



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

████████████████████
Karry S.,¹
Complainant,

v.

Matthew Donovan,
Acting Secretary,
Department of the Air Force,
Agency.

Appeal No. 0120182301

Hearing No. 480-2013-00018X

Agency No. 9T0R09002

DECISION

On July 2, 2018, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's June 11, 2018, final order concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. For the following reasons, the Commission AFFIRMS the Agency's final order.

ISSUE PRESENTED

1. Whether the Agency's award of \$100,000 in nonpecuniary compensatory damages is sufficient to compensate Complainant for the emotional distress and suffering that she sustained due to harassment (nonsexual) by Agency officials.
2. Whether the Agency properly denied Complainant's request for pecuniary damages in the amount of \$2,430.
3. Whether the Agency improperly failed to calculate Complainant's request for relief from tax consequences as a result of receiving backpay.

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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a School Age Program Coordinator, YA-02, for the 35th Force Support Squadron at Misawa Air Base in Japan.

Complainant filed a complaint on September 30, 2009, in which she alleged that the Agency discriminated against her on the bases of race (African-American) and reprisal when she was subjected to a hostile work environment when she was removed from her supervisory position on September 30, 2009 and subsequently removed from federal service on January 8, 2010. At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an EEOC Administrative Judge (AJ). Complainant timely requested a hearing.

On December 1, 2011, the AJ assigned to the case issued default judgment against the Agency for, in part, its failure to abide by the AJ's orders. The AJ subsequently issued a Final Decision regarding Liability and Damages (including attorneys' fees) on July 16, 2014, which incorporated three earlier decisions/orders. The incorporated decisions/orders included the December 1, 2011, order granting default judgment, and an order dated December 2, 2011, in which the AJ denied all evidence regarding Complainant's damages, to include backpay, as a sanction for Complainant's failure to abide by the AJ's orders with respect to discovery.

The AJ also incorporated her order dated March 29, 2013, wherein the AJ found that Complainant established a prima facie case of discrimination on the basis of reprisal for prior EEO activity as to both her removal from her probationary position as a Supervisory School Age Program Coordinator and her subsequent removal from federal service. The AJ found that the evidence:

supports that Complainant is qualified for a probationary SAP Coordinator position, thus negating the Agency's concern that Complainant could be awarded a position for which she is not minimally qualified. Likewise, the record evidence, including but not limited to the evidence establishing that Complainant previously worked for the Agency as a Training and Curriculum Specialist and had completed the minimum schooling requirement to qualify for the Training and Curriculum Specialist under the Agency's new qualification standard, supports that Complainant is qualified for a permanent position as a (non-probationary) Training and Curriculum Specialist.

Consequently, the AJ ordered the Agency to provide Complainant with the following remedies:

1. Complainant shall be reinstated to her choice of a position as a probationary SAP Coordinator who has successfully completed 6.5 months of her probation or a permanent (non-probationary) Training and Curriculum Specialist position.

Complainant shall be reinstated to an overseas assignment in one of the aforementioned job positions at the Agency's location in Misawa, Japan to serve out the balance of a 36-month term overseas position with possibility of an extension of her term overseas assignment.... The Agency shall bear the costs, if any, of Complainant's relocation to her Agency reinstatement location;

2. The Agency shall remove all references to Complainant's job performance as a probationary SAP Coordinator, her removal from her SAP Coordinator position, and her termination from her OPF, her Agency files, and all supervisory files, within 30 days of the final decision in this case, and make all future employment decisions without reference to such performance evaluations, her removal from her SAP Coordinator position, and or her termination;
3. The Agency shall remit attorneys' fees and costs to Complainant as a prevailing party in the amount of \$42,860.00 in fees and \$651.71 in costs;
4. The Agency shall provide EEO training to the supervisors and managers cited as responsible management officials who unlawfully discriminated and retaliated against Complainant; and
5. The Agency prominently post at its facility in Misawa, Japan, a notice of the finding of discrimination in conformity with 29 C.F.R. Part 1614. The notice shall indicate that it is being posted pursuant to this Decision.

