



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

[REDACTED]
Lauralee C.,¹
Complainant,

v.

Robert Wilkie,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 0120170883

Agency No. 20DR-0010-2015104647

DECISION

On January 14, 2017, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's December 15, 2016, final decision 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. For the following reasons, the Commission MODIFIES the decision.

ISSUES PRESENTED

The issues presented are whether Complainant established that she was subjected to discrimination, harassment or sexual harassment; and whether the Agency subjected Complainant to retaliation for engaging in protected EEO activity.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Health System Specialist, GS-12 at the Agency's Policy Planning and Analysis facility in Washington, D.C. She was a Presidential Management Fellow (PMF) appointee, and as a PMF, Complainant was given a two-year temporary appointment. At the end of the two years, a PMF is either converted to a permanent career conditional position or is terminated. Complainant completed her two-year

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.

requirement and was granted a 120-day extension. She was not, however, converted to a career conditional appointment.

Complainant alleged that her second-line supervisor (S2), prevented her from being converted to a full-time federal employee after she complained about him. Complainant indicated that S2 told her that she should be more submissive in order to succeed and told her that he controlled her professional future. Complainant explained that, in April 2014, she filed a complaint with the dispute resolution team, which indicated that she lacked assignments, lacked meaningful work, had been told to speak when spoken to, and had been told to not ask anyone questions. In May 2014, Complainant reported to her third-line supervisor (S3), that S2's behavior toward her was "rooted in sexual harassment." An investigation was initiated, and Complainant's claims were found to be unsupported. Thereafter, Complainant sent a letter to the Secretary of the Agency, regarding S2's behavior. On August 4, 2015, Complainant was issued a Letter of Admonishment for making unfounded allegations about S2. According to the Agency, the making of false statements was considered to be an act of misconduct.

On October 15, 2015, Complainant was advised that her temporary position would not be converted to a permanent career conditional position. Complainant was placed on administrative leave that day. She remained in a paid duty status until November 14, 2015.

Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of sex (female) and reprisal for engaging in prior protected EEO activity when:

- Claim A: On or about August 4, 2015, she was issued a Letter of Admonishment for allegedly making false statements about her second line supervisor (this claim was based on sex only);
- Claim B: On October 15, 2015, she was unwillingly placed on administrative leave (this claim was based on sex only);
- Claim C: On October 15, 2015, she was informed that she was not recommended for conversion from her Presidential Management Fellow appointment to a full-time career conditional position (this claim was based on sex only);
- Claim D: On May 5, 2015, she was subjected to sexual harassment based on sex when her second-line supervisor told her that she needed to be more submissive in order to succeed; and
- Claim E: Complainant alleged that she was subjected to harassment resulting in a hostile work environment on the bases of sex (female) and/ or reprisal (prior EEO activity) as evidenced by seven incidents occurring May 5, 2015 through October 15, 2015.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge. When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b).

The FAD concluded that Complainant failed to prove that the Agency subjected her to discrimination and harassment as alleged. Specifically, the Agency found that assuming, *arguendo*, Complainant established a *prima facie* case of discrimination with respect to all of her bases, the Agency articulated legitimate, nondiscriminatory reasons for its actions. With regard to Claim A, the Letter of Admonishment, Complainant claimed that the Letter was issued to her because she rebuffed S2's advances. Management explained, however, that Complainant was issued the Letter after she sent a letter to the Secretary complaining about S2 and that the statements were found to be untrue and libelous. Based on the Table of Penalties, Complainant was issued a Letter of Admonishment as a result of a first-time offense.

With respect to Claims B and C, management indicated that it was decided to not convert Complainant to a career conditional position as a result of her false allegations against S2 and because of her pattern of misconduct.² On that same day, management also placed Complainant on administrative leave because it was believed it would not be in the best interest of the Agency to have her report to duty once she received notice that she was not going to be converted. Complainant was put on administrative leave to give her the opportunity to maintain her government status while she looked for another position. To show pretext, Complainant argued that S2 treated female veterans badly, and that he had caused two females to leave the Department. S3 indicated, however, that the two employees that Complainant mentioned indicated that they were leaving the office to pursue new career opportunities and there was no mention of S2. The Agency found that Complainant did not demonstrate that the Agency's actions were pretext for discrimination.

