



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

[REDACTED]
Mario K.,¹
Complainant,

v.

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

Appeal No. 0120172206

Agency No. 4J481013016

DECISION

On June 13, 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 May 16, 2017, final decision concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., 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 REVERSES the Agency's final decision, in part.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Building Maintenance Custodian, PS-07, at the Rochester Main Post Office (RPO), located in Rochester, Michigan. Complainant also served as a Postal Workers' Union (AWPU) representative.

On July 14, 2016, Complainant filed an EEO complaint alleging that the Agency discriminated against him and subjected him to a hostile work environment based on race (Caucasian), sex (male), color (white), disability (back and knee impairment), age (50), and in reprisal for prior protected EEO activity when: (1) he was made to work outside his medical restrictions; (2) the

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.

RPO Postmaster (PM) (African-American, female, 45 years old) refused to communicate with him; (3) on February 3, 2016, PM read a Veteran's Day Appreciation letter that was dated three months earlier and he believes that she purposely waited to do this; (4) a co-worker (C1) (Caucasian, female, age 53) refused to move out of his way when he walked by her; (5) on March 2, 2016, his supervisor (S1A) cursed at him; (6) on April 19, 2016, he returned to work and his work route was a mess because the custodian assigned to clean in his absence refused to clean and management does nothing; (7) on May 16, 2016, co-workers harassed him about his work performance and management did nothing; (8) PM harassed him about his work performance; (9) on May 18, 2016, PM would not allow S1A to give him help with a task; (10) on May 19, 2016, he was accused of stealing; (11) he was not given copies of forms that he requested; (12) on May 20, 2016, PM harassed him about using the training room; (13) on May 24, 2016, a letter carrier purposely walked into him; and (14) his coworkers told PM things about him and she immediately had him investigated.

After the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an EEOC 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 decision concluded that Complainant failed to prove that the Agency subjected him to discrimination or reprisal as alleged.

FACTUAL BACKGROUND

Claim (1) – Work Outside of Medical Restrictions

Complainant asserted that he was instructed to perform excessive laborious tasks either when there was no legitimate need to do so or without the assistance of other custodians to help him. More specifically, Complainant claimed that PM ordered him to spread salt on February 9, 2016, when there was no need to do so. Further, on May 18, 2016, Complainant alleged that PM instructed him to distribute mulch around the property and denied him assistance from custodians stating that he could do the task himself because any outside work was in his bid. PM stated that she instructed Complainant to spread salt because there was a legitimate need for it to be completed. PM also affirmed that she did not instruct Complainant to perform the mulch work by himself.

A Maintenance Mechanic PS-7 and Chief Stewart of the APWU (U1) (Caucasian, female, 55 years old) asserted that Complainant was expected to perform more work in less time than the person that previously had the landscaping duties. According to U1, the previous bid holder (female) was given 32 hours or more per week to complete the landscaping and outdoor cleaning. U1 claimed that Complainant was scheduled to do the same work in less than 18 hours a week. As stated more fully below, U1 also alleged that PM refused to provide Complainant help from other custodians even when they were available to help him.

Claim (2) – PM Refusing to Speak with Complainant

PM stated that after filing his first EEO complaint, Complainant began to send harassing emails to her and openly stated to several employees that he had also filed a legal suit against her. She explained that she was instructed to limit her interactions with Complainant and to ensure that when she did interact with him, there was a witness present. PM further asserted that Complainant has openly stated that his lawyer has told him not to communicate with her. S1A noted that he knew nothing about PM not talking to Complainant and that Complainant never told him that PM refused to speak to him. However, according to S1A, Complainant stated that he was advised not to communicate with PM. The Manager, Human Resources, Detroit District (HR) (Black, male, 66 years old) stated that he was aware that Complainant claimed that PM had stopped communicating with him. However, HR did not read into Complainant's assertions that this had occurred because he had filed an EEO complaint.