By final order dated September 2, 2014, and Notice of Appeal also dated September 2, 2014, the Agency issued its final action and notified Complainant and the Commission that it would not be fully implementing the AJ's decision. The Agency also gave notice that it was appealing the AJ's decision to the Commission. The Agency's final order further notified Complainant and the Commission that the Agency rejected 'the AJ's requirements to take appropriate corrective action and the ordered remedies, including reinstatement of. . . Complainant and attorneys' fees and costs, as there was no factual evidence of discrimination or reprisal.'" Complainant also filed an appeal regarding sanctions against her and the remedies ordered by the AJ.

In EEOC Appeal No. 0720140038 (Oct. 9, 2015), the Commission upheld the AJ's imposition of discovery sanctions against Complainant but reversed and remanded the Agency's final decision for the imposition of remedies as ordered by the AJ, with slight modifications to the AJ's award of attorneys' fees. In this regard, the Commission modified the AJ's award of attorneys' fees to include hours previously disallowed for pre-complaint work (2.1 hours) subject to the across-the-board 50 percent reduction applied by the AJ and compensable at a rate of \$400 per hour.

In EEOC Request No. 0520160078 (Feb. 7, 2018), the Commission modified its decision in EEOC Appeal No. 0720140038 with regard to the AJ's imposition of sanctions against Complainant.

While the underlying appellate decision upheld the AJ's decision to deny Complainant the opportunity to present evidence on damages as a sanction for Complainant's failure to comply with the AJ's orders, the Commission, upon further consideration, found such sanction to be unduly harsh and unwarranted by the facts. Consequently, the Commission modified the Order in EEOC Appeal No. 0720140038 to include an order directing the Agency to conduct a supplemental investigation concerning Complainant's entitlement to compensatory damages. The modified Order directed the Agency to provide Complainant with 120 calendar days to submit evidence in support of her compensatory damages claim and to issue a final decision within 60 days of receipt of Complainant's evidence. See EEOC Request No. 0520160078.

On April 4, 2018, Complainant responded to the Agency's investigation into damages and requested the following remedies: retroactive backpay and benefits including all increases, performance awards given to employees not affected by discrimination, plus interest from January 7, 2010 until she was placed back on the payroll; reimbursement in the amount of \$2,430 for debt owed to a car dealership because she had to leave behind her vehicle in Japan following her removal; payment for the additional tax liability incurred for receiving the backpay as a lump sum payment; non-pecuniary compensatory damages in the amount of \$300,000; and attorneys' fees.

In support of her claim for pecuniary compensatory damages, Complainant submitted a letter from a Staff Judge Advocate for the 35th Fighter Wing who advised her that a car dealership in Misawa, Japan wanted to get in touch with her regarding debt in the amount of \$2,430 that she owed and discuss possible payment options.

Regarding Complainant's claim for nonpecuniary compensatory damages, the record shows that she submitted several statements and medical records to support her claim. In a personal statement, Complainant emphasized that the Agency's actions tarnished her reputation and left her in fear of what would come next. A sworn statement from Complainant's colleague indicates that Complainant was subjected to horrible embarrassing and demeaning treatment, including having her home searched and being put in jail three times without any charges. Complainant's colleague stated that the Agency's discriminatory actions caused Complainant to experience debilitating headaches, anxiety, mental anguish, stress, acne breakouts, stomach problems, weight loss, night sweats, and insomnia. As for Complainant's submitted medical documentation, the record shows that Complainant visited a military medical facility on several occasions in November 2009 for headaches, weight gain, neck stiffness, nightmares about work, and insomnia.

On June 29, 2018, the Agency issued a final decision on the issue of compensatory damages.² In issuing the final decision, the Agency acknowledged Complainant's statements regarding the emotional and physical harm that she endured due to management's actions; however, the Agency found that Complainant failed to provide any medical documentation linking the discriminatory acts to her alleged medical conditions.

