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

[redacted]
Cathy V.,[1]
Complainant,

v.

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

Appeal No. 0120172200

Agency No. 4G330000716

DECISION

On June 9, 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 June 2, 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. For the following reasons, the Commission REVERSES the Agency's final decision and REMANDS this matter for further action consistent with this Decision and the Order set forth below.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier Assistant (CCA) at the Father Felix Varela Post Office, but was temporarily assigned to the Country Lakes Post Office (CLPO) for the day at issue herein. On November 17, 2015, Complainant filed an EEO complaint alleging that the Agency discriminated against her based on her color (Black) when: (1) on September 30, 2015, she was placed on emergency placement (EP) in a non-duty,

[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.

non-pay status; and (2) on October 27, 2015, she was issued a notice of removal for unacceptable conduct that was later reduced to a 14-day suspension.[2]

After 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. In accordance with Complainant's request, 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 subjected her to discrimination as alleged. The instant appeal followed.

FACTUAL BACKGROUND

Complainant asserted that on September 28, 2015, she was assigned an unrealistic amount of work at the CLPO and was responsible for returning an Agency vehicle to another post office prior to its closing. She explained that she returned undelivered parcels to the CLPO. On or about the following day, Complainant's supervisors (S1A) (White) and (S2) (White) made the decision to put Complainant on an EP. Complainant asserted that she lost more than 160 hours of work from September 30, 2015 to October 28, 2015, because of the EP. The Agency stated that Complainant was issued an EP and Notice of Removal (NOR), which was later reduced to a 14-day suspension (Suspension), because she allegedly willfully delayed the mail by returning several packages to the office on September 28, 2015.

Complainant claimed that management's explanation for issuing the various discipline (EP, NOR and Suspension) was a pretext for discriminatory animus. Specifically, Complainant asserted that similarly situated White employees who returned or failed to deliver mail at the CLPO were not disciplined at all. Yet, she and another Black employee were harshly disciplined for less egregious alleged violations. Complainant identified the following comparison White employees who were treated significantly better than Complainant.

September 22, 2015 – White Comparator

Complainant asserted that two City Carriers (CC1) (White) and (CC2) (White) failed to deliver their assigned mail for Route 9673 on September 22, 2015. A City Carrier (CC3) (color unknown) affirmed that she was assigned to Route 9673 on September 23, 2015 and found two hours of undelivered mail from the previous day and reported it to the Shop Steward (U1) (Black).[3] U1 confirmed that CC3 informed him of the undelivered mail and that he then notified S2 and another supervisor (S1B) (White) of the incident. U1 affirmed that after he reported the undelivered mail

[2] Complainant also raised the claim that on October 29, 2015, she was forced to sign a grievance settlement reducing the notice of removal dated October 27, 2015, to a 14-day suspension. We agree with the Agency's dismissal of this claim pursuant to 29 C.F.R. § 1614.107(a)(1), as it is a collateral attack on another forum's proceeding. We note that Complainant does not raise this issue on appeal.

[3] U1 is also a City Carrier.

to S1B, he instructed U1 to get off the clock for insubordination. U1 further claimed that on September 24, 2015, he asked S2 what he was going to do about the undelivered mail on September 22, 2015; and S2 responded "nothing." U1 explained that he obtained the Unit Daily Record for September 22, 2015, which showed that CC1 and CC2 were both assigned one hour each on the route. U1 stated that this accounted for the two hours of undelivered mail found by CC3. The record showed that on or about February 2, 2016 (the day S2 completed his first EEO affidavit in response to this EEO complaint), he also conducted his first "investigation" into the allegations of returned mail by CC1 and CC2 approximately four months earlier (in September and October 2015). The "investigation" consisted of S2 asking CC1 and CC2 if they had ever returned undelivered mail and CC1 and CC2 denying doing so.