Claim (3) – Veteran's Day Appreciation Letter

PM explained that the Veteran's Day appreciation letters are usually sent out from the district office the week before Veteran's Day and are read by either the Postmaster or an available supervisor the day before Veteran's Day. However, in 2015, PM was off on military leave until November 13, 2015, and that she began presenting the letters on November 18, 2015, but that she was informed that some letters were missing, including Complainant's letter. PM asserted that she informed the District Manager's office of the missing letters and the letters did not arrive until the week of Christmas. PM added that the letters were distributed every Wednesday throughout January 2016, but that whenever Complainant's name was called, he failed to appear to receive his letter, since on January 13 and 20, 2016, he refused to come to the service talk, and on January 26, 2016, he was off work. PM also noted that Complainant accepted his letter on February 3, 2016, balled it up, and threw it in the trash in front of all the employees. PM further asserted that other veterans, including herself, did not receive their Veteran's Day Appreciation letters in November 2015.

Claim (4) – Incident with C1

S1A affirmed that he knew nothing about any incident between Complainant and C1 occurring on February 3, 2016, but that Complainant told him on August 23, 2016, that C1 had not moved out of his way at that time. C1 stated that she has no recollection of any of the alleged incident(s) occurring.

Claim (5) – S1A Cursed at Complainant

S1A acknowledged that he cursed while talking on the telephone with Complainant on March 2, 2016. S1A explained that he did not curse at Complainant, but used an expletive during the conversation because he was in a bad mood and Complainant had called him while he was driving in to work on a day with bad weather and poor road conditions. S1A also stated that Complainant was calling in because the female custodians were not performing a task that he thought should be done immediately when he told them to complete it, namely, clearing ice and snow off the path

leading to the employee entrance. S1A stated that the female custodians were clearing an area commonly used by customers and Complainant called to complain that they would not stop that task and do the task Complainant had instructed them to do. S1A explained that he thought that the task Complainant wanted the female custodians to perform could have waited and Complainant concluded that he would never call S1A again and tell him that something was not getting done.

Claim (6) - Co-Workers Fail to Cover Complainant's Work When Absent

S1A explained that if Complainant's route was not cleaned, it was likely because they were short-staffed. Moreover, according to S1A, during the week at issue, C1 would have policed his route for quick clean-ups and that during that time, there were no safety or health violations on record due to the bathrooms or break room not being cleaned. S1A stated that while he shuffled staff assignments as deemed necessary, when a custodian was absent, the remaining one or two custodians were not expected to perform the duties of four custodians.

Claim (7) – Comments About the Breakroom

S1A related that he did not recall Complainant telling him about C1 and another Custodian (C2) (Caucasian, female, age 54) complaining about the condition of the swing room on May 16, 2016.

Claim (8) – Harassment about Work Performance

PM denied that a discussion ever occurred regarding Complainant not watering the lawn on June 7, 2016. S1A stated that he was not aware of any discussions PM may have had with Complainant about the sprinkler system. U1 affirmed that PM and S1A separately, told her that the Area Vice President was coming to Rochester and that the grounds/landscaping look terrible. According to U1, the supervisors wanted to know why the grounds looked so bad and why Complainant was not keeping up with the landscape work. U1 stated that she explained to them that the previous person in Complainant's job was given about 32 hours a week to work on the landscaping; yet, Complainant was only provided with approximately 12 to 16 hours per week to do the same work. In addition, U1 explained that Complainant has other cleaning and maintenance duties that were expected of him and responsibilities related to his position as a union steward. U1 further asserted that she told the supervisors that Complainant was not covered by his co-workers when he performed EEO or union duties, during his off days or when he was on leave. Moreover, U1 stated that C1 and C2 told her several times that they refused to help Complainant. U1 affirmed that she questioned the supervisors as to why they did not provide Complainant with assistance if the visit from the area vice president was such a big deal.