² The Agency rescinded a prior final decision dated June 18, 2018, because that decision failed to inform Complainant that the Agency would determine her entitlement to backpay.

The Agency also emphasized that any detention or false imprisonment that Complainant may have suffered was very short in duration and did not result in injuries. The Agency concluded that the harm Complainant suffered entitled her to compensatory damages in the amount of \$100,000. The Agency, however, denied Complainant's request for pecuniary damages in the amount of \$2,430 because it had no way of knowing whether the debt had been paid because Complainant failed to provide supporting evidence confirming payment of the debt. As for the issue of backpay, the Agency informed Complainant that it would begin computing her entitlement to backpay for the period commencing from January 7, 2010, the effective date of Complainant's removal, to July 15, 2014, the effective date of Complainant's return to duty status.

This appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that the Agency's award of \$100,000 in nonpecuniary compensatory damages is insufficient to compensate her for the pain and suffering that she sustained due to the Agency's discriminatory actions. In support of her request for increased damages, Complainant cites to three cases where the Commission awarded damages of at least \$192,500 for similar pain and suffering. She also requests that the Commission award her relief for adverse tax consequences resulting from the receipt of backpay in a single tax year. She notes that the Agency did not include this relief in its final decision on damages.

The Agency requests that the Commission affirm its final decision, which awarded \$100,000 in nonpecuniary compensatory damages to Complainant. The Agency also argues that an award for tax liability would be premature because Complainant has not yet presented any evidence pointing to any additional tax burden.

STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that EEOC "review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law").

ANALYSIS AND FINDINGS

When discrimination is found, an agency must provide a remedy that constitutes full, make-whole relief to restore a complainant as nearly as possible to the position he or she would have occupied absent the discrimination. See, e.g., Franks v. Bowman Transp. Co., 424 U.S. 747, 764 (1976); Albemarle Paper Co. v. Moody, 422 U.S. 405, 418-19 (1975); Adesanya v. U.S. Postal Serv., EEOC Appeal No. 01933395 (July 21, 1994). To receive an award of compensatory damages, a complainant must demonstrate that he or she has been harmed by an agency's discriminatory conduct; the extent, nature, and severity of the harm; and the duration or expected duration of the harm. Rivera v. Dep't of the Navy, EEOC Appeal No. 01934157 (July 22, 1994), req. for reconsideration denied, EEOC Request No. 05940927 (Dec. 11, 1995); Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.002 (July 14, 1992), at 11-12, 14.

Compensatory Damages Overview

Compensatory damages are awarded to compensate a complaining party for losses or suffering inflicted due to the discriminatory act or conduct. See EEO MD-110 at Chapter 11, § VII (citing Carey v. Phipus 435 U.S. 247, 254 (1978) (purpose of damages is to "compensate persons for injuries caused by the deprivation of constitutional rights")). Types of compensatory damages include damages for past pecuniary loss (out-of-pocket loss), future pecuniary loss, and nonpecuniary loss (emotional harm). See EEO MD-110 at Chapter 11, § VII.B; and Goetze v. Dep't. of the Navy, EEOC Appeal No. 01991530 (Aug. 23, 2001).

Pecuniary losses are out-of-pocket expenses incurred because of the agency's unlawful action, including job-hunting expenses, moving expenses, medical expenses, psychiatric expenses, physical therapy expenses, and other such quantifiable expenses. Past pecuniary losses are losses incurred prior to the resolution of a complaint through a finding of discrimination, or a voluntary settlement, whereas future pecuniary damages are those likely to occur after the resolution of the complaint. See EEO MD-110 at Chapter 11, § VII.B.

In a claim for pecuniary compensatory damages, a complainant must demonstrate, through appropriate evidence and documentation, the harm suffered because of the agency's discriminatory action. Objective evidence in support of a claim for pecuniary damages includes documentation showing actual out-of-pocket expenses with an explanation of the expenditure. An agency is only responsible for those damages that are clearly shown to be caused by its discriminatory conduct. To recover damages, a complainant must prove that the agency's discriminatory actions were the cause of the pecuniary loss. Id.

