



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

[REDACTED]
Marquis K.,¹
Complainant,

v.

Richard V. Spencer,
Secretary,
Department of the Navy,
Agency.

Appeal No. 0720180014

Hearing No. 430-2014-00441X

Agency No. 14-42158-02780

DECISION

Following its January 26, 2018, 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 an EEOC Administrative Judge's (AJ) finding that Complainant was subjected to race and sex 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 order.

BACKGROUND

At the time of events giving rise to this complaint, Complainant was a probationary employee working as a Shipfitter Apprentice, WT-3820-00 in the Agency's Production Department, Code 900, Structural Shop, Code 920, at Norfolk Naval Shipyard (NNYS or Shipyard) in Portsmouth, Virginia. On September 15, 2014, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (African-American) and sex (male) when on June 20, 2014, his employment at the Norfolk Naval Shipyard was terminated.

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.

After the Agency investigation concluded, Complainant requested a hearing before an EEOC AJ. The AJ held a hearing on September 13 and October 18, 2016. On May 16, 2017, the AJ issued a decision finding discrimination on the bases of race and sex.

On December 19, 2017, the AJ issued a decision on relief. The AJ found that Complainant was entitled to back pay from June 20, 2014 until the date he is returned to work at the Agency. The AJ further found that the Agency was liable for any increased tax liability that Complainant may incur as a result of receiving a lump sum payment of back pay. The AJ stated Complainant would have to submit documentation to the Agency to show the increased tax liability. The AJ found that Complainant sought to mitigate his damages, but he was unable to obtain gainful employment. The AJ also awarded \$62,750.00 in nonpecuniary, compensatory damages, and attorney's fees in the amount of \$13,385.00.

The AJ ordered that Complainant be restored to his position as a Naval Shipfitter, nonapprentice, nonprobationary employee. The AJ ordered that the Agency should not place Complainant under the supervision of any management officials involved in this complaint. The AJ ordered that if the Agency is unable to place Complainant in the Naval Shipfitter position, they must offer him a similar position within a reasonable driving distance, not more than 50 miles from his home address, or they must pay him one year of front pay.

The AJ ordered the Agency to restore to Complainant any sick or annual leave he would have earned from June 20, 2014, until the date he is returned to work. The AJ ordered EEO training for responsible management officials. The AJ also ordered the Agency to post a posting order showing that discrimination had been found.

The Agency issued a final order rejecting the AJ's decision. The Agency filed the instant appeal from the AJ's decision. The Agency, as part of interim relief, stated it was placing Complainant in paid, non-duty status pending outcome of the instant appeal. Complainant did not file an appeal from the AJ's decision.

ANALYSIS AND FINDINGS

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held. An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See EEOC Management Directive 110, Chapter 9, at § VI.B. (Aug. 5, 2015).

Finding of Discrimination

On appeal, the Agency contends that the AJ erred in finding discrimination. Specifically, the Agency argues that Complainant produced no evidence that his race or sex played a role in his removal. The Agency also argues, that even if the liability finding is sustained, the ordered relief should be modified because the AJ: (1) erroneously found that Complainant properly mitigated damages to justify an award of back pay, despite Complainant's admission that he did not search for work for the last two years; (2) improperly awarded compensatory damages for bases of discrimination that were not alleged (retaliation and failure to reasonably accommodate); and (3) failed to determine the reasonableness of Complainant's counsel's billing rate in awarding attorney's fees.

To establish a prima facie case of discrimination, a complainant must show that: (1) he is a member of a protected group; (2) he is qualified for his position; (3) he suffered an adverse employment action; and (4) the circumstances give rise to an inference of discrimination. We note that, although a complainant bears the burden of establishing a “prima facie” case, Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 252–53 (1981), the requirements are “minimal,” St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 506 (1993), and complainant’s burden is “not onerous.” Burdine, 450 U.S. at 253. Here, record evidence reveals that Complainant established a prima facie case of race and sex discrimination because: (1) Complainant is a Black male; (2) he was qualified for his position; (3) he was discharged along with another Black male probationary employee; and (4) the circumstances surrounding his termination give rise to an inference that discrimination was the reason for the adverse action. We conclude that Complainant satisfied his burden of establishing a prima facie case, and that the AJ properly relied on the Agency’s assumption that Complainant had met his burden.