October 7, 2015 – White Comparator

According to Complainant, an unnamed CCA (CC4) (White) returned undelivered mail at the CLPO on October 7, 2015, which was reported to S1A and S2 who took no action. A City Carrier (CC5) (Black) asserted that she reported the undelivered mail on October 8, 2015 to S1A and U1. U1 also affirmed that on October 8, 2015, CC5 reported the undelivered mail to him and he wrote down the tracking numbers of the undelivered packages.[4] U1 further affirmed that he reported the undelivered mail to S1A and S2 who both ignored him and took no action. The testimonial and documentary evidence in the record showed that the Agency's Workload Status Report could have revealed the identity of any carrier who failed to deliver mail. However, S1A failed to obtain this information or provide it to the EEO investigator. Contrary to CC5 and U1's statements, on February 2, 2016, S1A affirmed that she had no information on the unnamed individual who returned undelivered mail on October 7, 2015. Moreover, on February 15, 2017, S1A and S2 inexplicably claimed that it was Complainant who returned undelivered mail on October 7, 2015 despite contrary documentary evidence that Complainant was off duty on this date.

October 21, 2015 – White Comparator

Complainant asserted that a City Carrier (CC6) (White) falsified a package scan and returned the package to the office undelivered on October 21, 2015. Complainant claimed that S1A ignored the reported incident. In addition, CC5 affirmed that on October 21, 2015, she had given CC6 part of her route (9673) to deliver which included the falsified parcel. CC5 stated that she discovered the undelivered parcel and reported it to U1. U1 confirmed that CC5 reported the undelivered package to him and he reported it to S1A who took no action. The documentary evidence shows that the package was scanned "No Secure Location Available" by CC6 on October 21, 2015. However, the Agency's internal tracking information indicates that the address was a residential address where packages were frequently delivered. The record shows that on or about February 2, 2016 (the day S2 completed his first EEO affidavit in response to this EEO complaint), he also conducted his first "investigation" into the allegations of returned mail by CC6 approximately four

[4] The record contains documentary evidence of the postal tracking information on the undelivered packages.

months earlier (in September and October 2015). The "investigation" consisted of S2 asking CC6 if he had ever returned undelivered mail and CC6 denying doing so.

February 11, 2016 – White Comparator

Complainant also alleged that a CCA (CCA7) (White) returned several parcels of mail to the CLPO on February 11, 2016, which were found the next day by a City Carrier (CC8) (Black) who reported it to S1A and S2. According to U1, both S1A and S2 refused to take any action toward CCA7. The record shows that CC8 informed U1 who verified that the parcels were given to CCA7. U1 documented the incident by writing the tracking number of the returned parcels and submitted an affidavit, with tracking information of the returned parcels to further prove the discrimination at CLPO. The record shows that S1A admitted that CC8 reported to her that CCA7 brought back undelivered packages on February 11, 2016. S1A stated that no action was taken against CCA7 because part of the route was business and was closed after 5:00 p.m. On February 13, 2016, U1 submitted a supplemental affidavit with tracking numbers and addresses of the two First-Class packages CCA7 returned, establishing that they were residential addresses.[5]

February 3, 2016 – Black Comparator

Complainant also asserted that a Rural Carrier Associate (RCA) (Black) at the CLPO was terminated on February 10, 2016, by S2 and another supervisor (S1C) for allegedly leaving mail at her case.[6] RCA asserts that S2 and S1C called her in for a meeting and falsely accused her of leaving a bucket of mail at her station on February 3, 2016. RCA affirmed that before leaving work, she had always checked her station for any mail and the bucket of mail was not there. She further states that she was not allowed any representation during the meeting with S2 and S1C and was not given a chance to present a witness who saw her checking her station on February 3, 2016, before she left work. RCA asserted that S2 and S1C unjustly terminated her employment without any formal investigation. The record shows that RCA was reinstated two months after her termination at an EEO meeting where she produced a witnessed who verified that she did not leave the mail as alleged.

The Agency asserted that the comparison employees identified by Complainant were not similarly situated. Specifically, the Agency claimed that CCAs were not entitled to the same level of protection with respect to discipline as City Carriers.[7]

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[5] Complainant also provided exhibits to her appeal in the form of Google Map pictures of the residential addresses.

[6] The record shows that Complainant identified RCA as a witness, but the EEO investigator refused to obtain an affidavit from RCA finding her testimony irrelevant. However, Complainant obtained an affidavit from RCA directly.

[7] According to the Agency, City Carriers are career employees who are entitled to progressive discipline under the terms of the collective bargaining agreement with the union.

