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

[redacted]
Orville D.,[1]
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Headquarters),
Agency.

Appeal No. 2022003408

Hearing No. 410-2020-00256X

Agency No. 66-000-0012-19

DECISION

On May 31, 2022, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's May 5, 2022, final order concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. For the following reasons, the Commission AFFIRMS the Agency's final order.

ISSUES PRESENTED

Whether the EEOC Administrative Judge (AJ) properly issued a decision by summary judgment finding that Complainant was not subjected to harassment or discrimination based on race.

[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

During the relevant time, Complainant worked as a Postal Inspector at the Agency's U.S. Postal Inspection Service in Atlanta, Georgia.

On September 6, 2019, Complainant filed a formal complaint alleging that the Agency discriminated against him based on race (African American) when:

1. On November 7, 2017, during a workplace graduation party, Demoted Postal Inspector made offensive statements to Complainant including, "I'll buy your black ass a drink", and "your black ass couldn't handle Boston." In addition, she and others referred to Complainant as "gin and juice."

2. Beginning in December 2017 Complainant was treated differently when he was required to submit weekly requests for take-home law enforcement vehicle usage, and when he was not allowed to jacket his own cases.

3. In May 2018 Complainant was required to obtain his Team Leader's approval if he wished to travel outside of the Atlanta Metro area on weekends.

4. Beginning May 2018, and continuing through at least February 2019, Complainant's requests to attend additional training and participate in other work opportunities were not granted.

5. In the Fall of 2018, Assistant Inspector in Charge made the comment, "I'd better not come down this hall, you guys may take my lunch money" to Complainant and two other African American Postal Inspectors.

6. On April 10, 2019, Team Leader sent Complainant an email stating that he would have to reimburse the Agency for over $6,200 in costs because he was leaving the Inspection Service before the end of his two-year commitment.

7. On April 16, 2019, a prominent case that Complainant had worked appeared in the Atlanta Division's online newsletter, but unlike other cases listed, his case was the only one where the inspector's name was not listed.

After its investigation into the complaint, the Agency provided Complainant with a copy of the report of investigation and notice of right to request a hearing before an EEOC AJ. Complainant timely requested a hearing. The Agency submitted a motion for a decision without a hearing.

The AJ reviewed the record. The record showed that during the period at issue, Complainant was on a 2-year probationary period. He began working for the Agency as a Postal Inspector in August 2017, and resigned before his probationary period was over on the ground that he was subjected to ongoing harassment.

In claim 1, Complainant alleged that the first instance of harassment occurred on November 7, 2017, when Demoted Postal Inspector made offensive racial statements to him at a graduation party at the Pony Express Bar and Grill. Complainant said that Demoted Postal Inspector's (Caucasian) statements included, "I'll buy your black ass a drink", and "your black ass couldn't handle Boston." In addition, Complainant alleged that she and others referred to him as "gin and juice." Witness (Race Unknown) was present. Witness said that he heard Demoted Postal Inspector make the first two statements. Witness said that he did not witness anyone referring to Complainant as "gin and juice," but Demoted Postal Inspector did inappropriately ask Complainant if he wanted to drink gin and juice.

Complainant's Team Leader (Caucasian) stated that he was not at the Pony Express Bar and Grill, but Complainant informed him of the offensive statements. Team Lead said he apologized to Complainant and relayed to Complainant that was not the kind of working environment they had at the Agency. Team Leader stated that the Office of Inspector conducted an investigation into the incident, but he was not aware of the results. When Complainant discussed this investigation in his Pre-Hearing Statement, Complainant said that the Agency never disciplined Demoted Postal Inspector. He said that instead, the Agency entered into a confidential agreement with her following the conclusion of the investigation.

After reviewing the evidence, AJ found that there were consequences for Demoted Postal Inspector's actions because she was demoted to a lower position. The AJ explained that although the Complainant had been subjected to racially offensive comments, his work environment was not abusive because the comments were made one time at the graduation.