Next, we find that the Agency met its burden of articulating legitimate, nondiscriminatory reasons for the removal. According to the record, the Agency asserted that Complainant was removed from his position because of two pre-action complaints alleging insubordination and inappropriate, sexual misconduct, and a report by an investigator trainee that she perceived Complainant’s demeanor during his pre-action investigation interview to be angry, disrespectful, and threatening. Specifically, on March 24, 2014, Complainant’s supervisor (S1) submitted a pre-action investigation request stating that Complainant engaged in several acts of insubordination toward him and had failed to follow instructions. Specifically, S1 alleged that Complainant had failed to fix a tool as directed, had failed to complete a job with which he was tasked and then represented that he had completed that job, and that Complainant had attempted to intimidate S1 by swelling up his chest and staring him down. S1 also reported that Complainant reported to duty to perform overtime on March 15, 2014, without authorization. On April 2, 2014, one of Complainant's second-line supervisors (S2) initiated a second pre-action investigation request based on allegations by another Shipfitter Apprentice (CW).

CW alleged that Complainant had harassed and intimidated her by sexually propositioning her, grabbing her arm and pulling her out of class, embarrassing her in front of others, invading her personal space by hovering over her and standing close to her, staring her down, making fun of her, and belittling her in front of others.

M1 reviewed and forwarded both requests for pre-action investigations to the Pre-Action Office (Code 1102) for investigation. On June 5, 2014, Complainant and his union representative met with the pre-action investigator (PAI) assigned to investigate both pre-action investigation requests, as well as with a pre-action investigator trainee (PAI-trainee) who attended Complainant's interview as an observer. After the interview, PAI-trainee called the Production Inside Shop Manager (M1) and reported that she perceived Complainant's demeanor during his pre-action investigation interview to be angry, disrespectful, aggressive, and abusive when Complainant did not answer PAI's questions. PAI-trainee also told M1 that Complainant's behavior towards CW had been aggressive and threatening towards CW. Consequently, without waiting for the results of the investigation or consulting the PAI, M1 proposed to the Production Superintendent (M2 – who is M1's supervisor) that Complainant be terminated based upon the statements in the pre-action investigation requests and PAI-trainee's oral report of Complainant's demeanor during his interview.

We further find that the AJ properly determined that the Agency's articulated reasons for removing Complainant were pretextual. We find that substantial evidence supports the AJ's findings of discrimination. S1 and S2 testified that the alleged incidents undergirding the two pre-action requests were minor and not terminable offenses. Thus, we find that S1 and S2's testimony support the AJ's finding that the Agency's reasons for termination were a pretext. S1 testified that Complainant probably did not intend to intimidate him or to be aggressive but rather that was S1's perception because of Complainant's size and stature, a contradiction in the Agency's reason that also supports a finding a pretext. Both of CW's eyewitnesses refuted CW's allegations of inappropriate or sexual conduct by Complainant, further undermining the alleged reason for termination.

The record also reflects that the PAI-trainee's report that Complainant's demeanor was abusive and threatening during his interview was unsubstantiated. When questioned at the hearing as to whether Complainant became physically irate, upset, or made threatening statements, the PAI-trainee said "no" which was in contradiction to her report to M1. The PAI who conducted Complainant's interview confirmed that, although Complainant was upset about CW's inappropriate conduct allegations, he was not disrespectful or threatening. Overall, we find that this is substantial record evidence demonstrating that the AJ properly determined that the Agency's proffered reasons for Complainant's removal were invalid.

In light of the substantial evidence of pretext, the Commission finds that the AJ's finding that Complainant's removal was the result of race and sex discrimination is supported by substantial evidence in the record. It is settled law that the ultimate issue of discrimination can be proven "either directly by [showing] that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." U.S.

Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 716 (1983). In this case, proof that the Agency's explanation is unworthy of credence is probative of intentional discrimination and we find that the AJ reasonably inferred from the falsity of the explanation that the Agency's action was motivated by discrimination.

Complainant argued that his race and sex were factors in the removal decision because Complainant's first-line supervisor (S1) regarded him as a "big, Black man" and thus racially stereotyped his behavior as "aggressive" and "intimidating." Additionally, Complainant recalled that when he and M1 first met he said, "Boy, you're a big boy." Complainant asserted that M1 selected him as a target and persuaded M2 to terminate him based on S1's racial stereotypes even though M1 had no evidence to support the allegations in the pre-action complaints. The AJ found that Complainant's racial perception was substantiated because S1 admitted that Complainant may not have intended to be "aggressive" or "intimidating" but S1 felt that way because Complainant was a large man who entered his personal space. Further, in summarizing S1's complaint against Complainant, M1 testified that he shared S1's allegations of Complainant's "aggressive" behavior with M2, thereby perpetuating the racial stereotype and tainting the removal decision.

To the extent that Complainant noted that another Black male probationary employee was terminated shortly after him, which management did not deny, we find that the Agency's identification of that probationary employee as White male on the document it submitted in discovery raises a suspicion of credibility regarding the Agency's removal decision especially when balanced against M2's testimony that Complainant's discharge was his first termination of a probationary employee in 38 years at the Shipyard.

In sum, we discern no basis to disturb the AJ's finding of discrimination since it was supported by substantial evidence. Complainant's prima facie case and other evidence of race and sex stereotyping, combined with sufficient evidence that the Agency's asserted justification is unfounded, permitted the AJ to conclude that the Agency unlawfully discriminated against Complainant on the bases of race and sex when it removed him from his job.

Remedies

The Agency argues on appeal that Complainant provided insufficient evidence of his efforts to seek outside employment to mitigate his damages and thus either should have been denied back pay or at least had it limited to the 14 weeks Complainant remained eligible for and received unemployment benefits (July 19, 2014 to October 25, 2014), as this was the only period during which Complainant attempted to make a colorable claim that he looked for work. We disagree. We find that substantial evidence supports the AJ's finding that Complainant had sought employment but as a result of having a "termination" from a federal employer on his employment record, he was either deemed ineligible or not considered for a number of positions.

A. Compensatory Damages

Regarding the issue of compensatory damages, the Agency argues that the AJ erroneously awarded compensatory damages for retaliation and failure to provide a reasonable accommodation in a case based solely on race and sex. The Agency asserts that since these bases of discrimination were not alleged or proven, the compensatory damages award should be reduced. Despite the AJ's inadvertent reference to retaliation and reasonable accommodation, we find that the record supports the AJ's finding that Complainant was sufficiently injured by the race and sex discrimination to merit the ordered damages award.

Based on a careful review of the record, credibility determinations made at the hearing, and Complainant's substantial evidence of injury and causation, the AJ awarded Complainant \$62,750.00 in compensatory damages. Specifically, the AJ noted that Complainant provided substantial testimonial evidence which clearly established that he experienced emotional and physical symptoms, which were caused by the Agency's discriminatory conduct. Complainant submitted a deposition from his girlfriend and a statement by his mother concerning the emotional and physical toll that Complainant encountered due to loss of his livelihood. According to their statements, Complainant had been a social and jovial person, who became despondent, depressed, withdrawn, and anxious after being terminated. Complainant stated that he began to indulge in alcohol and cigarettes to deal with the anxiety and depression and no longer had a desire attend to his physical health. Complainant also averred lost hope about his future because his loss of job and income forced him to put his personal items in storage, move back in with his parents, and forced him to forego pursuing full custody of his only child. Complainant's mother explained that Complainant was pursuing primary custody of his son so he could move him to a better school district and away from the gangs; however, as a result of no longer having the income to pursue this case, Complainant had to dismiss his child custody suit and accept the prior custody agreement. Finally, Complainant's girlfriend detailed that she and Complainant had enjoyed a blissful intimate relationship and engaged in sexual relations quite regularly but after his termination, their encounters were rare, rushed, and less pleasurable and their close relationship deteriorated.

