



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

Wendy Stevens a/k/a

Aleshia C.,¹

Complainant,

v.

Alejandro N. Mayorkas,

Secretary,

Department of Homeland Security

(Federal Emergency Management Agency),

Agency.

Appeal No. 2022003789

Hearing Nos. 551-2016-00151X

550-2021-00247X

Agency No. HS-FEMA-01125-2014

DECISION

On June 22, 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 June 29, 2022, 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 VACATES the Agency's final decision and REMANDS the complaint for further processing.

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.

ISSUES PRESENTED

Whether the Administrative Judge properly determined by summary judgment that no disputes of material fact existed, and Complainant failed to prove that she was subjected to discrimination and harassment on the basis of race and reprisal.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Tribal Liaison at the Agency's External Affairs facility in Bothell, Washington.

On May 23, 2014, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (association with American Indian/Alaska Native) and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 when:

1. Complainant was subjected to repeated harassment from April 2014, when the Agency:
 - a. Subjected Complainant to heightened scrutiny by requiring her to copy her supervisor on all emails, and increased his examination of her work product;
 - b. Demoted Complainant from working in the field; isolated and excluded her from internal and external working partners, including denial of access to and communication with the American Indian/ Alaskan Native tribal community; excluding her from participating in tribal field meetings, from portions of her work, and from discussions and problem solving with others;
 - c. Failed to communicate and address her work. She also alleged that her supervisor failed to address the restrictions placed upon her, which negatively impacted her effectiveness and morale;
 - d. Negatively attributed issues raised by two tribes to her;
 - e. Called her back from an approved assignment to return to the Joint Field Office, where her supervisors assigned her to assist interns copying papers for briefing packets;
 - f. Isolated her office into a small room apart from other staff, when the office staff relocated to another venue; and
 - g. Excluded her from participation in the President of the United States' visit to a disaster site and attendance at the Tribal Public Health Emergency Management Conference.

2. On May 15, 2014, during her performance review, her supervisor told her that she was not performing the core competencies of her position. When Complainant asked why she was being denied access to the tribal community, her supervisor responded that someone asked him to "pull [her] out." Complainant's supervisor declined to reveal who made the request.
3. On June 24, 2014, in a meeting with her supervisor and the Deputy Regional Administrator (DRA), she was asked to sign a six-page memorandum, without being given the opportunity to read or discuss it.
4. On July 5, 2014, Complainant was denied a Within Grade Increase.
5. On July 16, 2014, she learned she was not on the list of Delegated Examining Unit selectees to be interviewed for position FEMA-14-LDC.37217-DEU. Complainant alleged that her supervisor discouraged her from applying for the position and raised obstacles to her being qualified by removing tribal work from the position description.
6. In a staff meeting on July 24, 2014, Complainant's supervisor excluded her from an assignment to a disaster, which she was available for and offered to attend. Others on her team were assigned to the disaster. The ongoing exclusion from internal and external partners denied her training and team building opportunities afforded to others.
7. In a meeting with her supervisor on July 24, 2014, to review her Quarter 2 performance, her supervisor continued withholding training courses from her, which he had previously agreed to on her Individual Development Plan. Complainant's supervisor told her that her EEO complaint has no merit, that she was not really working out, and that she would not work out anywhere in FEMA. Complainant regarded this as a threat to her employment. When she requested her supervisor to review the line items on his six-page memorandum, he said, "Do you think I have to justify my decisions to you?"
8. On August 11, 2014, Complainant's supervisor removed her from attendance and participation in the National Tribal Emergency Management Conference in Spokane, Washington.
9. On August 11, 2014, her Quarter 1 and Quarter 2 performance review folders were negatively changed in the online employee review folders.
10. On or about September 2, 2014, after she discussed her EEO complaint with the Deputy Regional Administrator (DRA), the DRA did not take Complainant's claims of hostile work environment seriously and did nothing to stop the hostile work environment. The DRA called her "obnoxious" and said she was not loyal because she chose to forward her EEO complaint to Region X. The DRA advised her to drop the issue and forgive her supervisor for what he did during and after the reporting

of discrimination because Complainant could not understand how difficult their jobs were.

11. On October 2, 2014, Complainant was terminated. Complainant alleged that in the preceding month the DRA did not remove herself from the decision in the termination appeal and in the EEO mediation process.