Regarding her sexual harassment claim, Complainant alleged that S2 subjected her to sexual harassment when he told her that she needed to be "more submissive" in order to succeed. She

² S1 wrote that:

[Complainant] has not consistently demonstrated reasoned interpretation, good problem-solving skills, or an ability to efficiently negotiate solutions where the situation or date is inconsistent with her perspectives. She has displayed - in some situations - unhealthy interpersonal skills, constrained strategic relationships and ineffective communications with managers. She received a counseling memo for disrespectful and unbecoming e-mail communications, and more recently received a formal admonishment for false/unfounded statements which were slanderous and defamatory about a federal official.

also testified that she believed he was making sexual advances when he required “mandatory” lunches and when he offered to pick her up at home or at the metro station to attend a meeting. S2 denied telling Complainant to be more submissive, and he denied that he required her to attend mandatory lunches. He maintained that he never had lunch with Complainant. Finally, S2 indicated that because he and Complainant were going to the same meeting, he once offered to pick her up at the metro and drive her to the meeting. He indicated that he had offered that same courtesy to his other employees, both male and female. The FAD found that the evidence did not support Complainant’s allegation that she was subjected to sexual harassment.

The FAD found that Complainant did not demonstrate that she was subjected to a hostile work environment with respect to the incidents that she claimed. Specifically, Complainant alleged that she was not assigned meaningful work, that she was told that she needed to be more submissive, that she was denied her within grade increase, and that S2 influenced others not to hire her. The FAD found that after Complainant reported that S2 told her that she needed to be more submissive, S3 questioned S2 and he denied making the comment. S3 indicated that Complainant never alleged sexual harassment during their conversations but did tell S3 that she thought that S2 was disrespectful to Black women. Thereafter, Complainant sent a letter to the Secretary of the VA, making the same allegations about S2, namely that he had told her that she needed to be more submissive, that she was not assigned meaningful work, etc. The allegations were investigated and were found to be untrue. Also, no witnesses testified that such comments had been made.

Further, S2 explained that Complainant’s within grade increase was withheld until Complainant corrected work deficiencies. S2 indicated that Complainant had been given a memo outlining what she needed to work on before she could be promoted to the GS-12 level, and that her behavior with her supervisor and co-workers had been inappropriate, unprofessional, and “border[ed] on insubordination.” He then pointed out that because her performance at the GS-11 level had been only satisfactory up to this point, he could not recommend her for promotion at that time, but that he would re-consider her promotion after 90 days. Complainant was actually promoted to the GS-12 level on April 19, 2015. S2 also denied assigning Complainant menial tasks. S2 acknowledged that he had asked her to type an agenda for the “All Hands” meeting, but this is a task that other employees in the office, including himself had done.

Finally, S2 indicated that he did not influence others to not to hire Complainant. S2 explained that he spoke with the Deputy District Veterans Experience Officer (the Deputy) about a Memorandum of Understanding (MOU) regarding a detail for Complainant. S2 believed that the details of the MOU had been worked out but was later told that a decision not to offer the detail to Complainant had been made. S2 inquired about the reason Complainant was not placed on the detail, the Deputy indicated that she had received some negative background information on Complainant from an undisclosed source on her staff. S2 maintained that he had nothing to do with the decision not to detail Complainant.

Finally, the FAD found that Complainant did not establish that the alleged conduct at issue was severe or pervasive enough to establish a hostile work environment.

CONTENTIONS ON APPEAL

Complainant did not provide a brief on appeal.

The Agency maintains that it articulated legitimate, nondiscriminatory reasons for its actions, and Complainant failed to show that the Agency's reasons were pretext for discrimination. The Agency requests that its FAD be affirmed because Complainant did not establish that she was subjected to discrimination, harassment, or sexual harassment.

ANALYSIS AND FINDINGS

Standard of Review

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that EEOC "review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law").

Direct Evidence of Reprisal Discrimination regarding Claims A, B, and C:

In its enforcement guidance on retaliation, the Commission states:

The anti-retaliation provisions make it unlawful to discriminate because an individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII, the ADEA, the EPA, the ADA, the Rehabilitation Act, or GINA. This language, known as the "participation clause," provides protection from retaliation for many actions, including filing or serving as a witness for any side in an administrative proceeding or lawsuit alleging discrimination in violation of an EEO law. The participation clause applies even if the underlying allegation is not meritorious or was not timely filed. The Commission has long taken the position that the participation clause broadly protects EEO participation regardless of whether an individual has a reasonable, good faith belief that the underlying allegations are, or could become, unlawful conduct. Although the Supreme Court has not addressed this question, the participation clause by its terms contains no limiting language, and protects from retaliation employees' participation in a complaint, investigation, or adjudication process.

EEOC Enforcement Guidance on Retaliation and Related Issues, EEOC Notice 915.004 (Aug. 25, 2016) (Retaliation Guidance).

The Commission further states that:

The Supreme Court has reasoned that broad participation protection is necessary to achieve the primary statutory purpose of anti-retaliation provisions, which is “maintaining unfettered access to statutory remedial mechanisms.” The application of the participation clause cannot depend on the substance of testimony because, “[i]f a witness in [an EEO] proceeding were secure from retaliation only when her testimony met some slippery reasonableness standard, she would surely be less than forth-coming.” These protections ensure that individuals are not intimidated into forgoing the complaint process, and that those investigating and adjudicating EEO allegations can obtain witnesses’ unchilled testimony. It also avoids pre-judging the merits of a given allegation. For these reasons, the Commission disagrees with decisions holding to the contrary.