Complainant stated that he was shocked and confused about the treatment, discipline, and eventual termination he faced over the incidents raised in this complaint. Complainant expressed his frustration about not having an opportunity to address the allegations against him, and he was distressed about having his career terminated based upon unproven allegations. He stated that he had worked carefully to establish his professional reputation which was ruined by the termination. He explained that he had gone through an extensive education and training program to qualify to become a Ship Fitter Apprentice, and took special pride in becoming certified and working at the Naval Shipyard because it was somewhat of a family tradition, as his father had worked there in previous years. Complainant asserted his professional standing and career opportunities were substantially damaged, as the responsible management officials involved here are several of the same officials who have control over his performance appraisals, pay increases, promotions, transfer request, and would likely be involved in selection decisions for future positions.

We find that Complainant has submitted sufficient evidence to show he is entitled to nonpecuniary, compensatory damages. The Agency argues that, even if Complainant is entitled to compensatory damages, the \$62,750 award is excessive. We find that the award is consistent with the amount awarded in similar cases. See, e.g., Jacqueline G., v. Dep't of Justice, EEOC Appeal No. 0720160022 (Jan. 11, 2017) (\$65,000.00 awarded in nonpecuniary, compensatory damages, where Complainant suffered emotional harm including stress, anxiety, nervousness, fear for her economic security through loss of employment, increased intensity and frequency of migraines, loss of enjoyment of life, withdrawal from family and friends, lost motivation to get out of bed, pay her bills and engage in her hobbies due to the Agency's discriminatory conduct regarding a schedule and appraisal); Meghann M. v. Social Security Admin., EEOC Appeal No. 0720150028 (Mar. 15, 2016) (\$75,000 awarded in nonpecuniary, compensatory damages for discriminatory reassignment and removal; Complainant suffered stress, humiliation, anxiety, sleeplessness and depression).

B. Attorney's Fees and Costs

The Agency challenges the AJ's award of attorney's fees. As it did before the AJ, the Agency argues that Complainant's counsel did not provide sufficient evidence to establish the reasonableness of her hourly rates. Specifically, the Agency observed that Complainant's counsel provided affidavits from the two attorneys in the Hampton Roads area but argues they were insufficient. The Agency argues that neither affidavit revealed the hourly rate those attorneys charged nor identified the prevailing market rates in the Hampton Roads area.

The AJ awarded \$13,385.00 in attorney's fees to Complainant. Complainant's petition for attorney's fees and costs requested an hourly rate of \$250 for the administrative proceedings and \$300 for the judicial proceedings for the lead attorney, \$450.00 per hour for the senior partner, and \$400 per hour for his partner totaling \$13,265, plus travel, postage, and transcript costs. These rates and expenses were supported by several affidavits by attorneys of similar experience, qualifications, and location. The petition noted that the hourly rates for Complainant's attorneys had been approved and found reasonable in other cases. See, e.g., Mary A. Abbott v. USPS, DC-0752-12-0366-A-1 (MSPB Washington Regional Office) (Feb. 24, 2017) (finding counsels' hourly billing rates of \$300, \$400, and \$450 to be reasonable). Significantly, Complainant noted that the bulk of the work was accomplished by the lead attorney at the lower \$300 rate and that the senior partner and his partner billed less than one hour during the six-month timeframe. The AJ considered and rejected the Agency's arguments regarding deficiencies in the petition and decided that the attorney's fees in the amount of \$13,385.00 was reasonable to the preparation, travel, and other costs associated with this case. On appeal, the Agency raises no new arguments and does not present any authority establishing that the requested hourly rates were unreasonable or excessive. Accordingly, we sustain the AJ's award of attorney's fees.

C. Reinstatement

The AJ ordered the Agency to place Complainant in his position as a Naval Shipfitter, nonapprentice position, nonprobationary status. The Agency declined to do so. The Agency states that Complainant was only 10 months into his four-year apprenticeship program when he was terminated. The Agency argues that it would be disruptive to place him in apprentice training which would be out of sync with the rest of the apprentice class. Also, the Agency argues that Complainant is not qualified to be placed into a nonapprentice position as the AJ ordered because Complainant is not qualified to be a full mechanic and must complete the apprenticeship program first.