Nonpecuniary damages are losses that are not subject to precise quantification, including emotional pain and injury to character, professional standing, and reputation. Id.

There is no precise formula for determining the amount of damages for non-pecuniary losses except that the award should reflect the nature and severity of the harm and the duration or expected duration of the harm. See Loving v. Dep't of the Treasury, EEOC Appeal No. 01955789 (Aug. 29, 1997). The Commission notes that non-pecuniary compensatory damages are designed to remedy the harm caused by the discriminatory event rather than to punish the agency for the discriminatory action. Furthermore, compensatory damages should not be motivated by passion or prejudice or be “monstrously excessive” standing alone but should be consistent with the amounts awarded in similar cases. See Ward-Jenkins v. Dep't of the Interior, EEOC Appeal No. 01961483 (Mar. 4, 1999).

Evidence from a health care provider or other expert is not a mandatory prerequisite for recovery of compensatory damages for emotional harm. See Lawrence v. U.S. Postal Serv., EEOC Appeal No. 01952288 (Apr 18, 1996) (citing Carle v. Dep't of the Navy, EEOC. Appeal No. 01922369 (Jan. 5, 1993)). Objective evidence of compensatory damages can include statements from a complainant concerning his or her emotional pain or suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character or reputation, injury to credit standing, loss of health, and any other non-pecuniary losses that are incurred as a result of the discriminatory conduct. Id.

Statements from others including family members, friends, health care providers, other counselors (including clergy) could address the outward manifestations or physical consequences of emotional distress, including sleeplessness, anxiety, stress, depression, marital strain, humiliation, emotional distress, loss of self-esteem, excessive fatigue, or a nervous breakdown. Id. Complainant's own testimony, along with the circumstances of a particular case, can suffice to sustain her burden in this regard. Id. 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. Id. The absence of supporting evidence, however, may affect the amount of damages appropriate in specific cases. Id.

Complainants have the burden of proving the existence, nature and severity of the alleged emotional harm and must also establish a causal relationship between the alleged harm and the discrimination. Absent such proof of harm and causation, a complainant is not entitled to compensatory damages, even if there were a finding of unlawful discrimination. The Commission has held that evidence of emotional distress should include detailed information on physical or behavioral manifestations of the distress, if any, and any other information on the intensity of the distress, information on the duration of the distress, and examples of how the distress affected appellant both on and off the job. Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993). In addition to a detailed statement by the individual claiming emotional distress damages, other evidence of such damages could include statements by health care professionals, such as physicians, psychologists, psychiatrists, therapists or counselors, as well as friends, family or coworkers who could attest to the existence, nature and severity of appellant's distress, its duration and causation.

Denial of Pecuniary Compensatory Damages Claim

Complainant contends that she is entitled to compensation in the amount of \$2,430 for debt owed to a car dealership because she had to leave her car behind in Japan as a result of the Agency's discriminatory actions. In support of her claimed expense, Complainant submitted a letter from a Staff Judge Advocate for the 35th Fighter Wing who advised her that a car dealership in Misawa, Japan wanted to get in touch with her regarding debt that she owed and discuss possible payment options. While the Agency did not challenge the validity of the debt, the Agency denied the claimed expense because it had no way of knowing whether the debt had been paid because Complainant did not provide supporting evidence confirming payment of the debt. Upon review, we find that the Agency properly disallowed this expense due to Complainant's failure to provide adequate supporting documentation to substantiate her claim.

