



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

[REDACTED]  
Trey M.,<sup>1</sup>  
Complainant,

v.

Pete Buttigieg,  
Secretary,  
Department of Transportation  
(Federal Aviation Administration),  
Agency.

Appeal No. 2022004815

Hearing No. 410-2021-00128X

Agency No. 2019-28269-FAA-03

DECISION

On September 9, 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 August 17, 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 AJ's grant of summary judgment in favor of the Agency was appropriate, or whether genuine disputes of material fact exist that require a hearing.

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<sup>1</sup> 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.

Whether the Agency properly found that Complainant was not subjected to discrimination in reprisal for his prior protected EEO activity.

### BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Program Manager, GS-0260-J, in the Agency's Office of Civil Rights, Eastern Service Area, located in College Park, Georgia. On May 30, 2019, Complainant filed an EEO complaint alleging that the Agency discriminated against him and subjected him to an unlawful hostile work environment, based on reprisal (prior protected EEO activity) when:

1. From January 2015 through December 31, 2018, the Eastern Service Area Civil Rights Director (Supervisor1) has not allowed Complainant to perform his typical team lead duties, such as work assignments, telework request determinations and leave request determinations for staff;
2. From January 2015 through December 31, 2018, Supervisor1 has removed Complainant from duties related to responding to reasonable accommodation requests and matrix cases, has reviewed the work of employees under his responsibility/supervision, and embarrassed and humiliated him during staff meetings, including reading his position description aloud during a weekly staff meeting on or about June 5, 2018;
3. In or around June 15, 2017, Supervisor1 prohibited Complainant from attending Reasonable Accommodation Team (ReActs) meetings and other management meetings;
4. In or around late 2017, Supervisor1 required Complainant to provide a written summation of his accomplishments in relation to a request he made for four hours of ad hoc telework;
5. During February 2018 through April 2018, Supervisor1 did not convene one-on-one meetings with him as the Team Lead;
6. From May 2018 through July 2018, the Acting Assistant Administrator for Civil Rights (Supervisor2) failed to take appropriate action in response to Complainant's reports of harassment and request for a transfer;
7. On various dates, Supervisor1 assigned high-profile matters to a less experienced EEO Specialist (EEO Specialist1) rather than to him, including in or around October/ November 2018, when EEO Specialist1

was assigned work related to an Air Traffic Managers training in Jacksonville, Florida;

8. On or about June 2018, Supervisor1 did not respond appropriately to a disrespectful email Complainant received from EEO Specialist1;
9. In or around October 2018, Complainant learned that Supervisor1 denied him the right to use \$2,500.00 designated for personal/professional development training of his choice, by registering him to attend the FAA Program for Emerging Leaders, without consulting him or requesting his input;
10. On November 16, 2018, Complainant was issued a performance rating of "Meets Expectations;"
11. On December 31, 2018, Complainant was constructively discharged.

Supervisor1 was Complainant's first-line supervisor from December 2004 until the date of Complainant's retirement on December 31, 2018. Complainant contended that his prior protected EEO activity consisted of complaints filed beginning in 2003 and that Agency management has retaliated against him since. Complainant stated that his most recent EEO activity occurred in 2018, while litigating and appealing a prior complaint. See Hershel B. v. Dep't of Transp., EEOC Appeal No. 2019001094 (Jan. 15, 2020).

#### *Claims 1-2 – Restrictive Duty*

An anonymous complaint was forwarded to the Accountability Board regarding posts on Complainant's Facebook page. On February 6, 2015, Supervisor1 placed Complainant on Restrictive Duty to allow an investigation related to his conduct. Consequently, Complainant was relieved of his Team Lead/EEO Specialist related duties and instead assigned a variety of special projects to support the National Policy, Training and Resources Management Staff, ACR-3. On May 12, 2015, Supervisor1 issued Complainant a memorandum titled "Letter of Expectation" concerning his misuse of social media. The Letter pointed to "malicious, defamatory, or irresponsible statements on [Complainant's] Facebook page concerning homosexuality." Complainant identified himself on his Facebook page as a Program Manager with the Agency. The Letter advised Complainant that he failed to conduct himself in a manner expected from a Team Lead and any further similar conduct could result in disciplinary action.

On May 12, 2015, Supervisor1 issued Complainant a Written Reprimand for inappropriate conduct.

The Reprimand cited allegations reported to the Accountability Board by one of Complainant's subordinates (EEO Specialist2) and a subsequent investigation revealed that Complainant made inappropriate comments about EEO Specialist2 to a co-worker.

On July 2, 2015, Supervisor1 rescinded the May 12, 2015 Letter of Reprimand after considering Complainant's response. On July 2, 2015, Supervisor1 issued a letter fully restoring Complainant's lead duties after the investigation into his conduct was completed.

### *Claim 3 – ReActs Meetings*

Complainant asserted that Supervisor1 excluded him from attending ReActs meetings and other management meetings. He stated he attended these meetings in the past for the office many times. According to Complainant, this only began when the discovery and depositions of another pending EEO complaint began in 2018.