The Agency also argues that Complainant took actions to retaliate against the person whose harassment complaint partially formed the basis of Complainant's termination. The Agency describes the retaliatory acts by Complainant as filing some type of complaint (type unknown) about this person who filed the harassment complaint. The Agency states that Complainant followed up on multiple occasions on his complaint about this person who filed the harassment complaint. The Agency argues that Complainant relied on Privacy Act protected information to make the complaint about the person who filed the harassment complaint. The Agency also states that the person who filed the harassment complaint has "voiced concern" about Complainant returning to the work place. The Agency has not raised the argument about Complainant's retaliatory behavior in its appeal brief, but to the extent that it is part of their argument on appeal, we reject this argument. Even if we assume the Agency is correct and Complainant filed some type of "complaint" about the person who filed the harassment complaint (and then followed up on the status of that complaint), we find that such actions are not in any way indicative that Complainant could not be safely and appropriately be placed in the workplace.

We do, however, find that it is inappropriate to place Complainant in a nonapprentice, nonprobationary position since he had not completed his apprentice training. The Agency, as detailed in the Order herein, shall therefore provide Complainant with the option of restarting the apprenticeship program from the beginning of the next apprenticeship program or, if no significant changes to the apprenticeship program have been made since Complainant was in the program, from 10 months into the program (the point he had previously reached).

CONCLUSION

We REVERSE the Agency's final order. The Agency shall comply with the relief in the following Order.

ORDER

The Agency shall take the following actions:

1. Within 30 days of the date this decision is issued, the Agency shall offer Complainant reinstatement into his former Shipfitter Apprentice position.

- Complainant shall be provided the option of restarting the apprenticeship program from the beginning of the next apprenticeship program or, if no significant changes to the apprenticeship program have been made since Complainant was in the program, from 10 months into the program (the point he had previously reached).
2. Within 60 days of the date this decision is issued, the Agency shall pay Complainant back pay, with interest, from June 20, 2014, and other appropriate monetary benefits that Complainant would have been entitled to but for the discrimination.
 3. The Agency shall pay Complainant an amount to compensate him for the tax consequences of a lump-sum payment, according to proof to be provided by Complainant. Complainant must provide that proof of increased tax liability to the Agency within 30 days of receiving the back pay award. The Agency shall then reimburse Complainant for the proven increased tax liability within 60 days of receipt of Complainant's proof of increased tax liability.
 4. Within 60 days of the date this decision is issued, the Agency shall pay Complainant \$62,750.00 in nonpecuniary, compensatory damages.
 5. Within 60 days of the date this decision is issued, the Agency shall restore any sick or annual leave that Complainant would have earned from June 20, 2014, until the date he is returned to work.
 6. Within 60 days of the date this decision is issued, the Agency shall pay Complainant \$13,385.00 in attorney's fees.
 7. Within 60 days of the date this decision is issued, the Agency shall purge any documents or information relating to Complainant's June 20, 2014 removal from his official personnel file.
 8. Within 90 days of the date this decision is issued, the Agency shall provide eight hours of in-person or interactive training to the responsible management officials regarding the prohibitions against race and sex discrimination under Title VII.
 9. Within 60 days of the date this decision is issued, the Agency shall consider taking disciplinary action against the management officials identified as being responsible for the discrimination perpetrated against Complainant. The Commission does not consider training to be a disciplinary action.

10. The Agency shall report its decision to the Commission and specify what, if any, action was taken. If the Agency decides not to take disciplinary action, then it shall set forth the reasons for its decision not to impose discipline.

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 that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Department of the Navy, Norfolk Naval Shipyard, Portsmouth, Virginia, 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)), 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.

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 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 30 calendar days** of receipt of this decision. A party shall have **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).

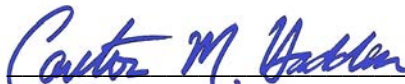
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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 90 calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after 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

May 10, 2019

Date