In claim 2, Complainant alleged that he was subjected to disparate treatment because he was not allowed to take law enforcement vehicles home on the weekend without submitting weekly requests. In addition, Complainant claimed that he was treated differently because he was not allowed to jacket cases.[2]

Team Leader stated that when Complainant was on Post Basic Training (PBT), he required Complainant to submit weekly requests for vehicle usage on the weekend and did not allow Complainant to jacket his own cases based on his understanding of PBT policy. Team Leader submitted a copy of the PBT Administrative Guide, which states, "the new postal inspector will not jacket cases or be transferred cases until approved by the PBT Coordinator." The Team Leader said that once Complainant completed PBT, the Complainant jacketed his own cases and did not need to submit weekly requests for vehicle usage. The Team Leader denied that Complainant was treated differently based on his race and explained that he supervised Caucasian and African American postal inspectors who were not on PBT and that all of them jacketed their cases and did not have to submit weekly requests for vehicle usage.

In his Pre-Hearing Statement, Complainant argued that he was treated differently to a Caucasian comparator who was on PBT at the same time as him. Complainant said that the comparator jacketed his own cases while he was on PBT and did not submit weekly requests for vehicle use. After reviewing the record, the AJ found that supervisors had the discretion on what to allow while their subordinates were on PBT and that the Caucasian comparator was not similarly situated to the Complainant because the comparator had a different supervising team. As a result, the AJ found that Complainant failed to demonstrate that the Team Leader was motivated by discriminatory animus.

Regarding claim 3, Complainant claimed that he was required to obtain his Team Leader's approval if he wished to travel outside the Atlanta Metro area on weekends. The Team Leader denied this allegation. Team Leader testified that Complainant was never required to seek approval to travel outside the Atlanta metro area on weekends by him or anyone else. The Team Leader explained that postal inspectors had a duty to respond to critical incidents after hours, including on weekends, so as team leader, he asked all his team members, regardless of their race, if they would inform him if they traveled

[2] A case is "jacketed" when there is an indication of criminal activity which warrants an investigation.

outside of the area so that he could know their availability. Team Leader said that he asked his team members to do this as a courtesy not a requirement, so that he know who would be able to respond to critical incidents after hours. The AJ found that in this instance, Complainant failed to demonstrate that Team Leader's actions were based on his race.

In Claim 4, Complainant alleged that from May 2018 to February 2019, his requests to attend additional training were not granted. However, the record showed that Complainant was granted permission to attend several trainings during that time frame, including, PMN training, workplace violence training, assistance operation training, deployment to assist with Hurricane Florence, Hong Kong Express Chicago ISC interdiction, and cryptocurrency dark web training. Complainant was denied training when more senior employees were selected for training participation or Complainant was eligible for participation due to having less than the required amount of experience necessary for participation. As a result, the AJ found that there was no evidence to show that the denials were based on his race.

Regarding claim 5, Complainant claimed that Assistant Inspector in Charge (White) made the comment, "I'd better not come down this hall, you guys may take my lunch money" to Complainant and two other African American Postal Inspectors. Assistant Inspector in Charge admitted that he made the comment. However, he testified that the comment was made due to Complainant's physical size and muscular build, not his race. The AJ found that while the Assistant Inspector in Charge's comment was not necessarily befitting of the workplace, Complainant did not show that the comment was made because of his race.

In claim 6, Complainant claimed that the Team Leader sent him an email stating that he would have to reimburse the Agency for over $6,200 in costs. The team Leader noted that he sent the Complainant the email after the Complainant informed him that he was resigning. Team Leader said his intention was for Complainant to make an informed decision about whether he wanted to resign and to be aware of his contractual obligation to reimburse the Agency if he left before his two-year probationary period was over. The record contains a copy of a contractual agreement that Complainant entered with the Agency on August 13, 2017, wherein he agreed to work as a Postal Inspector for two years. The agreement stated that if Complainant left the Agency before the two-year period, he would reimburse the Agency for the cost of training expenses. Complainant disagreed with Team Leader's testimony.

Complainant said that he believed that when Team Leader notified him of his obligation to reimburse the Agency, Team Leader's goal was to "stick it to [him]." Complainant said that Team Leader acted with discriminatory animus because there were two employees, an Asian American employee and a Caucasian employee, who left the Agency before the two-year period who never reimbursed the Agency. However, the Agency rebutted Complainant's contentions by providing proof that the employees had been contacted to reimburse the Agency for training costs. As a result, the AJ found that Complainant failed to demonstrate that Team Leader was motivated by discriminatory animus.