Sufficiency of Agency's Award of \$100,000 Nonpecuniary Compensatory Damages

With regard to Complainant's request for an award of nonpecuniary compensatory damages in excess of \$100,000, while we acknowledge that the alleged incidents of discrimination are particularly troubling and egregious, we ultimately agree with the Agency's award of \$100,000 in nonpecuniary compensatory damages. In so finding, we emphasize that nonpecuniary compensatory damages are designed to remedy the harm caused by the discriminatory event rather than to punish an agency for its discriminatory actions. Our review of similar cases shows that the Agency's award of \$100,000 is consistent with Commission precedent involving similar pain and suffering. For example, in Demarcus I. Dep't of Def., EEOC Appeal No. 0120150529 (May 4, 2017), the Commission awarded \$100,000 to a complainant who sustained post-traumatic stress disorder, severe anxiety, extreme humiliation/embarrassment, feelings of dread and isolation, and insomnia as a result of discriminatory conduct. In Cher B. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120140445 (Jan. 9, 2017), the Commission awarded \$95,000 for embarrassment, stress, loss of professional standing, and one panic attack for retaliatory harassment lasting approximately 18 months. We find that the Agency's award of \$100,000 in nonpecuniary compensatory damages is consistent with our prior cases and sufficiently compensates Complainant for her pain and suffering.

In reaching this conclusion, we considered Complainant's citation to Erwin B. v. U.S. Postal Serv., EEOC Appeal No. 0720150029 (March 15, 2016), where the Commission awarded \$192,500 in nonpecuniary compensatory damages. In Erwin B., the false accusations of a Postal Service manager resulted in the complainant being arrested, put in a holding cell, and tried in a court of law on criminal charges. While we are mindful of the similarities between this case and Erwin B., we agree with the Agency that Complainant did not provide sufficient evidence to warrant a similar award as in Erwin B. Moreover, while we recognize that Complainant sustained financial hardship due to her removal, which necessitated Complainant's cohabitation with her estranged husband, we note that the complainant in Erwin B., reported he was near bankruptcy due to the discriminatory actions of his manager and submitted evidence corroborating such claim. As such, we find Complainant's reliance on Erwin B. to be unpersuasive.

As for Complainant's reliance on Akiko L. v. U.S. Postal Serv., EEOC Appeal No 0720120027 (April 2, 2014) and Valencia L. v. Dep't of Homeland Security, EEOC Appeal No. 0720130039 (Aug. 7, 2014), we agree with the Agency that the facts in those cases are distinguishable from the instant case, and, given the facts here, we are disinclined to increase the Agency's award of nonpecuniary compensatory damages.

Relief for Adverse Tax Consequences

Complainant also requests that the Commission award her relief for adverse tax consequences resulting from the receipt of backpay in a single tax year, and she notes that the Agency did not include this relief in its final decision on damages. Upon review, we find no fault in the Agency's failure to include relief for adverse tax consequences. For the Agency to calculate Complainant's tax consequences, the Agency would need to know what taxes Complainant would have paid had she earned income in the years for which she received lump sum back pay payments, versus the additional tax she paid by receiving this amount in a lump sum. See Vandesande v. U.S. Postal Serv., EEOC Appeal No. 01A52449 (March 30, 2016) (citing Van Hoose v. Dep't of the Navy, EEOC Appeal Nos. 01982628 and 01990455 (Aug. 22, 2001)). We note that the Agency is not liable for all Complainant's taxes, but only for the additional taxes she owed as a result of the lump sum payments, *i.e.*, "tax consequences." Because the record is devoid of any evidence showing that Complainant submitted evidence in support of her claim for adverse tax consequences, we find that the Agency did not fail in this regard.³

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's final decision on damages.

ORDER

To the extent that it has not already done so, the Agency shall, within 120 calendar days of the date this decision is issued, pay Complainant in the amount of \$100,000.

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.

³ We note that the Agency's June 29, 2018, final decision indicates that the Agency would begin calculating Complainant's entitlement to backpay for the period commencing from January 7, 2010, the effective date of Complainant's removal, to July 15, 2014, the effective date of Complainant's return to duty status. To the extent Complainant has not done so, she should submit any evidence related to her claimed adverse tax consequences during the Agency's supplemental investigation on backpay.

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 (S0610)

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. 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 21, 2019

Date