



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

[REDACTED]
Taunya P.,¹
Complainant,

v.

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

Appeal No. 0720180022
Hearing No. 570-2013-00428X
Agency No. 4K-220-0054-12

DECISION

Following its March 7, 2018, final order, the Agency filed a timely 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 partial rejection 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. The Agency also requests that the Commission affirm its rejection of the relief ordered by the AJ. Specifically, the Agency requests that the amount of compensatory damages and attorney's fees be reduced. For the following reasons, the Commission MODIFIES the Agency's final order.

ISSUES PRESENTED

The issue presented in this case are whether there is substantial evidence in the record to support the AJ's award of \$250,000.00 in non-pecuniary compensatory damages; and attorney's fees and costs in the amount of \$131,794.04.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Letter Carrier, PS-06 at the Agency's Franconia and Kingstowne Station in Alexandria, Virginia.

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.

On October 18, 2012, Complainant filed an EEO complaint alleging that the Agency subjected her to a hostile work environment and failed to reasonably accommodate her physical disability (back) and/or retaliated against her based on her prior EEO activity (requesting reasonable accommodation) when:

1. On November 19, 2011, she was reassigned to the Carrier Craft, and from that date until June 22, 2012, the Agency did not honor her work restrictions or her requests for reasonable accommodation;
2. Beginning on or about November 19, 2011 and continuing until June 12, 2012, the Agency threatened to send her home; and
3. On March 30, 2012, she was sent home.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Administrative Judge. Complainant timely requested a hearing and the AJ held a hearing on January 24, 25, and 26, 2017, and issued a decision on January 24, 2018. The AJ found that Complainant established that she proved, by a preponderance of the evidence, that the Agency failed to accommodate her physical disabilities from late November 2011 through June 22, 2012. The AJ also found that Complainant was entitled to compensatory damages because of the Agency's failure to accommodate her. The AJ also found that Complainant established that she was subjected to a hostile work environment. To remedy the effects of discrimination, the AJ ordered the Agency to:

1. reimbursement Complainant for the LWOP she was required to take on March 30, 2012;
2. provide in-person EEO training to the responsible management official and all management officials at the Alexandria Main Office, as well as the Franconia and Kingstowne Stations regarding their responsibilities under Title VII and the Rehabilitation Act with an emphasis on reasonable accommodation and the Agency's duties to ensure that similar violations do not occur;
3. consider taking disciplinary action against the RMO;
4. post copies of a notice in the workplace indicating that discrimination had been found;
5. pay non-pecuniary compensatory damages to Complainant in the amount of \$250,000.00;
6. pay pecuniary compensatory damages to Complainant in the amount of \$958.00; and,
7. pay attorney's fees and costs in the amount of \$131,791.04.

With regard to non-pecuniary compensatory damages, the AJ found that Complainant showed that due to the Agency's failure to accommodate her, she suffered nerve damage, exacerbated her back pain, and had leg pain and other leg problems. She also had other neurologic damage to the motor part of her nerve. The record indicated that she experienced "jolting pain," that did not respond to pain killers.

Further, there was doctor's testimony that supported the determination that the Agency's failure to reasonably accommodate Complainant's disability, resulted in a December 2011 accident, that caused the new condition of lumbar disc and nerve impingement with motor and sensory stigmata. The AJ found that this ultimately rendered Complainant incapable of carrying a pregnancy. The doctor testified that this information was a devastating prognosis for Complainant, as she had hoped to have a child of her own with her husband. The AJ found that the Agency failed to sufficiently refute the doctor's or Complainant's testimony.

Evidence also revealed that since the December 2011 injury, Complainant experienced ongoing pain, spasms, stiffness, occasional difficulty with urination, numbness, tingling, burning and weakness. The doctor further testified that in April 2012, "after four [4] months of not being accommodated by the Agency, [Complainant] was 'in a lot of pain.'" He added that by June 2012, Complainant was "despondent," after being required to work outside of her restrictions for the past seven (7) months. Finally, the doctor testified that Complainant reached "maximum medical improvement" in September 2016, "and still suffers from pain, spasm, stiffness, and occasional giving way of the legs," with a "guarded" prognosis.