Supervisor1 does not remember this specific date or the timeframe. However, she stated she can delegate any EEO Specialist to attend these meetings in her stead.

### *Claim 4 – Written Summation for Telework*

Complainant asserted that, in late 2017, Supervisor1 required him to provide a written summation of his accomplishments when she approved his request for four hours of telework. Complainant alleged that she did not make the same requirement of other similarly situated employees. Because of this, he never asked for telework again. Complainant also stated he never complained to anyone about this treatment.

Supervisor1 did not recall the date or timeframe in question. However, she stated providing accomplishments is a requirement for all staff who telework.

### *Claim 5 – One-on-one Meetings*

Complainant alleged that from February 2018 through April 2018, Supervisor1 did not convene one-on-one meetings with him as the Team Lead. According to Complainant, Supervisor1 would express her expectations during staff meetings usually as a means of humiliating Complainant in front of his co-workers. He stated Supervisor1 treated EEO Specialist1, a subordinate, more like a team lead than himself.

Supervisor1 could not recall this time frame or whether she had one-on-one meetings with Complainant. She stated that impromptu employee meetings are not logged on the shared office calendar. Meetings for employee discussions, initial, mid-year and end-of-the-year, are placed on the calendar.

*Claim 6 – Failure to Respond to Reports of Harassment*

On May 31, 2018, Complainant sent an email to Supervisor2 (Subject: Follow-up Confidential Conversation) which stated the following:

I would like to thank you for meeting briefly with me last week. You asked me to reach out to you to schedule a follow-up to our conversation. I am available anytime your schedule permits such a conversation. For confidential purposes, it will be difficult to have the conversation during normal business hours due to the close proximity of our offices. I believe the information that I have to share will greatly benefit the short and long-term working environment of this office. As I shared with you last week, I am asking for nothing personally, I have had a 30 plus year career in civil rights and believe that my body of work speaks for itself. The privilege of working in civil rights is more than just a job, it is a commitment to the core principles of which it stands. When I began my career in civil rights, I was taught to ask myself a simple question, "what can I do today to change the lives of those which I serve" and then answer it before I leave the office each day.

That same day, Supervisor2 responded to Complainant by email stating the following:

"Hi [Complainant]. If it is better for you to discuss outside of work, which I completely understand, I will have to check my availability. My evenings are hectic as are my weekends. Is it possible for you to step out of the office for a call or commandeer a private office?"

On June 28, 2018, Complainant sent an email to Supervisor2 requesting a transfer claiming that the work environment under Supervisor1's supervision was toxic and hostile. On July 16, 2018, Supervisor2 responded he had been out of the office but was willing to meet and asked Complainant to coordinate with his secretary for a private discussion. On August 10, 2018, Complainant sent an email notifying Supervisor2, Supervisor1, and another employee that he would be restricted from air travel for two to four weeks.

That same day, Supervisor2 thanked Complainant for the update and asked to let him know if there was anything that could be done for him.

On September 6, 2018, Complainant sent an email to Supervisor2 complaining he had not responded to his June 28, 2018 email. That same day, Supervisor2 responded that he indeed had responded on July 16, 2018, and sent him a copy of his response email.

*Claim 7 – Assigned High Profile Work to EEO Specialist1*

Complainant believed that Supervisor1 gave high profile work to one of the employees on his team (EEO Specialist1). Complainant believes these actions were taken in reprisal against him for his prior EEO activity because he was the team lead in the office and there was no justifiable reason to remove these duties.

Supervisor1 testified that she allowed all of her senior EEO Specialists to work "high profile" matters because this allows them to "stretch themselves" and grow and develop as they prepare for other positions within or outside of our organization.

*Claim 8 – Disrespectful Email*

On June 20, 2018, Complainant sent an email to EEO Specialist1, regarding his need to update certain information related to his duties. That same day, EEO Specialist1 responded to Complainant by email with a copy sent to Supervisor1 as follows:

[Complainant], Let's not get anything twisted. You are seldom telling me anything to do. You give me your opinion on things but rarely are performing your duties as team lead, in the sense of you leading me to complete tasks. I take full responsibility of the things that I do as well as the things that I fall short on. [Supervisor1] has directed you to hold meetings with each one of us, to go over all of our tasks ... to ensure we are doing what we are supposed to do. Before you go pointing fingers and telling me what I am supposed to be doing at my pay band, you need to figure out what your role is. You[rs], to my knowledge, is team lead ... a J band. That supervisory role is to ensure that the EEO specialists under you are doing what they are supposed to be doing. I take responsibility for my shortfalls ... you should do the same. You are e-mailing me this BS on the day before our audit

because you are trying to cover your own tail instead of manning up and saying that you didn't check on us and do what you were directed to do by the Director and that is why things didn't get done. These days have been very busy, and things may have been inadvertently missed, but I refuse to allow your soft words to go unchecked. There have been 5 weeks pass without you saying, "let's go over your stuff." I can only assume that you haven't done that with anyone else either. You are coming at me telling me that another member of our team also have not been doing something ... that is K[\*\*\*]. You only have 3 people and you praise B[\*\*\*\*] so I know that it is not him. Math and common sense tells me if 2/3 of something is wrong, then its leadership. You're it bro. And why do you have to wait until a staff meeting for stuff to get right? Honestly, [Complainant], you have a wealth of knowledge about civil rights, but I feel that you lack the leadership skills necessary to lead the team in the direction that it needs to go, and definitely in leading me. Don't e-mail for record, something that you could have told me for growth.