In claim 7, Complainant claimed that a prominent case that he worked on appeared in the Atlanta Division's online newsletter, but unlike other cases listed, his case was the only one where the inspector's name was not listed. Inspection Service Technician (African American) said that she was assigned with drafting the newsletter while the employee who usually drafted the newsletter was on detail. The Inspection Service Technician stated that she was not aware of the Complainant's race and that the inspector's name was left out due to a mistake. The AJ noted that the Inspection Service Technician had limited experience publishing the newsletter and found that her mistake with the writeup was due to human error, not the Complainant's race.

On April 22, 2022, the AJ issued a decision by summary judgment in favor of the Agency. Overall, the AJ found that Complainant failed to prove discriminatory motive on the part of the Agency, and that his resignation was voluntary.

CONTENTIONS ON APPEAL

On June 27, 2022, Complainant timely requested an extension to submit an appeal brief due to care of a family member with medical problems. The Commission granted his extension to July 15, 2022. His brief was filed on July 14, 2022, via the EEOC Public Portal and has been considered in this decision.

Complainant argues that the AJ improperly found no genuine issues of material fact for which a hearing would be necessary; that the AH made errors of fact and loa; drew improper inferences in the Agency' favor; and made improper credibility determination which credited the Agency's version of facts.

On August 30, 2022, the Agency requested an extension to submit an appeal brief. The Agency's request was 15 days late. Agency Counsel said that she missed the filing deadline because she was not provided access to view Complainant's file until recently.

STANDARD OF REVIEW

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

ANALYSIS

As a preliminary matter, we determine that the Agency has not demonstrated good cause for the extension request. Agency Counsel did not explain why she did not have access. Furthermore, other staff members accessed Complainant's file on the EEOC Public Portal months prior to the extension request. Therefore, the Agency's appeal brief has not been considered in this decision. We now turn to the merits of the subject claims.

Summary Judgment

The Commission's regulations allow an AJ to issue a decision without a hearing when he or she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). This regulation is patterned after the summary judgment procedure set forth in Rule 56 of the Federal Rules of Civil Procedure. The U.S. Supreme Court has held that summary judgment is appropriate where a court determines that, given the substantive legal and evidentiary standards that apply to the case, there exists no genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a motion for summary judgment, a court's function is not to weigh the evidence but rather to determine whether there are genuine issues for trial. Id. at 249. The evidence of the non-moving party must be believed at the summary judgment stage and all justifiable inferences must be drawn in the non-moving party's favor. Id. at 255. An issue of fact is "genuine" if the evidence is such that a reasonable fact finder could find in favor of the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2D 103, 105 (1st Cir. 1988). A fact is "material" if it has the potential to affect the outcome of the case. If a case can only be resolved by weighing conflicting evidence, a hearing is required. In the context of an administrative proceeding, an AJ may properly consider issuing a decision without a hearing only upon a determination that the record has been adequately developed for such disposition. See Petty v. Dep't of Defense, EEOC Appeal No. 01A24206 (July 11, 2003). In the context of an administrative proceeding under Title VII, an AJ may only properly consider summary judgment after there has been adequate opportunity for development of the record.

On appeal, Complainant argues that the AJ erred in issuing a decision by summary judgment because there are material facts at issue. However, to successfully oppose a decision by summary judgment, a complainant must identify, with specificity, facts in dispute either within the record or by producing further supporting evidence and must further establish that such

facts are material under applicable law. Here, Complainant has provided specific facts he believes are in dispute and cited evidence he believes supports this contention. However, based on the record before us, these facts are either not in dispute, not material, and/or the evidence Complainant cites relies on his own subjective beliefs.

Harassment

In order to establish a prima facie case of harassment, Complainant must prove, by a preponderance of the evidence, the existence of five elements: (1) that he is a member of a statutorily protected class; (2) that he was subjected to unwelcome conduct related to her protected class; (3) that the harassment complained of was based on his protected class; (4) that the harassment had the purpose or effect of unreasonably interfering with his work performance and/or creating an intimidating, hostile, or offensive work environment; and (5) that there is a basis for imputing liability to the employer. See Celine B. v. Dep't of Navy, EEOC Appeal No. 2019001961 (Sept. 21, 2020); Humphrey v. U.S. Postal Serv., EEOC Appeal No. 01965238 (Oct. 16, 1998). See also Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982), approved in Meritor Savings Bank v. Vinson, 477 U.S. 57, 66-67 (1986); see generally Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (April 29, 2024).; Flowers v. Southern Reg'l Physician Serv. Inc., 247 F.3d 229 (5th Cir. 2001). The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the victim's circumstances. Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (April 29, 2024).