Id.

Finally, the Commission indicated that:

This does not mean that bad faith actions taken in the course of participation are without consequence. False or bad faith statements by either the employee or the employer should be taken into appropriate account by the factfinder, investigator, or adjudicator of the EEO allegation when weighing credibility, ruling on procedural matters, deciding on the scope of the factfinding process, and deciding if the claim has merit. It is the Commission’s position, however, that ***an employer can be liable for retaliation if it takes it upon itself to impose consequences for actions taken in the course of participation.***

Retaliation Guidance (emphasis added).

We find that the actions of S2, S3, and S1, were clearly in violation of the anti-retaliation provisions of our regulations. As was noted above, in deciding whether the comments made by management were retaliatory, the test is whether the comments and actions were reasonably likely to deter protected EEO activity by Complainant or other employees. We note in this regard, S2’s comments about not converting Complainant to an employee and discussing this issue with S1 and S3 is likely to deter other employees from engaging in the EEO process.

We have held that the actions of a supervisor are discriminatory based on reprisal where the supervisor acts to intimidate an employee and interfere with his or her EEO activity in any manner. See Binseel v. Dep’t of the Army, EEOC Request No. 05970584 (Oct. 8, 1998); Yubuki v. Dep’t of the Army, EEOC Request No. 05920778 (June 4, 1993); see also Lindsey v. U.S. Postal Serv., EEOC Request No. 05980410 (Nov. 4, 1999). The statutory retaliation clauses prohibit any adverse treatment that is based upon a retaliatory motive and is reasonably likely to deter a complainant or others from engaging in protected activity. Id.; Robinson v. Shell Oil Co., 519 U.S. 337, 346 (1997).

In Feder v. Department of Justice, the Commission held:

Direct evidence of a retaliatory motive is any written or verbal statement by an Agency official that he or she undertook the challenged action because the employee engaged in protected activity. Such evidence also includes a written or oral statement by an Agency official that on its face demonstrates a bias toward the employee based on his or her protected activity, along with evidence linking that bias to the adverse action.

Feder v. Dept. of Justice, EEOC Appeal No. 0720110014 (May 14, 2013).

In this case, Complainant engaged in protected activity under Title VII when she complained of discrimination based on her sex and sexual harassment to the Agency's Secretary. S2, S3, and S1 were aware of this activity, and after conducting an investigation that determined that Complainant's allegations were untrue, took action to punish Complainant by issuing her a Letter of Admonishment, placing her on administrative leave, and not converting her to a permanent position and subsequent removal. Management clearly states that these actions were based, in part, on her allegations against S2. We find that the facts of this case demonstrate that there was a bias against Complainant based on her protected EEO activity, along with evidence linking that bias to the adverse actions. Accordingly, we find direct evidence of discrimination.

Mixed-Motive Analysis

In light of our finding that Complainant's removal was motivated by reprisal, we further find that this matter should be reviewed under a mixed-motive analysis because the deciding official also provided a non-retaliatory reason for removing Complainant, i.e., because of her pattern of misconduct. Among other things, S1 indicated that Complainant had not "[c]onsistently demonstrated reasoned interpretation, good problem-solving skills, or an ability to efficiently negotiate solutions where the situation or date is inconsistent with her perspectives." Further, he noted that "[S]he has displayed - in some situations - unhealthy interpersonal skills, constrained strategic relationships and ineffective communications with managers."

Cases such as this, where there is evidence that discrimination was one of multiple motivating factors for an employment action, that is, the employer acted on the bases of both lawful and unlawful reasons, are known as "mixed motive" cases. Once an employee demonstrates that discrimination was a motivating factor in the employer's action, the burden shifts to the employer to prove, by clear and convincing evidence, that it would have taken the same action even if it had not considered the discriminatory factor. See Price Waterhouse v. Hopkins, 490 U.S. 228, 249, 258 (1989); Tellez v. Dep't of the Army, EEOC Request No. 05A41133 (Mar. 18, 2005). If the employer is able to meet this burden, the employee is not entitled to personal relief, that is, damages, reinstatement, hiring, promotion, and/or back pay. But the employee may be entitled to declaratory relief, injunctive relief, attorneys' fees or costs. See Walker v. Soc. Sec. Admin., EEOC Request No. 05980504 (Apr. 8, 1999).

