



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

██████████
Becki P.,¹
Complainant,

v.

Elaine L. Chao,
Secretary,
Department of Transportation
(Federal Aviation Administration),
Agency.

Appeal No. 0720180004

Hearing No. 551-2015-00220X

Agency No. 2015-26073-FAA-06

DECISION

Following its October 20, 2017, final order, the Agency filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) pursuant to 29 C.F.R. § 1614.403(a). On appeal, the Agency requests that the Commission affirm its rejection of a portion of an EEOC Administrative Judge's (AJ) finding of discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. Complainant filed a cross appeal challenging the AJ's finding of no discrimination on other claims.

BACKGROUND

During the period at issue, Complainant worked as a Real Estate Contracting Officer for the Agency in Renton, Washington.

On February 3, 2015, Complainant filed a formal EEO complaint. Complainant claimed that the Agency discriminated against her based on sex (female), disability, age, and in reprisal for prior protected EEO activity.

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.

In its March 9, 2015, partial acceptance/dismissal letter, the Agency accepted the following claims for investigation:

[Was Complainant] discriminated against based on [her] sex (female), age (over 40), disability (depression/anxiety, association with physically disabled individuals) and or in reprisal for [her] participation in protected activity when since approximately November 2014 and continuing, [she was] subjected to a hostile work environment.

Examples of the hostile work environment include, but are not limited to, the following discrete personnel actions and/or acts of harassment:

- a. On December 2, 2014, [her] request to work an extra hour to compensate [her] for late arrival was denied;
- b. On or about December 4, 2014, [her] computer was confiscated;
- c. [Complainant was] not allowed to telework on [her] regularly scheduled telework day, December 5, 2014;
- d. Effective December 1- through December 12, 2014, [Complainant was] placed on Administrative Leave with unreasonable stipulations;
- e. On December 15, 2014, [her] request for the purpose of obtaining guardianship for her grandchildren was denied;
- f. In December 2014, [her] supervisor wrongly disclosed information regarding [her] personal medical information to an individual that was not on a need to know basis;
- g. [Her] requests for changes to [her] work schedule as a reasonable accommodation were denied;
- h. On January 5, 2015, during medical leave, [she was] ordered not to enter any FAA facilities without prior approval;
- i. On January 9, 2015, upon returning to work from medical leave her computer was once again confiscated;
- j. On January 10, 2015, [her] supervisor singled [her] out and requested things from [her] that no others were requested to do;
- k. On March 2, 2015, [she was] written up for allegedly not adhering to the Standards of Conduct within FAA;

However, the Agency dismissed the following incidents on the grounds that Complainant previously raised these matters in the grievance process:

- l. [Her] November 2014 request to work outside of the commuting area was denied; and
- m. [Her] request for online training courses were denied.²

After an investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. The Agency filed on March 30, 2016, a motion for a decision without a hearing. Complainant opposed the motion.

On September 12, 2017, the AJ issued a decision without a hearing finding discrimination with respect to one claim. The AJ found that the Agency improperly disclosed Complainant's medical information in violation of the Rehabilitation Act. Specifically, the AJ made the following determination:

[i]t is undisputed that [Complainant's second level supervisor, S2] told a contract employee, after a heated discussion with [Complainant], that [Complainant] is on medication. [S2] states he made the comment to offer explanation for [Complainant's] erratic behavior. I find that the disclosure was a per se violation of Complainant's rights under the Rehabilitation Act. Complainant's medical information should not have been shared with an individual with no possible need know about her medical conditions or medications. Further, while [S2] did not disclose any specific medical diagnosis or symptom, his references to being 'on medication' as an explanation for Complainant's erratic behavior implies that Complainant has a psychiatric condition.

The AJ ordered the Agency to pay Complainant reasonable attorney's fees and costs, if applicable; pay \$1,000 in non-pecuniary compensatory damages, and to post a notice regarding the AJ's finding of discrimination.

The AJ found no discrimination regarding the remainder of the formal complaint. Specifically, the AJ stated "[t]here is no evidence that any of the management actions, comments, or requirements were taken because of any protected category, nor were they sufficiently severe or pervasive to constitute harassment."

The Agency subsequently issued a final order rejecting the AJ's finding that Complainant proved that the Agency subjected her to discrimination as alleged.

² The alleged incidents of harassment are re-numbered herein for ease of reference.

The Agency filed an appeal challenging the AJ's finding of discrimination. The Agency asserts that the AJ erred in issuing a per se finding of a violation of the Rehabilitation Act because S2's statement did not disclose either a specific diagnosis or symptoms, and thus was not a disclosure of confidential medical information. Agency Brief at 5-6. The Agency stated "[e]ven if we accept the [AJ's] conclusion that a 'psychiatric condition' was implied by the statement, one is left to speculate whether the specific diagnosis in question was a phobia, depression, schizophrenia, or some other unknown mental disorder." Agency Brief in Support of Appeal at 7.

