



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

[REDACTED]
Rochelle F.,¹
Complainant,

v.

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

Appeal No. 0120171406

Agency No. 1G-701-0031-16

DECISION

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 February 7, 2017, 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission **AFFIRMS** in part and **REVERSES** in part the Agency's final decision.

ISSUES PRESENTED

The issues presented are whether the Agency properly found that Complainant did not prove the Agency denied her a reasonable accommodation for her disability, and whether the Agency properly found that Complainant did not prove she was subjected to unlawful harassment or discrimination.

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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Mail Processing Clerk at the Baton Rouge, Louisiana Processing and Distribution Center. In this position, Complainant performed a variety of duties required to process mail using automated processing equipment or manual sorting and distribution. On February 22, 2012, Complainant was offered and accepted a limited duty Mail Processing Clerk assignment that included sitting in a chair and lifting less than five pounds for up to eight hours per day.

On June 27, 2016, Complainant filed an EEO complaint in which she alleged that the Agency harassed and discriminated against her on the bases of sex (female), disability, age (born in December 1954), and in reprisal for prior protected EEO activity when:

1. Since March 17, 2016, her request for reasonable accommodation has been denied;
2. Since March 17, 2016, coworkers have been scheduled to work 45 minutes earlier than she was scheduled; and
3. On June 23, 2016, she was subjected to a hostile work environment when her coworker called her a “bitch,” and management did nothing.

In an investigative statement, Complainant stated that she has a bad back and swollen extremities, and these conditions were exacerbated by the fact she was issued “not so ergonomically friendly accommodations.” Complainant stated that her conditions are permanent and were first diagnosed in October 1993. Complainant further stated that she can perform all the duties assigned to her, including working “waste mail” and holding and operating a scanner.

Regarding claim 1, Complainant stated that on March 17, 2016, she verbally requested a reasonable accommodation to her supervisor (S1), and subsequently on a PS Form 1767 submitted the request to S1. Complainant further stated that the Maintenance Manager let an employee order a chair for Complainant, but the chair was not “ergonomically correct.” Complainant stated that the chair provided was “overstuffed” and could only be adjusted up or down, which resulted in horrible swelling in her legs and feet. She stated that she told S1 that the chair caused her to experience “physical problems” that are ongoing, and the chair exacerbated her other health issues.

Regarding claim 2, Complainant stated that management knew that coworkers were reporting to work 45 minutes earlier than she reported, yet they led a coworker to believe that she “outed” them about this matter, although it was C1 who said this about the coworkers. Complainant further stated that C1 claimed that she was hitting the clock early and was working overtime, although she only worked the allowed six hours per day. Complainant also stated that a limited duty female employee (C2) who became injured worked overtime, although Complainant only wanted to work eight hours per day without overtime. Complainant further stated that a male employee (C3) who was injured on the job was reassigned to several different jobs.

Regarding claim 3, Complainant stated that on June 23, 2016, C1 uttered the word “bitch” around her, and when she turned around, C1 headed back up the aisle. She stated that she then asked C1 if he was speaking to her, and he took a few steps toward the office, turned around, and yelled “bitch.” Complainant stated that she immediately reported C1’s actions to managers, who never even required C1 to say he was sorry. She stated that a coworker (C4) was the first victim of C1’s harassment.

S1 (female, born in July 1973) stated that she was aware that Complainant had medical limitations because she filled out her Limited Duty offer of assignment form in 2006 and 2012, but did not know her medical impairments or conditions. S1 further stated that she knew that Complainant could not lift more than five pounds or work more than six hours per day but could perform the duties of her modified assignment. S1 also stated that she was aware of Complainant’s previous EEO activity because she received investigative affidavits about it in 2015 and 2016.

Regarding claim 1, S1 stated that Complainant never requested a reasonable accommodation, but the Maintenance Manager was involved in the matter. S1 stated that Complainant received an ergonomic chair from the Maintenance Manager. S1 further stated that although Complainant submitted a Form 1767 to her regarding the chair, there were no reasonable grounds to determine that a hazard existed. S1 also stated that she did not know if Complainant expressed disagreement with management about its response to her reasonable accommodation request.