To prove his hostile work environment claim, Complainant must establish that he was subjected to conduct that was either so severe or so pervasive that a "reasonable person" in Complainant's position would have found the conduct to be hostile or abusive. Complainant must also prove that the conduct was taken because of a protected basis; in this case, his race. Only if Complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself.

The Commission agrees with the AJ in determining that no evidence whatsoever reflects that the matters at issue occurred because of Complainant's race. Regarding claim 2, Team Leader said that when Complainant was on PBT, he was not allowed to jacket his own cases and had to submit weekly requests for vehicle usage based on PBT policy, not his race. Complainant indicated that when he was finished with PBT, he jacketed his own cases and did not have to submit the weekly requests.

This weakens any inference that Team Leader's actions were motivated by racial animus, especially given Team Leader's testimony that there were other African American postal inspectors on his team and Caucasians, who were not on PBT who jacketed their own cases and did not have to submit the weekly requests.

Regarding claim 3, Team Leader testified that Complainant was never required to seek approval to travel outside the Atlanta metropolitan area on weekends by him or anyone else. The Team Leader explained that postal inspectors had a duty to respond to critical incidents after hours, including on weekends. Therefore, as team leader, he asked all his team members, regardless of their race, if they would inform him if they traveled outside of the area so that he could know their availability. Under these circumstances, Complainant failed to demonstrate that Team Leader's actions were based on his race.

In Claim 4, Complainant alleged that his requests to attend additional training were not granted. However, the record showed that he was granted permission to attend several trainings. Although there were instances where Complainant was denied training, the denials did not occur because of Complainant's race. The AJ correctly noted that the denials occurred when more senior employees were selected for training participation or Complainant was eligible for participation due to having less than the required amount of experience necessary for participation.

We also agree with the AJ's assessment of claim 5 that the Assistant Inspector in Charge's comment that the Complainant "may take [his] lunch money" was not befitting of the workplace. However, Complainant did not show that the comment was made because of his race.

Regarding claim 6, the Complainant claimed that he informed the Team Leader that he was leaving the Agency, and the Team Leader subjected him to race-based harassment by notifying him that he would have to reimburse the Agency for over $6,200 in training costs. Complainant named two employees, an Asian American employee and Caucasian employee, who he claimed were treated differently because they did not reimburse the Agency when they resigned. Contrary to Complainant's contentions, the Agency provided proof that the employees had been contacted to reimburse the Agency for training costs. This demonstrates that the Agency subjected all probationary employees, African Americans, Asian Americans, and Caucasians, to the same standard. Therefore, we find that Complainant failed to show that he was treated differently because of his race.

In claim 7, the Complainant claimed that the Inspection Service Technician was motivated by discriminatory animus toward his race when she published his case in a newsletter without the inspector's name. The Inspection Service Technician denied that her actions were due to race. In fact, she said that she worked in a different state, was unaware of Complainant's race, and omitted the inspector's name by mistake. We find that the Inspector Service Technician's mistake with the newsletter was due to human error, not the Complainant's race.

With respect to claim 1, Complainant testified that on November 7, 2017, Demoted Postal Inspector made statements to him at the Pony Express Bar and Grill, which were, "I'll buy your black ass a drink", and "your black ass couldn't handle Boston." In addition, Complainant said Demoted Postal Inspector and others referred to him as "gin and juice." Witness was present and confirmed that Demoted Postal Inspector made the first two statements. However, Witness and said that no one referred to Complainant as "gin and juice." Although Complainant and Witness have different accounts on whether anyone called Complainant "gin and juice," we find that both versions involved several comments that were offensive and unprofessional. We understand that Complainant would be offended by Demoted Postal Inspector's conduct.