With regard to the physical harm, Complainant testified that for seven (7) months "she worked in a state of constant pain," with the pain so bad at times that she had to go the emergency room. In addition, she maintained that the pain was so bad at times that even while carrying mail, she would lie down wherever she was to try to get relief from the pain. From October 2012 until June 2013, she was incapable of working. She also testified that the Agency's failure to accommodate her physical disabilities from November 2011 to June 2012 rendered her no longer capable of engaging in activities she had been able to do in the past, "such as housework, walking her dog, dancing, going to the movies on a regular basis, going to amusement parks, and riding horses." Her husband also testified to the cessation of activities based on her injuries. Complainant also testified about learning that she was unable to carry a baby. Complainant, her husband, and her mother all testified to the "profoundly detrimental effect" this had on them. Specifically, Complainant's husband testified with regard to his wife not being able to carry a baby that:

"... [I]t was hard, you know, because we both, you know, wanted a kid. We always talked about how it would be, you know, a cute little baby. And, you know, for her mother, you know, she's the only one to have a child from her mother's side and, you know, I'm the only male in my family, so the name, you know, I don't get to carry on that name anymore. So, it's something I still think about until now."

The AJ found that Complainant was entitled to nonpecuniary damages in the amount of \$250,000.00, based on the nature, severity and duration of the harm.

The AJ also requested that Complainant submit a verified statement of attorney's fees and costs. The Agency responded to Complainant's Petition for Attorneys' fees and costs. Complainant submitted her reply to the Agency's amended response and submitted an updated verified statement of attorney's fees and costs. Complainant claimed a total of \$131,231.10 in attorney's fees, with an hourly rate of \$483.00; she also claimed a total of \$559.94 in costs.

The AJ rejected the Agency's objections and found that Complainant's attorney was entitled to the full amount of fees and costs set forth in the fee petition, as revised. As such, the AJ found that Complainant was entitled to attorney's fees and costs totaling \$131,791.04.

The Agency subsequently issued a final order accepting the AJ's finding of discrimination but rejecting the AJ's compensatory damages and attorney's fees and costs award.

CONTENTIONS ON APPEAL

On appeal, the Agency contends, among other things, that it does not dispute the finding of discrimination. It does however, believe that the AJ erred in awarding excessive fees regarding the award of \$250,000.00 in compensatory damages, and attorney's fees and costs in the amount \$131,794.04. The Agency argues that the compensatory damages award should be mitigated and reduced because it is: (1) monstrously excessive standing alone; (2) was a result of passion and prejudice; and (3) inconsistent with awards made in similar cases. The Agency also argues that the AJ erroneously relied on the conclusory testimony of Complainant's orthopedist, who opined that Complainant could not carry a child. Additionally, the Agency contends that the AJ's compensatory damages award is not supported by the record because Complainant relied primarily on her mother for emotional support instead of seeing a psychiatrist or a psychologist for her emotional harm. Further, the Agency maintains that the compensatory damages award is based on the AJ's passion and prejudice, as evidenced by her saying that the supervisor was "clueless" about reasonable accommodation. Finally, the Agency asserts that Complainant did not suffer harm because she was paid for the time that she was out of work.

With regard to attorney's fees, the Agency maintains, for the most part, that Complainant's attorney spent excessive time communicating with Complainant and drafting her post hearing brief.

In response, Complainant contends, among other things, that the AJ's award of compensatory damages and attorney's fees and costs should be affirmed as the decision of the AJ is supported by substantial evidence. Complainant argues that the AJ provided a detailed analysis of her finding with regard to her award of \$250,000.00 in compensatory damages. According to Complainant, the Agency, other than disagreeing with the AJ's finding, provided no evidence as to why the compensatory damages should be mitigated or reduced. Complainant maintained that her Orthopedist thoroughly described how, as a result of the Agency's failure to provide her with a reasonable accommodation and work her within her restrictions, she suffered additional nerve damage and that the added weight of a pregnancy could cause paralysis. Complainant indicates that the Agency had the opportunity to call an OB/GYN as a witness but chose not to do so. Further, Complainant maintains that as a result of the Agency's discriminatory actions, she experienced debilitating pain, to the point that she did not want to live. While she did talk to a therapist because it was necessary for her to get approval for a pain blocking procedure, she mostly talked to her mother about her pain. Complainant also maintains that the Agency erred in indicating that she never missed a paycheck.

Complainant explains that she had a two-year delay in receiving her Worker's Compensation benefits, which caused financial harm to her family and strained her marriage. Complainant contends that the AJ's award was not based on passion and prejudice, because a single comment about the RMO being "clueless" about the need for reasonable accommodation is not enough to show passion and prejudice.

Finally, Complainant contends that the Agency's argument that her attorney spent too much time communicating with her and drafting the post hearing brief is not supported by the record, as the record shows that she spent approximately 25 hours over five years talking to Complainant about her case. Further, these assertions were properly addressed and dismissed by the AJ. As such, Complainant argues that the AJ's decision should be affirmed in its entirety.

ANALYSIS AND FINDINGS

Standard of Review

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 or not 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).

Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VI.C (Aug. 5, 2015) provides that on appeal to the Commission, the burden is squarely on the party challenging the Administrative Judge's decision to demonstrate that the factual determinations are not supported by substantial evidence. See id. In this case, this means that the Agency has the burden of pointing out where and why the AJ's findings are not supported by substantial evidence. Cf. id. (pointing out that "[t]he appeals statements of the parties, both supporting and opposing the [AJ's] decision, are vital in focusing the inquiry on appeal so that it can be determined whether the [AJ's] factual determinations are supported by substantial evidence").

Compensatory Damages

Pursuant to section 102(a) of the Civil Rights Act of 1991, a Complainant who establishes his or her claim of unlawful discrimination may receive, in addition to equitable remedies, compensatory damages for past and future pecuniary losses (i.e., out of pocket expenses) and non-pecuniary losses (e.g., pain and suffering, mental anguish). 42 U.S.C. § 1981a(b)(3).

For an employer with more than 500 employees, such as this agency, the limit of liability for future pecuniary and non-pecuniary damages is \$300,000.00. *Id.* In West v. Gibson, 527 U.S. 212 (1999), the Supreme Court held that the Commission has the authority to award compensatory damages in the federal sector EEO process.

The particulars of what relief may be awarded, and what proof is necessary to obtain that relief, are set forth in detail in EEOC's Enforcement Guidance, Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991 (July 14, 1992) (Guidance). Briefly stated, Complainant must submit evidence to show that the Agency's discriminatory conduct directly or proximately caused the losses for which damages are sought. *Id.* at 11-12, 14; Rivera v. Dep't. of the Navy, EEOC Appeal No. 01934157 (July 22, 1994). The amount awarded should reflect the extent to which the Agency's discriminatory action directly or proximately caused harm to Complainant and the extent to which other factors may have played a part. Guidance at 11-12. The amount of non-pecuniary damages should also reflect the nature and severity of the harm to Complainant, and the duration or expected duration of the harm. *Id.* at 14.

In Carle v. Dep't. of the Navy, the Commission explained that 'objective evidence' of non-pecuniary damages could include a statement by the complainant explaining how he or she was affected by the discrimination. EEOC Appeal No. 01922369 (January 5, 1993). Statements from others, including family members, friends, and health care providers could address the outward manifestations of the impact of the discrimination on the complainant. *Id.* The complainant could also submit documentation of medical or psychiatric treatment related to the effects of the discrimination. *Id.* However, evidence from a health care provider is not a mandatory prerequisite to establishing entitlement to nonpecuniary damages. Sinnott v. Dep't of Defense, EEOC Appeal No. 01952872 (September 19, 1996). A complainant's own testimony, along with the circumstances of a particular case, can suffice to sustain his or her burden in this regard. The more inherently degrading or humiliating the defendant's action is, the more reasonable it is to infer that a person would suffer humiliation or distress from that action. The absence of supporting evidence, however, may affect the amount of damages appropriate in specific cases. Lawrence, EEOC Appeal No. 01952288.

The Commission applies the principle that 'a tortfeasor takes its victims as it finds them.' Wallis v. U.S Postal Service, EEOC Appeal No. 01950510 (November 13, 1995) (quoting Williamson v. Handy Button Machine Co., 817 F.2d 1290, 1295 (7th Cir. 1987)). The Commission also applies two exceptions to this general rule. First, when a complainant has a pre-existing condition, the agency is liable only for the additional harm or aggravation caused by the discrimination. Second, if the complainant's pre-existing condition inevitably would have worsened, the agency is entitled to a reduction in damages reflecting the extent to which the condition would have worsened even absent the discrimination; the burden of proof being on the Agency to establish the extent of this entitlement. Wallis, EEOC Appeal No. 01950510 (citing Maurer v. United States, 668 F.2d 98 (2d Cir. 1981); Finlay v. U.S. Postal Service, EEOC Appeal No. 01942985 (April 29, 1997)).

Non-pecuniary damages are available to compensate the injured party for actual harm, even where the harm is intangible. Carter v. Duncan-Higgins, Ltd., 727 F.2d 1225 (D.C. Cir. 1984). Emotional harm will not be presumed simply because the complainant is a victim of discrimination. See Guidance at 5. The existence, nature, and severity of emotional harm must be proved. Id. Although there is no precise formula by which to calculate nonpecuniary damages, the method for computing non-pecuniary damages should typically be based on a consideration of the severity and duration of harm. Carpenter v. Department of Agriculture, EEOC Appeal No. 01945652 (July 17, 1995); Guidance at 8. We note that for a proper award of non-pecuniary damages, 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 Ward-Jenkins v. Department of the Interior, EEOC Appeal No. 01961483 (March 4, 1999) (citing Cygnar v. City of Chicago, 865 F.2d 827, 848 (7th Cir. 1989)).