Regarding claim 2, S1 stated that Complainant cannot perform the essential functions of a Mail Processing Clerk position, and works in a Modified Mail Processing Clerk assignment based on her medical restrictions. S1 further stated that Complainant has performed modified duties since 2012. S1 also stated that Complainant had not spoken to her about coworkers who could clock in early, but the Manager spoke to her about the matter.

The Manager (female, born in 1955) stated that she was aware of Complainant’s medical conditions and impairments based on her job offer CA-17 form. The Manager further stated that she had completed numerous EEO affidavit statements regarding Complainant.

Regarding claim 1, the Manager stated that she did not recall Complainant requesting a reasonable accommodation, but she recalled that the Maintenance Manager checked Complainant’s chair for problems, but did not find anything was wrong with the chair. She stated that Complainant claimed that the chair was “horrible,” too wide, and overstuffed, but managers felt that the chair given to Complainant was suitable.

Regarding claim 2, the Manager stated that all employees were expected to report to work at 7:45 p.m., except for one employee who reports at 5:00 p.m. The Manager stated that Complainant reported to work early and was told to discontinue hitting the clock early. She stated that all employees were told not to report early. The Manager further stated that C1 is not comparable to Complainant because he is not holding a modified job offer, and C2 and C3 are not under her management.

Regarding claim 3, the Manager stated that C1 admitted that he was talking to Complainant when he said “bitch,” and that he said it in passing. The Manager further stated that an investigation was conducted and discipline was issued to C1.

The Manager of Distribution Operations (male, born in 1959) stated that he was not aware of Complainant’s medical impairments. Regarding claim 2, the Manager of Distribution Operations stated that all employees with a limited duty job offer reported to work at 7:45 p.m., whereas employees who are full duty, report to work according to their bid assignments.

The Maintenance Manager (male, born in 1952) stated that he believed that Complainant had work limitations because she needs a certain type of chair. Regarding claim 1, the Maintenance Manager stated that he was not at work when Complainant requested accommodation, but he heard that she had a chair that she was using, but the chair disappeared. He further stated that the Agency lost Complainant’s chair, and it made sense to buy her another chair. The Maintenance Manager stated that the Maintenance Engineering Specialist brought Complainant’s information to him, and somehow the Injury Compensation Office denied her request for a new chair because the Agency does not supply special chairs. He stated that the Agency has a policy of no longer buying special chairs, and Complainant had the chair for years. However, the Maintenance Manager stated that if the Agency lost Complainant’s chair, it had to replace it, and his boss insisted that the Agency buy Complainant a new chair, which was eventually approved.

The Maintenance Manager further stated that Complainant’s chair took a long time to come in to the office, six weeks or longer. He stated that the chair was given to Complainant, and he understood that the chair was too large and cost around \$650. The Maintenance Manager also stated that the Maintenance Engineering Specialist looked for a chair and found a chair from the custodian’s training room as a temporary measure, and Complainant was satisfied with the chair.

After 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 EEOC Administrative Judge (AJ). 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 decision concluded that Complainant failed to prove that the Agency denied her a reasonable accommodation for her disability or subjected her to unlawful harassment or discrimination as alleged.

CONTENTIONS ON APPEAL

On appeal, Complainant asserts that her job duties require her to sit for long periods of time, she needed an ergonomic chair because of her permanent medical condition, and she had no input in management’s decision to order a chair for her. Complainant further contends that the chair provided to her was not ergonomically correct; it was only a “large overstuffed chair made for a large wide-bottom person, not for 166 lbs me.” Complainant also maintains that she immediately told management that the chair provided was not ergonomically correct for her. Regarding incident 2, Complainant maintains that the Agency mischaracterized this allegation. She maintains

that she is alleging that C1 said that she had complained about an employee who clocked in an hour before his/her scheduled time and had told the employee to stop doing so, but this was not true. Regarding incident 3, Complainant contends that the District Manager posted a policy that said the Agency had “zero tolerance” for any derogatory language, and C4 had also been subjected to harassment from C1. The Agency requests that we affirm its final decision.