Complainant filed a cross appeal with the Commission's Office of Federal Operations (OFO). The record reflects that Complainant's cross appeal is timely. However, her brief in support of her appeal was not timely filed. The record reflects that Complainant filed her appeal with OFO on December 5, 2017. On the coversheet to her appeal, Complainant indicated that her brief would follow within 30 days of the filing of her appeal. In addition, the Notice of Appeal Form that Complainant used for her appeal set forth a brief in support of the appeal must be filed with OFO within 30 days of when the appeal was filed. The record reflects that Complainant filed her brief in support of her appeal on February 2, 2018, outside of the applicable time period. Complainant has not provided sufficient justification for her delay. Based on the foregoing while Complainant's appeal is timely, we will not consider herein her untimely brief in support of her appeal.

ANALYSIS AND FINDINGS

In rendering this appellate decision we must scrutinize the AJ's legal *and* factual conclusions, and the Agency's final order adopting them, de novo. See 29 C.F.R. § 1614.405(a) (stating that a "decision on an appeal from an Agency's final action shall be based on a de novo review . . ."); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (Aug. 5, 2015) (providing that an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed de novo). This essentially means that we should look at this case with fresh eyes. In other words, we are free to accept (if accurate) or reject (if erroneous) the AJ's, and Agency's, factual conclusions and legal analysis – including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. See id. at Chapter 9, § VI.A. (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").

We must determine whether it was appropriate for the AJ to have issued a decision without a hearing on this record. The Commission's regulations allow an AJ to issue a decision without a hearing when he or she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g).

This regulation is patterned after the summary judgment procedure set forth in Rule 56 of the Federal Rules of Civil Procedure. The U.S. Supreme Court has held that summary judgment is appropriate where a court determines that, given the substantive legal and evidentiary standards that apply to the case, there exists no genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a motion for summary judgment, a court's function is not to weigh the evidence but rather to determine whether there are genuine issues for trial. Id. at 249. The evidence of the non-moving party must be believed at the summary judgment stage and all justifiable inferences must be drawn in the non-moving party's favor. Id. at 255. An issue of fact is "genuine" if the evidence is such that a reasonable fact finder could find in favor of the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A fact is "material" if it has the potential to affect the outcome of the case.

In order to successfully oppose a decision by summary judgment, a party must identify, with specificity, facts in dispute either within the record or by producing further supporting evidence, and must further establish that such facts are material under applicable law. Here, we conclude that neither party has pointed with adequate specificity to particular evidence in the investigative file or other evidence of record that indicates such a dispute. Therefore, we find that the AJ properly issued a decision here by summary judgment.

Dismissed Claims

As an initial matter, we find that the Agency and the AJ properly dismissed incidents (l) and (m) because these matters were previously raised in the grievance process which allowed claims of discrimination to be raised. EEOC Regulation 29 C.F.R. § 1614.301(a) states that when a person is employed by an agency subject to 5 U.S.C. § 7121(d) and is covered by a collective bargaining agreement that permits claims of discrimination to be raised in a negotiated grievance procedure, a person wishing to file a complaint or grievance on a matter of alleged employment discrimination must elect to raise the matter under either part 1614 or the negotiated grievance procedure, but not both. An aggrieved employee who files a grievance with an agency whose negotiated agreement permits the acceptance of grievances which allege discrimination may not thereafter file a complaint on the same matter under this part 1614 irrespective of whether the agency has informed the individual of the need to elect or whether the grievance has raised an issue of discrimination.

The record reflects that Complainant filed grievances regarding the denial of her November 2014 telework request and denial of online training classes. Report of Investigation (ROI) at Ex. G3 at 1-6. The Agency's negotiated grievance procedure permits employees to raise allegations of discrimination in the grievance process or the EEO process, but not both. Agency's Comments on Partial Dismissals Attachment 1. Based on the foregoing, we find the Agency and the AJ properly dismissed these matters.

We also find that the Agency properly found that Complainant previously raised in the negotiated grievance process the issue of being denied a maxiflex schedule. ROI Ex. G3-at 7-8. Thus, we will not address this matter further herein.

Finding of Discrimination: Disclosure of Medical Information

The AJ properly found that S2 committed a violation of the Rehabilitation Act. Employers must treat as confidential medical records all information obtained regarding the medical condition or history of an employee. 42 U.S.C §§ 12112(d)(3)(B), 4(C); 29 C.F.R. § 1630.14(c)(1). Such information includes any medical information obtained from a disability-related inquiry or medical examination, as well as any medical information voluntarily disclosed by an employee. See Enforcement Guidance on Disability Related Inquiries and Medical Examination of Employees Under the ADA No. 915.002 (July 27, 2000). Improper Agency disclosure of such medical information constitutes a per se violation of the Rehabilitation Act. Valle v. U.S. Postal Serv., EEOC Request No. 05960585 (Sept. 5, 1997).