ARGUMENTS ON APPEAL

Complainant submits that the Agency's articulated nondiscriminatory reason for the disciplinary action is a pretext for discriminatory animus. Specifically, Complainant asserts that the evidence in the record shows that White similarly situated employees who returned or failed to deliver mail were not disciplined in any manner. Moreover, Complainant contends that she did not willfully delay the mail, but had to return the parcels to the station because her supervisor assigned her excessive work that she could not complete. Complainant further argues that S2 and S1A both gave false testimony to conceal that they intentionally gave Complainant excessive work. Complainant asserts that S1A falsely affirmed that she assigned Complainant a total of 4.48 hours on Route 9673 on September 28, 2015. However, the documentary record shows that Complainant was assigned 8.54 hours of work on September 28, 2015. In addition, Complainant asserts that S1A knew that she could not complete the excessive work that was assigned because Complainant had to pick up and return a vehicle to another post office before it closed on that day. Complainant also contends that S2 and S1A also knew that she was scheduled to start work later (10:00 a.m.) than the other CCAs who began their shifts at 7:30 a.m. Complainant also contends that the record contains additional evidence of disparate treatment toward Black employees which supports a finding of discriminatory animus. Accordingly, Complainant requests that the Commission reverse the final agency decision.

ANALYSIS AND FINDINGS

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").

Disparate Treatment

Generally, claims of disparate treatment are examined under the analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). For Complainant to prevail, she must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. McDonnell Douglas, 411 U.S. at 802; Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978).

In a disparate treatment case, a prima facie case of discrimination may be established by Complainant's showing that she is in a protected class, and was treated less favorably than other, similarly situated employees outside her protected class.

Potter v. Goodwill Industries of Cleveland, 518 F.2d 864, 865 (6th Cir. 1875). For her claims of discriminatory discipline, Complainant may establish a prima facie case by showing either that she is a member of a protected class who performed her job within the legitimate expectations of her employer and nevertheless was disciplined, or that she was singled out for discipline while similarly situated employees not in her protected groups were not disciplined or were disciplined less harshly. Campbell v. United States Postal Service, EEOC Appeal No. 01832804 (September 4, 1984) (prima facie case for disciplinary actions); See Mosley v. General Motors Corp., 497 F Supp. 583 589 (E.D. Mo. 1980).

Once Complainant has established a prima facie case, the burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Tex. Dept. of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). If the Agency is successful, the burden reverts back to Complainant to demonstrate by a preponderance of the evidence that the Agency's reason(s) for its action was a pretext for discrimination. At all times, Complainant retains the burden of persuasion, and it is her obligation to show by a preponderance of the evidence that the Agency acted on the basis of a prohibited reason. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993); U.S. Postal Service v. Aikens, 460 U.S. 711, 715-716 (1983).

Contrary to the Agency assertion, we find the identified comparison employees similarly situated to Complainant. A "similarly situated" employee "means that the persons who are being compared are so situated that it is reasonable to expect that they would receive the same treatment in the context of a particular employment decision. See EEOC Compliance Manual, Section 604, Theories of Discrimination (June 1, 2006); Idell M. v. U.S. Postal Serv., EEOC Appeal No. 0120132276 (Dec. 9, 2015). A difference in job title alone is not dispositive. Coleman v. U.S. Postal Serv., 667 F.3d 835, 848 (7th Cir., 2012) (quoting, Boumehdi v. Plastag Holdings, LLC, 489 F.3d 781, 791 (7th Cir. 2007)). The question is not whether the employer classified the comparators in the same way, but whether the employer subjected them to different employment policies. Lathem v. Dep't of Children & Youth Services, 172 F.3d 786, 793 (11th Cir.,1999). Comparators need only be similar enough to enable a meaningful comparison. Their different titles do not defeat, as a matter of law, the probative value of their different disciplinary treatment. Coleman v. U.S. Postal Ser'v., 667 F.3d 835, 848–49 (7th Cir., 2012); Idell M. v. U.S. Postal Ser'v., EEOC Appeal No. 0120132276 (Dec. 9, 2015).

In the instant complaint, each comparison employee identified by Complainant (despite some different job titles) is responsible for delivering the mail. The comparison employees all have the same second-line supervisor[8] and engaged in the act of failing to deliver a portion of a mail bundle assigned to them at the CLPO. Neither Complainant nor the comparison employees have a record of discipline. We find all relevant aspects of Complainant's employment are identical to the comparison employees.

[8] Several comparators have the same first-line supervisor.