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”).

ANALYSIS AND FINDINGS

Claim 1: Reasonable Accommodation

Although the Agency analyzed claim 1 under disparate treatment and harassment analyses, we find that this claim is more appropriately analyzed under a reasonable accommodation analysis. Complainant alleged that she was denied a reasonable accommodation when the Agency failed to provide her with an “ergonomically-correct chair.” Under the Commission’s regulations, an agency is required to make reasonable accommodation to the known physical and mental limitations of an otherwise qualified individual with a disability unless the agency can show that accommodation would cause an undue hardship. 29 C.F.R. §1630.9.

To establish that she was denied a reasonable accommodation, Complainant must show that: (1) she is an individual with a disability, as defined by 29 C.F.R. § 1630.2(g); (2) she is a “qualified” individual with a disability pursuant to 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide her with a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC Notice No. 915.002 (Oct. 17, 2002) (Enforcement Guidance on Reasonable Accommodation). An individual with a disability is “qualified” if he or she satisfies the requisite skill, experience, education, and other job-related requirements of the employment position that the individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position. 29 C.F.R. § 1630.2(m).

In this case, Complainant has a permanent back condition that resulted in her inability to lift more than five pounds. The Agency found that Complainant is an individual with a disability and qualified. We concur with this determination. See Gwendolyn G. v. U.S. Postal Serv., EEOC Appeal No. 0120080613 (Dec. 23, 2013) (finding Complainant is individual with a disability

where she was substantially limited in the major life activity of lifting and restricted to lifting no more than 10 pounds).

Additionally, the record reflects that the Agency initially provided Complainant with an ergonomic chair because of her back condition. The record further reflects that on February 29, 2016, Complainant reported on an Agency Hazard, Unsafe Condition or Practice form that on January 2, 2016, she was finally given a chair to replace the broken chair that had been issued to her. She further reported that someone apparently ordered the chair without any medical input from her because the chair given to her was “horrible,” too wide, and overstuffed. She further reported that the chair had to be elevated at all times, but because it was overstuffed, it made her legs swell and ankles burn. The record also reflects that on March 2, 2016, S1 responded that there were no hazards related to the chair, and therefore no corrective action was recommended in response to Complainant’s report.

Upon review, we find that Complainant’s February 29, 2016 report constituted a request for a reasonable accommodation because the Agency was aware that Complainant needed an ergonomic chair for her back condition, and Complainant reported that after her chair was lost or broken, the Agency did not provide her with a chair that addressed the needs of her condition. Additionally, the record supports the finding that an ergonomic chair is *the* reasonable accommodation that Complainant needs to accommodate her disability. See Rafalski v. U.S. Postal Serv., EEOC Appeal No. 0120064487 (Mar. 26, 2009) (evidence supports finding that provision of an ergonomic chair was the reasonable accommodation needed by complainant with Degenerative Disc Disease and 10-pound lifting restriction).

Further, the record reveals that after receiving the report, S1 recommended that no corrective action be taken. The Maintenance Manager maintains that Complainant eventually was provided with a chair after the Agency’s initial resistance to Complainant’s request for a new ergonomic chair. It is unclear exactly how long it took for the Agency to provide a chair after Complainant’s report, but the Maintenance Manager indicated that it took at least six weeks for the chair to arrive after it was ordered. At any rate, the Maintenance Manager stated that the new chair the Agency provided was too large for Complainant.

The Maintenance Manager also stated that Complainant was eventually provided with a chair from the custodian’s training room, which Complainant found to be satisfactory. There is no evidence or statement in the record that substantiates this bare assertion. Moreover, the Maintenance Manager asserted that his knowledge about Complainant’s reasonable accommodation request was merely speculative “secondhand knowledge,” and he had “no direct involvement” in this matter. However, on appeal, Complainant, who has first-hand knowledge, indicates that she has still not received an ergonomically-correct chair that is appropriate for her body and impairment. Consequently, we are persuaded by Complainant’s version of events.