The evidence developed during the investigation reveals that Complainant was hired in June 2013 as a temporary Tribal Relations Specialist under the Robert T. Stafford Act, which allows the Agency to hire at-will employees to provide continuity of service for long-term, disaster-related projects, who are typically hired for a term of up to two years with full Federal benefits. In June 2013, Complainant was deployed to a disaster in Alaska. While there, her supervisor, the Region 10 External Affairs Director (RMO), received two complaints about Complainant from the disaster site. The complaints referenced unprofessional behavior by Complainant that continued even after she was spoken to about changing her behavior.

On August 26, 2013, Complainant met with RMO and the Regional Chief of Staff to discuss Complainant's performance. Following the August 26, 2013 meeting, Complainant's supervisor noted that he discussed with Complainant performance criteria of coordination, communication, customer service, and teamwork. In September 2013, another coworker provided RMO with a detailed list of areas of improvement for Complainant. The list cited poor communication and poor teamwork as two major challenges. In another meeting on January 9, 2014, Complainant's supervisor notified her that she was "on target with respect to critical job knowledge, however more work is needed." ROI at 609-10.

On April 2, 2014, while both Complainant and RMO were deployed to a disaster, RMO deployed an experienced External Affairs Reservist, to act as a coach/mentor to Complainant. On May 16, 2014, RMO completed Complainant's 2014 First Quarter Performance Review. In the review, Complainant's supervisor wrote that Complainant needed to improve her core competencies of communication and representing the Agency. RMO suggested that Complainant utilize grammar books to improve her written communication. In the Quarter 1 Performance Review, Complainant's supervisor also wrote that she still had not demonstrated a consistent ability to represent the Agency and its interest in interactions with external parties.

On June 6, 2014, RMO was notified by an EEO counselor that Complainant had filed an EEO claim. On June 18, 2014, RMO issued Complainant a Performance Expectation Memorandum which informed her that her performance was less than expected, and that additional performance concerns may result in administrative action. On July 24, 2014, Complainant received her 2014 Second Quarter Performance Review. RMO wrote that the objective of the Performance Expectation Memorandum was that he had observed a pattern of performance that needed to improve. He also told Complainant that he needed to see demonstrable progress in Complainant's completion of work assignments. On October 2, 2014, Complainant received a Notice of Termination of Appointment.

Complainant does not dispute the performance and communication difficulties noted by the Agency and stakeholders. Rather, she alleged that it was in retaliation for her association with the tribes and EEO activity that led the Agency to take action against her, ultimately terminating her employment. For example, Complainant stated that RMO made disparaging and discriminatory comments about American Indian and Alaska Native tribes and tribal leaders to her and when she opposed his discrimination regarding the Agency's aid and benefits to the tribes, he subjected her to retaliation, discrimination, and harassment.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. On March 12, 2018, the AJ assigned to the case issued an Order of Dismissal based on a lack of jurisdiction. In the Order, the AJ reasoned that Complainant was alleging reprisal for her report of discrimination against tribes in the allocation of Agency benefits, and that it constituted whistleblower activity over which the EEOC had no jurisdiction. On June 25, 2019, the Commission reversed the March 12, 2018 decision finding that Complainant alleged harassment and reprisal for reporting claims against American Indian and Alaska Native tribes receiving Agency disaster services. The Commission determined that Complainant engaged in protected activity when she raised objections that the Agency's practices allegedly discriminated against American Indian and Alaska Natives. See Shantel H. v. Dep't of Homeland Sec., EEOC Request No. 2019005185 (May 27, 2020).

The Agency moved for reconsideration of the Commission's June 25, 2018 decision. In its motion, the Agency contended that the appellate decision failed to explain how opposing allegedly discriminatory practice related to recipients of federal disaster aid qualified as an employment practice under Title VII. In its May 27, 2020 Reconsideration, the Commission reversed its prior decision, in part, stating, "to the extent that Complainant alleges that the Agency subjected her to discrimination and a hostile work environment based on her reports of discriminatory conduct against American Indian/Alaskan Native tribes, we determine that dismissal was proper." The Commission noted that the AJ failed to address the issue of whether Complainant engage in prior protected EEO activity. The Commission found that the AJ also failed to consider Complainant's claims on the basis of association with American Indian/Alaskan Native tribes. The case was remanded for further processing.

On June 15, 2017, and re-filed on September 8, 2021, the Agency filed a Motion for Summary Judgment. On September 26, 2021, Complainant requested a ruling on the Motion for Default Judgment filed by Complainant on May 23, 2017, prior to the AJ's initial dismissal decision.