The record reflects that S2 made a comment to a contract employee that Complainant is “on medication.” We acknowledge that this statement did not disclose a specific diagnosis. We concur, however, with the AJ that the specific circumstances in the instant matter, along with the statement that Complainant is “on medication,” implied that Complainant had a psychiatric or mental health condition. The record contains an affidavit from S2. Regarding the incident, S2 asserts that Complainant’s behavior on the date in question (December 4, 2014) was “unstable and irrational.” ROI at 222. Specifically, S2 asserts that “[Complainant] was clearly out of control and hysterical. By way of trying to calm her highly emotional state and to make an excuse for her unprofessional, irrational behavior, swearing and yelling, I ask[ed] [a named contractor] to overlook her behavior since she had taken some medication...It was clear from her behavior that whatever medication she was taking was not working properly.” ROI at 223.

The record further reflects that Complainant provided S2 a note from her physician dated December 3, 2014. ROI at 154-155, 358. The note from Complainant’s physician set forth that Complainant was excused from work for a specified period due to “reactive depression/anxiety and family grievance/stress.” S2 drafted a “Memo [To the] File” dated December 4, 2014 regarding this incident. ROI at 358-360. Therein, he asserts that Complainant came to the office the afternoon of December 4, 2014 and that Complainant stated that she had received medication from her doctor and she had “taken one pill and then fallen asleep for the whole day. Just before coming into [S2’s office], she said she had taken another pill...” Based on the specific circumstances set forth herein, we find that the AJ’s properly found that S2’s disclosure to a contractor that Complainant was “on medication” was a per se violation of the Rehabilitation Act. We find that S2 by disclosing to the contractor (who did not have a need to know) that the Complainant was on medication given the specific circumstances in the instant matter and S2’s own description of Complainant’s behavior, that she was out of control and hysterical, was sufficient to constitute a per se violation of the Rehabilitation Act.

We will now determine whether the AJ’s award of \$1000 in non-pecuniary compensatory damages was proper. As set forth above, we find Complainant’s appeal to be timely. Thus, we exercise our discretion to review the amount awarded by the AJ for non-pecuniary compensatory damages.

With respect to non-pecuniary compensatory damages, these are losses that are not subject to precise quantification, i.e., emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, injury to credit standing, and loss of health. See Enforcement Guidance: Compensatory and Punitive Damages Available under § 102 of the Civil Rights Act of 1991 (EEOC Guidance), EEOC Notice No. 915.002 at 10 (July 14, 1992). Objective evidence in support of a claim for non-pecuniary damages claims includes statements from Complainant and others, including family members, co-workers, and medical professionals. See id.; see also Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993). Non-pecuniary damages must be limited to compensation for the actual harm suffered as a result of the Agency's discriminatory actions. See Carter v. Duncan-Higgans, Ltd., 727 F.2d 1225 (D.C. Cir. 1994); EEOC Guidance at 13. Additionally, the amount of the award should not be “monstrously excessive” standing alone, should not be the product of passion or prejudice, and should be consistent with the amount awarded in similar cases. See Jackson v. U.S. Postal Serv., EEOC Appeal No. 01972555 (April 15, 1999) (citing Cygnar v. City of Chicago, 865 F. 2d 827, 848 (7th Cir. 1989)).

The AJ awarded \$1000 in the instant matter. We determine, however, that an award of \$2,000 is more consistent with the awards given in similar cases and is not monstrously excessive. Complainant throughout the investigation and once this case was before an AJ repeatedly asserted that the Agency's actions caused her distress, depression, and sadness. Specifically, the AJ, in her decision, stated that Complainant in her Opposition to the Agency's Motion for Summary Judgment stated that the harassment and discrimination, of which the disclosure of medical information is a part, caused her “severe stress, anxiety, depression, lack of sleep, nightmares, panic attacks, crying spells, aggravated her spinal condition causing intense pain, withdrawal from family, friends, and co-workers, required medication for anxiety, caused financial hardship...[The AJ] found that a portion of [Complainant's] stress, though not the entirety of her distress, was caused by the unlawful disclosure of medical information.”