Clearly, the Agency did not immediately respond to Complainant’s report that she needed another chair because of her medical condition, and when it responded, it provided her with a chair that did not meet her medical needs. The Agency’s failure to provide Complainant with an effective

accommodation is largely attributable to the fact that it did not engage in the interactive process with Complainant. We note that after receiving a request for reasonable accommodation, “it may be necessary for the [agency] to initiate an informal, interactive process with the individual with a disability . . . [to] identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.” 29 C.F.R. § 1630.2(o)(3); see also Enforcement Guidance on Reasonable Accommodation at Question 5. If the agency and the individual with a disability need to engage in an interactive process, it should proceed as quickly as possible. Enforcement Guidance on Reasonable Accommodation at Question 10.

In this case, after Complainant reported experiencing medical problems related to her work chair, the Agency should have worked with Complainant to conduct an individualized ergonomic assessment that would have determined Complainant’s specific needs. Instead, the Agency first completely denied Complainant’s request for an ergonomically correct chair, and then provided her with a chair that not only did not fit her physical/medical needs, but also caused her to experience additional physical impairments. The Agency’s provision of chairs without conducting an ergonomic assessment of Complainant’s individual needs was wholly inadequate and deprived her of an accommodation that was effective. See Denese G. v. Dep’t of the Treasury, EEOC Appeal No. 0120141118 (Dec. 29, 2016) (complainant had particular medical needs that the agency should have addressed with specific, individualized accommodations, instead of generic responses).

The Agency has not shown that providing Complainant with a properly fitting ergonomic chair would have imposed an undue hardship on the Agency. Therefore, we find that the Agency denied Complainant a reasonable accommodation. See Complainant v. Dep’t of the Treasury, EEOC Appeal No. 0120132563 (Aug. 11, 2015) (reasonable accommodation denied when after her ergonomic chair disappeared, agency did not promptly provide complainant with a new ergonomic chair that was fitted with correct cushioning, which resulted in her experiencing additional back pain). Finally, we conclude that the Agency’s failure to conduct an individual assessment of Complainant’s need for a reasonable accommodation reflects its lack of good faith in this matter, and therefore, Complainant is entitled to compensatory damages. See Teshima v. U.S. Postal Serv., EEOC Appeal No. 01961997 (May 5, 1998) (An agency is not liable for compensatory damages under the Rehabilitation Act where it has consulted with complainant and engaged in good faith efforts to provide a reasonable accommodation, but has fallen short of what is legally required.).

Claims 2 and 3: Hostile Work Environment

Complainant’s remaining allegations are part of a hostile work environment claim. In order to establish a claim of hostile environment harassment, Complainant must show that: (1) she belongs to a statutorily protected class; (2) she 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 her 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 environment, 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).

In a case of co-worker harassment, an agency is responsible for acts of harassment in the workplace where the agency (or its agents) knew or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action. EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (June 18, 1999). See Jones v. Dep't of Labor, EEOC Appeal No. 01A41672 (Oct. 22, 2004) (management official's failure to address an ongoing tense situation between the complainant and a co-worker based on her protected class stated a claim under Title VII).

In this case, regarding incident 2, the Manager stated that all employees were expected to report to work at 7:45 p.m., except for one employee who reports at 5:00 p.m. The Manager stated that Complainant reported to work early and was told to discontinue hitting the clock early, and all employees likewise were told not to report early.

In an attempt to prove the Manager's explanation is pretextual, Complainant compares herself to C2 and C3, whom she claims were allowed to clock in to work early. However, these coworkers had a different supervisor than Complainant, and were therefore not similarly situated to her. We find that Complainant has not shown that the Agency's nondiscriminatory explanation is pretext for unlawful discrimination. Therefore, we do not find that this matter was motivated by discriminatory animus, or connected to Complainant's protected class.