Over Complainant's objections, and after requesting the Agency to show why it should not be sanctioned for failing to provide a timely investigation and also requesting Complainant to provide evidence to substantiate a prima facie case of discrimination and reprisal, the AJ assigned to the case granted the Agency's September 24, 2021, motion for a decision without a hearing and issued a decision without a hearing on May 23, 2022. In the decision, the AJ found no genuine disputes of material fact and no questions of credibility were present. The AJ noted that Complainant did not dispute the performance and communication difficulties noted by the Agency and stakeholders. The AJ found no direct evidence of discrimination based on association with American Indians or Alaskan Natives, and no direct evidence of reprisal for EEO activity. The AJ found that the Agency provided substantial evidence of its legitimate, nondiscriminatory reasons for its actions, and that Complainant did not establish pretext. The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that her performance was not as bad as alleged by RMO and that the real reason for her termination is discrimination.

Complainant contends that the AJ abused their discretion when they refused to grant damages for the Agency's failure to timely produce the report of investigation. Complainant also contends that the AJ abused their discretion in granting the Agency's Summary Judgment motion because there are disputed material facts, the evidence was not viewed in the light most favorable to Complainant, there was no liberal construction afforded to her as a pro se litigant, and she was required to bring forth direct evidence of discrimination. Complainant filed an additional brief in response to the Agency's opposition to her appeal, as well as another brief in response to the Agency's motion to strike detailed below where Complainant requested, inter alia, the Commission to remand the case for a hearing on the merits.

On appeal, the Agency contends that Complainant failed to demonstrate evidence of any association with American Indian/Alaskan Native tribes. The Agency also contends that while the AJ did issue sanctions against the Agency for delayed EEO investigation, the AJ rightfully did not grant Complainant's default judgment because she failed to state a prima facie case of discrimination or reprisal. The Agency also argues that Complainant failed to show adverse treatment in several of her claims. Additionally, the Agency argues that there are no genuine issues of material fact and that the Agency demonstrated legitimate, nondiscriminatory reasons for its actions. The Agency also filed a Motion to Strike Complainant's reply to the Agency's Opposition.

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

Summary Judgment

We determine whether the AJ appropriately issued the decision without a hearing. The Commission's regulations allow an AJ to issue a decision without a hearing upon finding that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). EEOC's decision without a hearing regulation follows the summary judgment procedure from federal court. Fed. R. Civ. P. 56. The U.S. Supreme Court held summary judgment is appropriate where a judge determines no genuine issue of material fact exists under the legal and evidentiary standards. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a summary judgment motion, the judge is to determine whether there are genuine issues for trial, as opposed to weighing the evidence. Id. at 249. At the summary judgment stage, the judge must believe the non-moving party's evidence and must draw justifiable inferences in the non-moving party's favor. Id. at 255. A "genuine issue of fact" is one that a reasonable judge could find in favor for 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 "material" fact has the potential to affect the outcome of a case.

The hearing process is intended to be an extension of the investigative process, designed to ensure that the parties have "a fair and reasonable opportunity to explain and supplement the record and, in appropriate instances, to examine and cross-examine witnesses." See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), 7-1 (Aug. 5, 2015); see also 29 C.F.R. § 1614.109(e). It is not appropriate at the summary judgment stage to weigh evidence and assess credibility. See Reeves v. Sanderson Plumbing, 530 U.S. 133, 142 (2000). See also Petty v. Dep't of Defense, EEOC Appeal No. 01A24206 (Jul. 11, 2003).

The Commission has noted that when a party submits an affidavit and credibility is at issue, "there is a need for strident cross-examination." Pedersen v. Dep't of Justice, EEOC Request No. 05940339 (February 24, 1995). "Truncation of this process, while material facts are still in dispute and the credibility of witnesses is still ripe for challenge, improperly deprives Complainant of a full and fair investigation of their claims." Bang v. U.S. Postal

Serv., EEOC Appeal No. 01961575 (March 26, 1998). See also Peavley v. U.S. Postal Serv., EEOC Request No. 05950628 (October 31, 1996); Chronister v. U.S. Postal Serv., EEOC Request No. 05940578 (April 25, 1995). In this case, we find that a hearing is necessary to resolve issues of material fact and credibility regarding the testimony of management officials.

In the summary judgment decision, the AJ found that there were no genuine disputes of material fact and no questions of credibility present. AJ Decision at 9. The AJ also found that there was no direct evidence of discrimination based on association with American Indian/Alaskan Native tribes or individuals, nor direct evidence of reprisal. Additionally, in the AJ's Order on Motion for Default Judgment, issued before the summary judgment decision, the AJ found that default judgment was not warranted because Complainant failed to show a prima facie case of discrimination or reprisal on any basis. See Default Judgment Order at 4.