U1 further stated that there was no way one person can mow, edge, weed whip, and blow clippings on the four-acre property in a few hours.² U1 asserted that despite her attempts to get help for Complainant, PM and S1A were adamant that Complainant complete the work by himself, even though there were custodians available to assist him. According to U1, S1A told her that he knew

² U1's opinions were based on her prior experience in working in the same job.

Complainant was working on his EEO matter, but that it was taking up too much of his time. U1 also noted that PM stated that all Complainant's "EEO business" needed to be dropped.

In addition, U1 stated that Complainant was treated differently than his peers and she believed that his EEO protected activity was one of the bases for such treatment. Specifically, she stated that every time EEO affidavits get delivered, managers either start eyeballing Complainant or they totally ignore him. U1 also recalled on one occasion, PM wanted to discuss Complainant's EEO matter and the amount of time he was using to work on it. U1 stated that she told PM that as a union steward she was not involved in the EEO process and could not discuss any EEO matter with her.

Claim (9) – Complainant Received No Help on May 18, 2016

PM asserted that she was unaware that S1A would not help Complainant with a task and noted that she did not supervise the maintenance staff. S1A stated that he has no knowledge of the facts relevant to this allegation. U1 affirmed that on May 18, 2016, she was aware that Complainant was instructed to distribute six cubic yards of mulch around the entire property by himself.³ U1 confirmed that she told PM that in the past the custodians worked together because it was such a big job. However, U1 stated that PM told her "in no uncertain terms" that Complainant had to do it alone because outside work is his work. U1 also noted that C1 and C2 never helped Complainant with anything. U1 added that they would outright condemn him and tell U1 that they refused to help him.

Claim 10 – Stealing Accusations

Complainant claimed that management believed that he was stealing paperwork out of the supervisor's office and had the office door code changed. PM denied that Complainant was ever accused of stealing and asserted that the situation described by Complainant never occurred. In addition, PM stated that the lock to the supervisor's office was changed because too many people knew the code and there were sensitive items located in that office. S1A stated that Complainant was never accused of stealing anything and that there were issues with access to a storage room, so PM changed the access code to eliminate any issues.

U1 affirmed that she spoke to the employee who was tasked with changing the lock on the supervisor's door (CC). According to U1, CC told her that two supervisors (S1B) (White, female, 59 years old) and (S1C) (White, female, over 60 years of age) thought Complainant was stealing documents from the supervisors' office and wanted the lock changed. Further, U1 stated that S1C told her that S1B and PM thought Complainant was stealing documents, which S1C denied.

³ According to U1, Complainant did perform the entire mulch job entirely by himself.

Claim 11 – Request for Documents

Complainant affirmed that he requested from PM certain forms for his prior EEO complaint. PM explained that she complied with Complainant's request for documents. Specifically, PM stated that she gave Complainant copies of everything that she personally found and that she was told by the supervisor that she had provided everything that was in the supervisor's office. PM further explained that some documents were discovered later because the office has a bad filing system. S1A asserted that the documents that Complainant sought were found during the safety audit which indicated that whoever looked for them either looked in the wrong place or they were stored in multiple locations. S1A further stated that Complainant was given copies of the forms he asked for after they were found.

Claim 12 – Training Room

Complainant asserted that there was a complaint reported against him for using the computer in the training room which led to an investigation against him. Complainant alleged that he later confronted S1B about the training room issue, and she made up a story about the room being needed for audits and Growth Management. PM denied that she ever harassed Complainant about using the training room. S1A asserted that he knew nothing about this allegation or whether PM ordered an investigation. However, S1A noted that if there was an investigation, he would have conducted it because he was Complainant's direct supervisor.

Claim 13 – Incident with Coworker

S1A denied any knowledge of Complainant and a City Carrier (C3) (African-American, female, age unknown) having any issues with each other. However, S1A explained that on September 16, 2016, he received an email from Complainant stating that he had an issue with C3 and that he contacted S1B to find out what was going on. S1B told him that the matter had been handled. C3 denied the allegations.