Regarding incident 3, during an internal investigative interview, C1 acknowledged that he mumbled the word "bitch" in Complainant's presence and told Complainant the word was directed toward her. The record further reflects that C1 previously used similar derogatory language with another female employee. As such, we are persuaded that C1's actions toward Complainant were based on sex. However, we do not find that this single utterance of this word was severe or pervasive enough to constitute a hostile work environment, even if we view this utterance in the context of Complainant's assertion that the gravamen of incident 2 is that C1 falsely accused her of saying coworkers were clocking in to work early. See Bolden v. U.S. Postal Serv., EEOC Appeal No. 0120111020 (May 25, 2011) (alleged harassment that included incident wherein complainant's name on file cabinet label was crossed off and replaced with "bitch" is not severe enough to constitute a hostile work environment).

Further, the record reflects that on July 7, 2016, C1 was issued a Letter of Warning regarding his utterance of the word "bitch" around Complainant on June 23, 2016. The letter stated that during an investigative interview, C1 said that he mumbled the word but was not talking to Complainant, but out of anger, he told her that he was talking to her. The letter concluded that C1's behavior created an "unpleasant work environment and cannot be tolerated," and further incidents of this behavior would result in discipline up to and including removal from the Agency. We find that the Agency's issuance of a Letter of Warning to C1 within two weeks of Complainant's reporting of the incident constituted an immediate and prompt response to C1's actions. Further, there is no evidence that C1 engaged in similar conduct after Complainant reported this incident. Therefore,

even if we were to find that C1 harassed Complainant, we find that the Agency would not be liable for the harassment.

CONCLUSION

Accordingly, based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency's finding that Complainant did not prove she was denied a reasonable accommodation for her disability. We AFFIRM the Agency's finding regarding incidents 2 and 3. The Commission REMANDS this matter to the Agency for further action consistent with this decision and the ORDER set forth below.

ORDER

To the extent it has not already done so, the Agency is ordered to undertake the following remedial actions:

1. Within sixty (60) calendar days after this decision is issued, the Agency shall conduct an individualized assessment of Complainant's need for an ergonomic chair, and thereafter, provide her with a chair in accordance with that need. Complainant shall cooperate with the Agency's ergonomic assessment.
2. Within one hundred twenty (120) calendar days after this decision is issued, the Agency shall restore any leave or pay lost (if any) by Complainant because of its failure to timely provide her with a reasonable accommodation.
3. Within ninety (90) calendar days after this decision is issued, the Agency shall provide eight hours of in-person EEO training to S1, the Manager, and the Maintenance Manager, and all personnel responsible for processing reasonable accommodation requests at the Baton Rouge, Louisiana Processing and Distribution Center, with an emphasis on the Agency's obligation to provide reasonable accommodations to individuals with disabilities, as well as to prevent reprisal.
4. The Agency shall conduct a supplemental investigation pertaining to Complainant's entitlement to compensatory damages incurred because of the Agency's discriminatory actions in this matter. The Agency shall issue a final decision, with appeal rights, determining the Complainant's entitlement to compensatory damages and leave restoration within ninety (90) calendar days after this decision becomes final, and shall pay the amount within thirty (30) days from the date of that determination.
5. The Agency shall consider taking appropriate disciplinary action against S1, the Manager, and the Maintenance Manager for the decision to deny provision of the reasonable accommodation at issue in this complaint. 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 S1, the Manager, or the Maintenance Manager have left the Agency's employ, the Agency shall furnish documentation of their departure date(s).

6. The Agency shall post a notice in accordance with the paragraph below.

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 Baton Rouge, Louisiana Processing and Distribution Center facility 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).

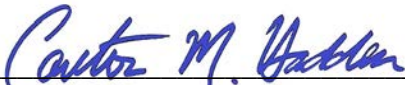
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

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

March 5, 2019
Date