The record establishes that none of the White employees who failed to deliver mail received discipline while Complainant and RCA (both Black employees) who were charged with such behavior were placed off duty and received removal notices. Accordingly, we find that the record evidence establishes a clear pattern of disparate treatment.[9]

Complainant not only establishes a prima facie case of discrimination, we agree that she has sufficiently established that the Agency's articulated explanation for disciplining Complainant is a pretext for discrimination. Pretext can be demonstrated by showing such weaknesses, inconsistencies, or contradictions in the Agency's proffered legitimate reasons for its action that a reasonable fact finder could rationally find them unworthy of credence. Opare-Addo v. U.S. Postal Serv., EEOC Appeal No. 0120060802 (Nov. 20, 2007), req. for recon. den'd. EEOC Request No. 0520080211 (May 30, 2008). Gregory F. v. Dep't of the Treasury, EEOC Appeal No. 0120141037 (Dec. 2, 2016). Specifically, the record shows that disciplining only Black employees for violations that seemingly happen all the time by White employees without so much as a verbal warning establishes that the Agency's articulated explanation is not credible. We also find S1A and S2's testimony stating that they were not aware of any of the Agency policy violations by White employees not credible given the multiple witnesses who state otherwise. We note that the contradictory witness testimony provides detailed and supporting documentation while S1A and S2's testimony is vague and brief. In addition, both S1A and S2 inexplicably fail to "recall" numerous key details. We also find it incredible that S2 could not produce relevant information about the employees who failed to return mail during the relevant time-frame using the Agency's Workload Status report. The record also contains testimonial evidence that S2, himself, may have falsified Agency records to make it appear that such mail was undeliverable when in fact it was deliverable. Accordingly, for the reasons stated herein, the Commission finds that the Agency's explanation for the imposed discipline is a pretext for discriminatory animus based on Complainant's color.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency's final decision and REMAND the matter for further action consistent with this Decision and the ORDER set forth below.

ORDER

1. Within 30 days from the date this decision is issued, the Agency shall remove the Emergency Placement, Notice of Removal, and Suspension from Complainant's official

[9] We note that the only comparison employee proffered by the Agency to support its contention that White employees were equally disciplined, was a CCA (CCA10) who engaged in conduct completely different than the comparison employees identified above. The record shows that CCA10 had an "at-fault" vehicle accident and failed to report it while on probation. We do not find CCA10's offense sufficiently similar to Complainant's conduct at issue herein.

personnel file and shall not consider such discipline or proposed discipline in the issuance of any potential future discipline against Complainant;

2. Within 60 days from the date this decision is issued, the Agency shall determine the appropriate amount of back pay with interest, leave, and other benefits due Complainant, pursuant to 29 C.F.R. § 1614.501. Complainant shall cooperate in the Agency's efforts to compute the amount of back pay, and other benefits due, and shall provide all relevant information requested by the Agency. The Agency shall provide Complainant with clear, specific, and understandable explanations regarding how the back pay was calculated and not simply provide, for example, unexplained computer printouts and Agency codes, without explanation or clarification. If there is a dispute regarding the exact amount of back pay and/or benefits, the Agency shall issue a check to 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. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."

3. Within 90 days from the date this decision is issued, the Agency shall conduct a supplemental investigation on compensatory damages. The Agency shall allow Complainant to provide evidence in support of her compensatory damages claim. See Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993). The Agency is directed to inform Complainant about the legal standards associated with proving compensatory damages and the types of evidence used to support a claim for compensatory damages. See Harold M. v. Dep't of the Air Force, EEOC Appeal No. 0120162540 (Feb. 22, 2018). The Agency shall issue a final decision addressing the issue of compensatory damages no later than 30 calendar days after the Agency's receipt of all information, with appropriate appeal rights. Complainant shall cooperate with the Agency in providing the information in support of her claim. The Agency shall submit a copy of the final decision to the Compliance Officer as set forth below.

4. Within 60 days from the date this decision is issued, the Agency shall consider taking disciplinary action against S1A and S2. 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.

5. Within 90 days from the date this decision is issued, the Agency shall provide eight hours of interactive or in-person training to all supervisors and managers at the CLPO regarding their responsibilities under Title VII with special emphasis on race and color discrimination. The Agency shall provide proof of the contents of the in-person training provided.

6. Within 30 calendar days of the date this decision is issued, the Agency shall post of a notice, as provided in the statement 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 Country Lakes Post Office 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 (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

February 6, 2019
Date