When harassment is perpetrated by a non-supervisor, liability is imputed to the employer if it knew or should have known of the misconduct and failed to take immediate and appropriate corrective action. Policy Guidance on Current Issues of Sexual Harassment, EEOC Notice No. N-915-050 at 29-30 (March 19, 1990); Owens v. Department of Transportation, EEOC Request No. 05940824 (September 5, 1996).

Here, Team Leader testified that when he learned about the offensive statements he apologized to Complainant and relayed to Complainant that was not the kind of working environment they had at the Agency. The record shows that management took reasonable steps to remedy the situation by initiating investigation and demoting Demoted Postal Inspector. Furthermore, Demoted Postal Inspector was reassigned, and she and Complainant worked in different locations. There is no evidence that Demoted Postal Inspector's conduct continued after her demotion. For these reasons, we find there is no basis for imputing Demoted Postal Inspector's actions to the Agency.

Disparate Treatment

A claim of disparate treatment is examined under the three-part analysis set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Under this analysis, a complainant initially must establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. See St. Mary's Honor Center v. Hicks, 509 U.S. 502, 507 (1993); Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981); McDonnell Douglas 411 U.S. at 802. The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the agency has met its burden, the complainant has the responsibility to demonstrate by a preponderance of the evidence that the agency's action was based on prohibited considerations of discrimination, that is, its articulated reason for its action was not its true reason but a sham or pretext for discrimination. See Hicks, 509 U.S. at 511; Burdine, 450 U.S. at 252-5 3; McDonnell Douglas, 411 U.S. at 804.

This established order of analysis in discrimination cases, in which the first step normally consists of determining the existence of a prima facie case, need not be followed in all cases. Where the agency has articulated a legitimate, nondiscriminatory reason for its actions, the factual inquiry can proceed directly to the third step of the McDonnell Douglas analysis, the ultimate issue of whether complainant has shown by a preponderance of the evidence that the agency's actions were motivated by discrimination. U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 713-714 (1983).

Applying the above analysis to the instant matter, we find that Complainant has not met his burden of proving that the Agency subjected him to unlawful disparate treatment as alleged. Even assuming for the sake of this appeal that Complainant established a *prima facie* of race discrimination, the Agency met its burden of articulating a legitimate, nondiscriminatory reason for its actions in claims 6 and 7[3].

As discussed above, in response to claim 6, Team Leader stated that he sent Complainant an email reminding him of his contractual obligation to

[3] To be considered timely to be included in a disparate treatment analysis, the alleged discriminatory events had to occur 45 days prior to Complainant's initial contact with an EEO counselor. The only events that were reported to the EEO counselor within the 45-day period were claims 6 and 7.

reimburse the Agency, so that Complainant could make an informed decision about whether he wanted to resign.

In response to claim 7, Inspector Service Technician said the inspector's name was mistakenly omitted from the newsletter.

Complainant failed to present any evidence to establish that the Agency's articulated reasons were unworthy of credence or pretext for unlawful disparate treatment.

Constructive Discharge

Finally, Complainant asserted that due to the hostile work environment and discriminatory treatment, he had to resign. The central question in a constructive discharge case is whether the employer, through its unlawful discriminatory behavior, made the employee's working conditions so difficult that any reasonable person in the employee's position would feel compelled to resign. Carmon-Coleman v. Dep't. of Def., EEOC Appeal No. 07A00003 (Apr. 17, 2002).

The AJ found that because complainant failed to prove that he was subjected to harassment and disparate treatment, his constructive discharge claim failed. We agree, where a complainant fails to establish hostile work environment, in no way can they meet the higher standard for "intolerable conditions" for constructive discharge. See Larraine D. v. Federal Deposit Insurance Corp., EEOC Appeal No. 0120142043 (October 27, 2016).

CONCLUSION

After a review of the record in its entirety, including consideration of all statements submitted on appeal, it is the decision of the Equal Employment Opportunity Commission to affirm the Agency's final order, because the AJ's issuance of a decision without a hearing was appropriate and a preponderance of the record evidence does not establish that discrimination occurred.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0124.1)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that 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 for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration**. A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within 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).

Complainant should submit their request for reconsideration, and any statement or brief in support of their request, via the EEOC Public Portal, which can be found at

https://publicportal.eeoc.gov/Portal/Login.aspx

Alternatively, Complainant can submit their request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files their request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the 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(f).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0124)

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 their 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

March 5, 2025
Date