainant asserted that based on his protected classes, Agency officials subjected him to a hostile work environment. Complainant alleged several incidents of what he believed to be discriminatory and retaliatory harassment. The Commission finds that substantial record

evidence supports AJ-2's determination that Complainant has not shown that he *personally* was subjected to conduct sufficiently severe or pervasive to create a hostile work environment.

In so finding, the Commission acknowledges that the many of the incidents alleged are highly offensive and objectionable; however, substantial record evidence supports AJ-2's findings that Complainant did not witness most of the racially-insensitive incidents alleged, that he learned of the conduct second or third-hand, he did not work at the Norfolk Office when the alleged racially offensive conduct occurred, and the offensive behavior was not directed at him. Essentially, Complainant claims that he was affected by the alleged harassment of others. The Commission has recognized that in some circumstances, harassment of one or more employees may create a hostile work environment for another employee who is not the target of the harassment. However, in the instant case, many of the offensive incidents and comments occurred either prior to Complainant's arrival at the Norfolk Office or were not directed at him. While employees who witnessed the incidents may have suffered direct harm as a result of the alleged conduct, the Commission finds that substantial evidence shows that Complainant failed to demonstrate that *he* was subjected to conduct that rose to the level of objectively unreasonable behavior that would trigger a violation of Title VII. See Complainant v. Dep't of Treasury, EEOC Appeal No. 0120131775 (Apr. 1, 2015).

Additionally, the Commission concurs with AJ-2 that Complainant failed to show that the alleged incidents were based on his protected classes. For example, with respect to Complainant's claims regarding working with his spouse, both Complainant and his wife testified that they did not request reassignments to the other's assigned office. Hr'g Tr., Vol. 1, at 215, 304. Furthermore, S1 testified that the Agency had a local management practice to not allow married couples to work in the same group. Hr'g Tr., Vol. 2, at 344. S1 testified that this policy was in place to avoid conflicts of interest, scheduling issues, and safety concerns. Id. As to the fraudulent document case, S1 testified that at the time Complainant brought his theories to him, SA-1 had been conducting multiple fraudulent document investigations in the area and was essentially his "go-to agent" for these investigations. Id. at 346-47. S1 determined that there was no evidence at that time warranting going forward with an investigation. Id. at 346. S1 testified that six months later, SA-1 brought S1 all of the information needed to initiate an investigation into a document fraud organization. Id. at 347. S1 testified that he did not assign cases to agents and instead agents brought their own cases and worked them proactively from start to finish. Id. S1 testified that since SA-1 had prepared all of the things needed for the investigation, it would have been inappropriate to take him off the case at that point. Id. at 348-49. S1 testified that Complainant participated significantly in the investigation. Id. at 349.

As to the move to the Norfolk Office from Newport News, S1 testified that management had been planning the consolidation of offices for two years. Hr'g Tr., Vol. 2, at 353-54. S1 testified that the Agency had to incorporate building out office space and moving office equipment into the whole project, but moving Complainant and another agent's files and items were not included in the scope of work for the moving company. Id. at 354. Nonetheless, Complainant was offered assistance, but he declined. Id. at 442.

Finally, regarding the informant payment issue, S1 testified that it was reported to him that no one had witnessed the payment to the informant. Hr'g Tr., Vol. 2, at 354-55. S1 testified that since Complainant was out on medical leave and payment could not be verified, he and S2 decided to call the informant in and speak with him in person. Id. at 355. S1 testified that the informant confirmed that he received the payment. Id. S1 testified that Complainant and his wife expressed that they felt like they were being investigated and that their integrity was being challenged. Id. at 356-57. S1 testified that management explained to Complainant and his wife that they were not conducting an investigation; rather, they were trying to ascertain the circumstances surrounding the payment and provide oversight to the informant program. Id. at 357. S1 testified that management considered the matter resolved at that point. Id.

After reviewing the record and considering the arguments on appeal, the Commission finds that AJ-2 made reasonable credibility determinations, which are not contradicted by objective evidence, and her factual findings are supported by substantial evidence. Based on the specific circumstances present, the Commission finds that substantial record evidence supports AJ-2's finding that Complainant has not shown that he was subjected to a discriminatory or retaliatory hostile work environment. Furthermore, to the extent that Complainant is alleging disparate treatment with respect to his claims, the Commission finds that he has not shown that the Agency's reasons for its actions were a pretext for unlawful discrimination or reprisal. Accordingly, the Commission finds that Complainant has not established that he was subjected to discrimination, reprisal, or a hostile work environment as to all claims alleged.

However, the Commission agrees with AJ-2 that the atmosphere at the Norfolk Office was clearly rife with offensive and racially-hostile behavior. The record evidence demonstrates that employees at the Norfolk Office, including S2 and SA-1, used racial epithets and engaged in racial stereotyping. While Complainant did not witness the racially-insensitive conduct nor was the conduct directed at him, substantial record evidence shows that other African-American employees were subjected to the conduct based on their race. As discussed above, most of the incidents occurred prior to Complainant's arrival; however, the management official (S2) responsible for some of the conduct at issue was in Complainant's chain-of-command. AJ-2 acknowledged the offensive work environment and suggested that the Norfolk Office undergo training. The Commission agrees that an order of training is warranted under the circumstances present. Thus, the Commission takes this opportunity to modify the final order to require the Agency to conduct training for the Norfolk Office's employees regarding race-based harassment, to consider disciplining S2 and SA-1, and to post the attached notice.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, the Commission concludes that the Administrative Judge's decision issued following a hearing is supported by substantial evidence of record. The Commission MODIFIES the Agency's final order. The Commission REMANDS the matter to the Agency for further processing in accordance with this decision and the ORDER below.

ORDER

1. Within 90 days from the date this decision is issued, the Agency is ordered to provide eight hours of in-person or interactive EEO training to all employees at the Office of Investigations, Assistant Special Agent-in-Charge Office in Norfolk, Virginia, specifically with regard to employees' protections against race-based harassment.
2. Within 60 days from the date this decision is issued, the Agency shall consider taking disciplinary action against S2 and SA-1. If the Agency decides not to take disciplinary action, it shall set forth the reason for its decision not to impose discipline. If the identified employees are no longer employed by the Agency, the Agency shall furnish proof of the date of separation. The Commission does not consider training to be disciplinary action.
3. The Agency shall post a notice in accordance with the paragraph entitled "Posting Order."

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 supporting documentation of the Agency's calculation of back pay and other benefits due Complainant, including evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Office of Investigations, Assistant Special Agent-in-Charge Office in Norfolk, Virginia 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).

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0618)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. **Within seven (7) calendar days** of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP)

supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

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).

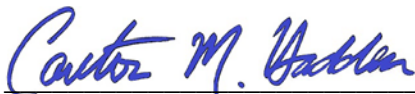
COMPLAINANT’S RIGHT TO FILE A CIVIL ACTION (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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 filed your appeal with the Commission. 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. **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

July 25, 2018

Date