After a careful review of the record, the Commission finds that the AJ's findings of fact are supported by substantial evidence in the record and that the AJ's decision properly summarized the relevant facts and referenced the appropriate regulations, policies, and laws. We also find that the Agency provided no relevant evidence to show that the AJ erred in awarding \$250,000.00 in nonpecuniary compensatory damages as other than the Agency's conclusory statements, the Agency did not provide evidence that the decision erred. For the most part, the Agency simply disagreed with the AJ's conclusions but did not established any error. Given the nature, severity and duration of the harm suffered by Complainant, and the ample documentation in the record supporting the AJ, we do not find that \$250,000.00 is monstrously excessive, and it is line with amounts awarded in other cases.² We note the words of Complainant's doctor that she reached "maximum medical improvement" in September 2016, "and still suffers from pain, spasm, stiffness, and occasional giving way of the legs," and that she has a "guarded" prognosis.

² After considering the awards in similar cases and the relevant factors discussed above, we find the AJ's award of \$250,000.00 appropriate. We note that the Commission has awarded compensatory damage amounts similar to the amount awarded in this case. See Augustine S. v. Dep't of Homeland Security, EEOC Appeal No. 0720110018 (October 22, 2015)(Commission affirmed EEOC Administrative Judge's award of \$250,000 in nonpecuniary, compensatory damages to a complainant who experienced sleep disturbances, physical pain, social withdrawal, fear of others, and inability to work due to the Agency's failure to provide reasonable accommodation over an extended period); McCormick v. Dep't of Justice, EEOC Appeal No. 0720100040 (November 23, 2011)(Commission affirmed EEOC Administrative Judge's award of \$200,000 in nonpecuniary, compensatory damages to a complainant who experienced depression, severe migraines, sleeplessness, strain on familial relationships, severe physical damage, social withdrawal, and damage to her professional reputation due to the Agency's failure to provide reasonable accommodation and its portrayal of the complainant as an insubordinate employee); Blount v. Dep't of Homeland Security, EEOC Appeal No. 0720070010 (October 21, 2009)(Commission affirmed EEOC Administrative Judge's award of \$200,000 in nonpecuniary, compensatory damages to a complainant who experienced severe depression and loss of self-esteem and sense of worth due to the Agency's failure to engage in the interactive process and provide reasonable accommodation).

Finally, although the AJ's use of the term, "clueless," can not be condoned, we find that one word does not indicate that the AJ's decision was the product of passion or prejudice.

Likewise, with respect to the AJ's award of attorney's fees and costs, other than the Agency's conclusory statements, the Agency did not show that the AJ erred in the amount awarded. In fact, the record supports the AJ's findings and shows that the AJ meticulously addressed these issues in her decision. Therefore, we discern no basis to disturb the AJ's decision on this issue.

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 finding of discrimination, but REVERSE the Agency's rejecting the AJ's award concerning compensatory damages and attorney's fees. Accordingly, the Agency's final order is MODIFIED. We REMAND this matter for further processing in accordance with this decision and the ORDER below.

ORDER

To the extent that it has not already done so, the Agency shall take the following action within 120 days of the date of this decision:

1. The Agency shall reimbursement Complainant for the LWOP she was required to take on March 30, 2012;
2. The Agency shall provide eight hours of in-person EEO training to the RMO, and four hours of training for all management officials at the Agency's Alexandria Virginia Main Office, as well as the Franconia and Kingstowne Stations in Alexandria, Virginia regarding their responsibilities under Title VII of the Civil Rights Act of 1964, as amended and the Rehabilitation Act of 1973, as amended, with an emphasis on reasonable accommodation and the Agency's duties to ensure that similar violations do not occur;
3. The Agency shall consider taking disciplinary action against the RMO. The Agency shall report its decision. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. The Commission does not consider training to be discipline;
4. The Agency shall pay non-pecuniary compensatory damages to Complainant in the amount of \$250,000.00;
6. The Agency shall pay pecuniary compensatory damages to Complainant in the amount of \$958.00 and,
7. The Agency shall pay attorney's fees and costs in the amount of \$131,791.04.

POSTING ORDER (G0617)

The Agency is ordered to post at its Alexandria Virginia Main Office, as well as the Franconia and Kingstowne Stations located in Alexandria, 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)), 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 (K0719)

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.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 CFR § 1614.503(f) for enforcement by that agency.

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

September 27, 2019

Date