Complainant, in her affidavit, addresses the specific impact that the disclosure of her medical information had on her. ROI at 148. Specifically, Complainant states that “[a]fter [S2] released my private medical information, it became known around the office that I was on mental medication and my symptoms-psychological and physical-worsened. I felt greatly embarrassed and I was deprived of my dignity. I felt even greater distress and sadness, fell into a deeper depression, and became more withdrawn.” ROI at 148. Based on the foregoing, we find that an award of \$2000 is proper. See Grazier v. Dep't of Labor, EEOC Appeal No. 0120102711 (Sept. 30, 2010) (\$2,000 awarded for humiliation and embarrassment when Agency disclosed confidential medical information). We note that this award is related to the sole finding of discrimination (unlawful disclosure of medical information).

We will now turn to the remainder of the formal complaint.

AJ's Finding of No Discrimination: Remainder of Complainant's Complaint

We also concur with the AJ's finding of no discrimination pertaining to the remainder of Complainant's complaint. As set forth above, certain incidents comprising Complainant's hostile work environment claim are not considered herein because we found that these matters (i.e. denial of Complainant's November 2014 request for telework in San Diego and denial of Complainant's request for a maxi-flex schedule) were previously raised in the grievance process.

Complainant also raises various incidents regarding her FMLA requests being denied or the Agency not properly processing these requests. We find that these matters are not properly before us. The proper forum for Complainant to have raised her challenges to her FMLA eligibility was through the Department of Labor's (DOL) FMLA enforcement procedures. It is inappropriate to now attempt to use the EEO process to collaterally attack actions related to her eligibility for FMLA. A claim that can be characterized as a collateral attack, by definition, involves a challenge to another forum's proceeding, such as the grievance process, the workers' compensation process, an internal agency investigation, or state or federal litigation. See Fisher v. Dep't of Defense, EEOC Request No. 05931059 (July 15, 1994). We note that DOL issued a report on the Agency's compliance to Complainant's FMLA requests. See Agency's Motion for Summary Judgment Attachment 8.

Regarding Complainant's remaining incidents of harassment, we find that Complainant has failed to establish that the actions at issue were based on her protected classes. To establish a claim of harassment a 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 intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982). Further, the incidents must have been "sufficiently severe or pervasive to alter the conditions of [complainant's] employment and create an abusive working environment." Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993). The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the victim's circumstances. Enforcement Guidance on Harris v. Forklift Systems Inc., EEOC Notice No. 915.002 at 6 (Mar. 8, 1994).

In the instant matter, there is no evident connection between the incidents at issue and Complainant's protected classes. For example, regarding incident (k), being written up for violating the Agency's Standard of Conduct, the record contains an affidavit from Complainant's third-level supervisor (S3). Therein, S3 asserts that Complainant did not comply with exercising courtesy and tact with fellow co-workers and managers. The record contains a copy of the memorandum from S3 dated February 27, 2015, therein informing Complainant that an email she sent to management was unprofessional. ROI at 380. The record reflects that Complainant apologized for the sending the email in question. ROI at 168.

Finally, to the extent, that Complainant is alleging that the Agency failed to provide her with a reasonable accommodation for issues that were not the subject of prior grievances, we find that Complainant failed to establish that the Agency failed to provide her with an effective accommodation.³ Based on the foregoing, we find that Complainant has failed to establish that she was subjected to a hostile work environment.

ORDER

To the extent, it has not already done so, the Agency is ORDERED to take the following actions set forth by the AJ, as modified herein:

1. Within sixty (60) calendar days from the date this decision issued, the Agency shall pay Complainant \$2,000 in non-pecuniary compensatory damages.
2. The Agency shall pay Complainant reasonable attorney's fees and costs, if applicable, as set forth in the paragraph below entitled "Attorney's Fees."
3. Within ninety (90) calendar days from the date his decision is issued, the Agency shall provide at least four (4) hours of in-person training to the responsible management official (S2) on the Rehabilitation Act and the prohibition of disclosing medical information to those who do not have a need to know.
4. Within thirty (30) calendar days from the date this decision is issued, the Agency is required to post a notice in accordance with the paragraph entitled "Posting Order."

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 the Federal Aviation Administration's Renton, Washington 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

³ Assuming for the sake of argument that Complainant is a qualified individual with a disability, she would be entitled to an effective accommodation, but not necessarily the accommodation of her choice. Kristie D. v. U.S. Postal Serv., EEOC Appeal No. 0120160236 (Feb. 6, 2018). The burden to prove that the accommodations offered by the Agency were not effective rest with complainant. See e.g. Victor M. v. National Security Agency, EEOC Appeal No. 0120152103 (Dec. 22, 2017) (complainant failed to prove that the agency's provided accommodation was not an effective accommodation).

customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0618)

Under 29 C.F.R. § 1614.405(c) and §1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

ATTORNEY'S FEES (H1016)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), he 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.

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)

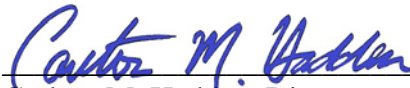
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from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

November 15, 2018

Date