Claim 14 - Investigation

Complainant alleged that on several occasions in May and June 2016, management officials launched investigations into his work performance and other issues. Complainant claimed that the investigations were harassment, and that management officials took no action when he reported it. Both PM and S1B deny that an investigation was conducted with respect to Complainant's performance.

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”).

Denial of Reasonable Accommodation

To establish that Complainant was denied a reasonable accommodation, Complainant must show that: (1) he is an individual with a disability, as defined by 29 C.F.R. § 1630.2(g); (2) he is a qualified individual with a disability pursuant to 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide a reasonable accommodation. See Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC No. 915.002 (Oct. 17, 2002). Under the Commission’s regulations, an Agency is required to make reasonable accommodation to the known physical and mental limitations of a qualified individual with a disability unless the Agency can show that accommodation would cause an undue hardship. See 29 C.F.R. § 1630.2(o) and (p).

We assume, without deciding, that Complainant established that he is an individual with a disability within the meaning of the Rehabilitation Act. Complainant affirmed that he had no medical work restrictions and could perform all duties of his position, but needed to work at his “own pace.” Complainant also alleged that he was forced to perform his job without the assistance of his co-workers, but he was not asked to perform any duties outside of his job description. There is no evidence in the record that Complainant requested any accommodation or modification to his duties because of his medical condition. Furthermore, Complainant did not allege that management ever told him to work faster. Accordingly, the record is devoid of evidence that he was denied a reasonable accommodation in violation of the Rehabilitation Act.

Hostile Work Environment – Race, Color, Sex, Age, and Disability

To establish a claim of harassment, Complainant must show that: (1) he belongs to a statutorily protected class; (2) that he was subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on his statutorily protected class; (4) the harassment affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982).

Here, Complainant asserted that based on his protected classes, he was subjected to a hostile work environment. Assuming that the alleged conduct was sufficiently severe or pervasive to create a hostile work environment, the Commission finds, however, there is no persuasive evidence in the record that discriminatory animus based on race, color, sex, or age played a role in any of the conduct at issue.

Reprisal

A complainant may establish a prima facie case of reprisal by showing that: (1) he engaged in a protected activity; (2) the agency was aware of the protected activity; (3) subsequently, he was subjected to adverse treatment by the agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000); Hochstadt v. Worcester Foundation for Experimental Biology, 425 F. Supp. 318. 324 (D. Mass.), aff'd, 545 F.2d 222 (1st Cir. 1976); Coffman v. Dep't of Veteran Affairs, EEOC Request No. 05960473 (Nov. 20, 1997). The Commission's policy on retaliation prohibits any adverse treatment that is based on a retaliatory motive and is reasonably likely to deter a complainant or others from engaging in a protected activity. See EEOC Enforcement Guidance on Retaliation and Related Issues, No. 915.004 (Aug. 25, 2016).

The record supports a finding of unlawful reprisal. Complainant's testimony (corroborated by U1's testimony) is consistent and credible. We also find that U1's testimony contradicts numerous statements made by PM, S1A and S1B. Specifically, U1 affirmed that she specifically told S1A and S1B on several occasions that PM is inappropriately hostile toward Complainant. U1 also states that she told S1B that C1 was stalking Complainant. U1 also corroborates Complainant's testimony that he told S1B that Complainant's co-workers were harassing him on several occasions and that he asked for an investigation. In addition, U1 corroborates Complainant's testimony in that she testified that she personally witnessed PM screaming at Complainant after he (Complainant) told PM that she (PM) and his coworkers were harassing him. Lastly, U1 testified that she was included in emails to various management officials where Complainant complained of harassment. Not only is PM, S1A, and S1B's testimony contradicted, we find that the testimony provided by these management officials lacks sufficient details to establish credibility. In contrast, Complainant's testimony is corroborated by U1 who provided detailed and consistent testimony.