To meet its burden, the employer must offer objective evidence that it would have taken the same action even absent the discrimination. In this showing, the employer must produce proof of a legitimate reason for the action that actually motivated it at the time of the decision. A mere assertion of a legitimate motive, without additional evidence proving that this motive was a factor in the decision and that it would independently have produced the same result, is not sufficient. The employer must prove “that with the illegitimate factor removed from the calculus, sufficient business reasons would have induced it to take the same action.” Price Waterhouse, 490 U.S. at 276-77 (O’Connor, J., concurring). The employer’s alleged legitimate explanation for the action will be undercut if there is evidence that this reason would also have justified taking the same action against another similarly-situated employee, but the employer declined to do so. Revised Enforcement Guidance on Recent Developments in Disparate Treatment Theory, EEOC Notice No. 915.002 (July 14, 1992).

There is no question that the record contains justification for the Agency to have removed Complainant for performance-based reasons; however, we are not looking at this matter in a vacuum. We cannot say, based on the record before us, that the Agency would have taken the same action, i.e., non-conversion of her position to a permanent position, absent the retaliatory motivation of Complainant’s managers, especially S2, who testified that he was the individual who made the decision not to convert Complainant’s appointment to a permanent position. In view of the foregoing, we find that the Agency has not satisfied its burden of proof to avoid providing personal relief.

Harassment

Harassment is actionable if it is sufficiently severe or pervasive that it results in an alteration of the conditions of the Complainant's employment. See EEOC Notice No. 915.002, Enforcement Guidance on Harris v. Forklift Systems, Inc., at 3 (Mar. 8, 1994). To establish a claim of harassment Complainant must show that: (1) she belongs to a statutorily protected class; (2) she was subjected to unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on the statutorily protected class; (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. See Humphrey v. United States Postal Service, EEOC Appeal No. 01965238 (Oct. 16, 1998).

With respect to Complainant’s allegation of harassment and sexual harassment we find that the record does not support her claims. We find no persuasive evidence that showing that any of the complained of conduct was due to her protected categories. Additionally, even taking all these events together, we find that they are not severe or pervasive enough to rise to the level of unlawful harassment. Accordingly, we find that Complainant has not shown that she was subjected to a hostile work environment based on her sex, or in reprisal for protected EEO activity.

CONCLUSION

Accordingly, we MODIFY the Agency's FAD as set forth above. The Agency is ordered to take the following action as set forth in the ORDER below.

ORDER

The Agency is ordered to take the following remedial actions **within one hundred and twenty (120) calendar days** of the date this decision is issued:

1. The Agency shall offer to retroactively reinstate Complainant to the Health System Specialist, GS-12 position, or a substantially equivalent position, she held on November 14, 2015. Complainant should then be converted to permanent status. The offer should be made in writing, providing Complainant 15 (fifteen) calendar days from receipt of the offer to notify the Agency of the acceptance or rejection. Failure of the Complainant to respond within the 15-day time limit shall be construed as a declination.
2. The Agency shall award Complainant the appropriate amount of back pay and other benefits pursuant to 29 C.F.R. § 1614.501(c). Complainant shall cooperate in the Agency's efforts to compute the amount of back pay and benefits due, and, shall provide all relevant information requested by the Agency. If there is a dispute regarding the exact amount of back pay and/or benefits, the Agency shall issue a check to the Complainant for the undisputed amount within sixty (60) calendar days of the date the Agency determines the amount it believes to be due. Complainant may petition for enforcement or clarification of the amount in dispute.
3. The Agency shall conduct a supplemental investigation on compensatory damages, including providing Complainant an opportunity to submit evidence of pecuniary and non-pecuniary damages. For guidance on what evidence is necessary to prove pecuniary and non-pecuniary damages, the parties are directed to EEOC Enforcement Guidance: Compensatory and Punitive Damages Available Under § 102 of the Civil Rights Act of 1991 (July 14, 1992) (available at eeoc.gov). The Agency shall complete the investigation and issue a final decision, within 60 days of the investigation, appealable to the EEOC determining the appropriate amount of damages.
4. The Agency shall remove any copy of the August 4, 2015, Letter of Admonishment from any personnel record or file, hardcopy or electronic, pertaining to Complainant.
5. The Agency will ensure that S1, S2, and S3 receive at least 8 (eight) hours of EEO training with a focus on preventing retaliation in the workplace. The Commission does not consider training to be a disciplinary action.
6. The Agency shall consider taking disciplinary actions against S1, S2, and S3. The Agency shall notify the Commission of its decision.

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 (G0617)

The Agency is ordered to post at its Policy Planning and Analysis facility in Washington, DC 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 (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 (T0610)

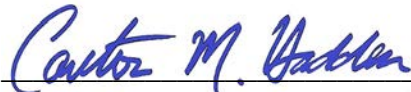
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from 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

February 28, 2019

Date