The Commission recognizes that an allegation of discrimination based on an individual's association with, or relationship to, another individual of a protected class gives rise to an associational discrimination claim under Title VII. See 29 C.F.R. § 1606.1; EEOC Compliance Manual on National Origin Discrimination, No. 915.003, Section 13-IIA (Dec. 2, 2002); Phillips v. Dep't of the Navy, EEOC Appeal No. 01832590 (Jan. 8, 1985)(allegation of discrimination based on a spouse's national origin states a cognizable claim), citing Holiday v. Belle's Restaurant, 409 F.Supp. 904 (W.D.Pa. 1976)(White plaintiff claimed discrimination based on her association with Black persons).

In this case, Complainant alleged that she was discriminated against based on her association with American Indian/Alaskan Native tribes and individuals. In her submissions, Complainant was not able to provide comparative data or direct evidence to support her prima facie case. However, that is not the only way a complainant can establish a prima facie case. In the absence of direct evidence, a claim of discrimination is examined under the three-part analysis originally enunciated in McDonnell Douglas Corp. v. Green. 411 U.S. 792 (1973). For a complainant to prevail, she must first 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. Id. at 802; Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978).

In her formal complaint, interrogatory, and in Response to the AJ's Order to Establish a Prima Facie Case, Complainant alleged that RMO said derogatory and discriminatory statements about the tribes/tribal leaders. See ROI at 41 (Complainant alleged RMO stated "I don't trust 'em...They lobby and are after money and that's about it."). Complainant also testified that RMO stated "I don't like them, and I don't have to" when referring to the tribes and tribal leaders. Hearing Documents at 118-119; ROI at 80. Complainant also stated that RMO named two of the tribal leaders and informed her that he did not trust them either. ROI at 40.

When asked to respond to the allegations in the pre-complaint stage, RMO stated that the alleged disparaging comments about Complainant's assigned tribe were taken out of context. He stated that he never said disparaging comments about any tribe and clarified that his comments were made to remind Complainant of the Agency's roles and responsibilities. ROI at 47. In the Agency's Response to Complainant's Establishment of a Prima Facie Case, the Agency addressed other, more neutral, comments made by RMO, but not the ones cited above. See Hearing Documents at 25 ("Complainant also alleged that her supervisor made remarks about American Indians and Alaskan Natives, such as "the tribe is wrong" and "the tribe just doesn't know what they are doing"). These comments were not addressed in the AJ's Decision either. We therefore find that RMO's comments present a material fact in dispute which, if proven to be true, could provide evidence of discriminatory animus.

We also find there is a need for additional development of the record and assessment of the DRA's credibility as it relates to Complainant's allegations in claim 11. In this claim, Complainant again alleged that a management official made comments that could lend support to a finding of discrimination and reprisal. More specifically, Complainant alleged that after discussing her EEO complaint with the DRA, the DRA called her obnoxious and stated that Complainant was not loyal for moving forward with her complaint. We note that the threshold for establishing retaliatory harassment is different than for discriminatory hostile work environment. If the conduct would be sufficiently material to deter protected activity in the given context, even if it were insufficiently severe or pervasive to create a hostile work environment, there would be actionable retaliation." EEOC Enforcement Guidance on Retaliation and Related Issues, No. 915.004, Sect. II.B, ex. 17. (Aug 25, 2016). If proven to be true, we find these comments could reasonably deter protected activity and provide evidence of retaliatory harassment.

Accordingly, we find that a hearing is necessary to resolve issues of material fact and supplement the record regarding the issues presented herein, including Complainant's allegations of discrimination and reprisal.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, the Commission VACATES the Agency's final decision and REMANDS the matter to the Agency for further processing in accordance with this decision and the Order below.

ORDER

Within fifteen (15) calendar days of the date this decision is issued, the Agency is directed to submit a renewed request for a hearing on Complainant's behalf, a copy of the complaint file, and a copy of this appellate decision, to the Hearing Unit of the EEOC Seattle Field Office. The Agency shall provide written notification to the Compliance Officer at the address set forth below that the complaint file has been transmitted to the Hearings Unit. Thereafter, an Administrative Judge, besides the Judge previously assigned to this case, shall hold a hearing and issue a decision on the complaint in accordance with 29 C.F.R. § 1614.109 and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

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 C.F.R. § 1614.503(f) for enforcement by that agency.

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 (R0124)


This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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 filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by 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. **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

December 30, 2024
Date