An employee may suffer unlawful retaliation if his supervisor or management interferes with his EEO activity. See Binseel v. Dep't of the Army, EEOC Request No. 05970584 (Oct. 8, 1998); Complainant v. Dep't of Def., EEOC Appeal No. 0120132212 (Nov. 8, 2013). When management's behavior has a potentially chilling effect on the use of the EEO complaint process - the ultimate tool that employees have to enforce equal employment opportunity -- the behavior is a per se violation. Here, we find that that numerous management officials engaged in conduct intended to deter Complainant from engaging in the EEO process. After weighing the credibility of the witnesses,⁴ we find the record shows that every time the responsible management officials received affidavits to respond to with respect to Complainant's EEO complaints, they would display displeasure with Complainant by "eyeballing him or totally ignor[ing] him." The record also establishes that PM was disturbed by Complainant's EEO activity and raised her concern with U1 on numerous occasions. The record shows that both S1A and PM felt Complainant was

⁴ We do not find C1 and C2 credible, as their statements provide unreasonably vague denials.

spending too much time on his EEO matters and that PM stated that all “this EEO business” needed to be dropped. Such behavior by management clearly amounts to unlawful reprisal.⁵

Furthermore, the record shows that despite PM’s denials, Complainant was forced to perform an unrealistic amount of physical labor before he was permitted to work on his EEO complaints to punish him and make it impossible for him to do any EEO work. In addition to loading Complainant with twice the amount of work that his predecessor was expected to perform, management and others would complain about his work performance and give him a hard time in general.

The record contains sufficient evidence demonstrating that Complainant was criticized and generally treated poorly by supervisors and co-workers as set forth in the claims above. Given the duration and nature of the conduct, and the evidence in support of the allegations, it is apparent that Complainant’s work environment was objectively hostile and Complainant subjectively believed that the environment was hostile and abusive. Additionally, we find that there is a basis for imputing liability to Agency because there is no indication that the Agency took sufficient action to prevent or correct the hostile work environment, which continued for months after Complainant reported the harassment to management. Therefore, Complainant has proven by a preponderance of the evidence that he was subjected to a hostile work environment based on his protected EEO activity.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency’s final decision regarding race, color, sex, age, and disability discrimination. However, we REVERSE the Agency’s final decision with regard to reprisal. The Agency is directed to comply with the Commission's Order below.

ORDER (C0618)

The Agency is ORDERED to undertake the following remedial actions:

1. Within ninety (90) days of the date this decision is issued, the Agency shall undertake a supplemental investigation concerning Complainant's entitlement to compensatory damages and determine the amount of compensatory damages due Complainant in a final decision with appeal rights to the Commission. Within thirty (30) days of the date of the determination of the amount of compensatory damages, the Agency shall pay this amount to Complainant. If there is a dispute regarding the exact amount of compensatory damages, the Agency shall issue a check to Complainant for the undisputed amount. Complainant may petition for enforcement or clarification of the amount in dispute. The petition for

⁵ We note that the record is devoid of evidence to suggest that any of the comparison employees engaged in EEO activity.

clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."

2. Within ninety (90) days of the date this decision is issued, the Agency shall provide a minimum of eight hours of in-person or interactive EEO training to PM, S1A, S1B, and S1C with a special emphasis on the Agency's obligation to prevent reprisal.
3. Within sixty (60) days of the date this decision is issued, the Agency shall consider disciplinary action against PM, S1A, S1B, and S1C. The Commission does not consider training to constitute discipline. 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. If the responsible management officials have left the Agency's employment, the Agency shall furnish documentation of their departure dates.
4. Within thirty (30) days of the date this decision is issued, the Agency shall post a notice in accordance with the paragraph entitled "Posting Order."

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

POSTING ORDER (G0617)

The Agency is ordered to post at its Rochester 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 (T0610)

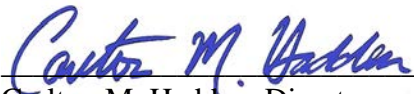
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from 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 15, 2019

Date