Complainant asserts that Supervisor1 did not address EEO Specialist1's inappropriate response.

Supervisor1 did not remember the specific email or date in question. Supervisor1 also stated her practice in the office is to deal immediately with any office conflict.

#### *Claim 9 - Training*

Complainant alleged that Supervisor1 prevented him from using \$2,500.00 designated for personal/professional development training of his choice. Instead, she registered him for the Agency's Program for Emerging Leaders, without consulting Complainant. He contended that Supervisor1 has taken similarly discriminatory actions against him in the past. He believed she was taking these steps to humiliate him in front of his coworkers.

Supervisor1 stated Complainant was not denied the right for training. As a manager, she stated she has the responsibility to identify developmental training as necessary for employees. Supervisor1 also stated that as a fairly new Team Lead, Complainant never received training related to be a Team Lead. The training she assigned him to was for his development in this area.

*Claim 10 – Performance Appraisal*

Employees such as Complainant receive two evaluations during an appraisal period, a Mid-Cycle Review and a Final Rating, that contain the employee's performance rating in each of the critical elements in the performance plan. The Mid-Cycle Review and Final Rating contain a summary rating of the overall performance rating of the employee which is established by combining the individual ratings of each critical element. A summary rating will either be "Significantly Exceeding" – 4 points, "Exceeds" - 3 points, "Fully Successful" – 2 points, or "Does Not Meet" – 0 points. A "Fully Successful" (also known as "Meets") rating represents good, sound performance and positive response of the employee in accomplishing assignments. Unacceptable performance on any critical element results in a "Does Not Meet" summary rating, indicating unacceptable performance in the position.

Complainant's Performance rating for Fiscal Year (FY) 2016, issued by Supervisor1, reflects that he received an overall "3.0 - Exceeds" expectations rating. In the last narrative section regarding his performance, Supervisor1 stated:

[Complainant] has raised the bar with the team under his leadership. Under his leadership, the team conducts their team meetings to discuss all assignments or any relative complaint information in an attempt to iron out any process issues or questions in general. This has afforded them the opportunity to meet without the Director which eliminates her from staying in the weeds of daily operations. The team has definitely taken huge steps forward in becoming "one team."

Complainant's Performance ratings for FY 2017, issued by Supervisor1, reflects that he received an overall "2.0 - Meets" expectations rating. In the last narrative section regarding his performance, Supervisor1 stated: "As the Team Lead, [Complainant] continues to strive for a high performing team and provides coaching and mentoring whenever necessary to each team member."

Complainant's Performance rating for FY 2018, issued by Supervisor1, reflects that he received a "2.0 - Fully Successful" expectations rating which is the equivalent to a "Meets" expectations rating. In the last narrative section regarding his performance, Supervisor1 stated:

[Complainant] has a strong commitment to the team and going the extra step to ensure that the team accomplishes all of our

Business Plan goals and initiatives. His attitude is always, "whatever it takes, we will get it done." The Overall Narrative states: "[Complainant] has met all the requirements of his position for FY-18. As the Team Lead, [Complainant] is slated to attend some of the courses of the PEL Program for December 2018 which will be part of his training and development. The courses are good leadership courses for Team Leads and Frontline Managers.

### *Claim 11 – Constructive Discharge*

Complainant stated that Supervisor1 "made his life hell" for the last four years that he worked for her. He claimed that she made his work environment so hostile that no reasonable person could work for her under such circumstances. Complainant also asserted that after reaching out to Supervisor2 by phone and email in 2018 without a response, Supervisor1 was given the green light to continue her campaign of retaliation against him.

Supervisor1 stated she has no recollection of Complainant complaining to her that he was forced to retire. He did not notify her on December 31, 2018, the day the furlough started, that he would not be returning to work. She was shocked that he was leaving and continually told him she needed him to stay and help her move the organization forward.

Supervisor2 affirmed that Complainant approached him in May 2018 wanting to talk to him about the office. Complainant came to Supervisor2's office while he was in transit to a meeting in another building. They briefly spoke as Supervisor2 walked. Complainant told Supervisor2 he was retiring, and that he had been working in Civil Rights for 30 years. He informed Supervisor2 that he had suggestions to improve the functioning of the Civil Rights office. Supervisor2 stated Complainant at that point never said anything to him about a discriminatory or retaliatory hostile workplace. Supervisor2 asked Complainant to contact his assistant and get on his schedule for a meeting where they could talk in detail. Complainant did not do so. Supervisor2 stated Complainant next sent an email to him dated June 28, 2018, in which Complainant described the work environment as toxic, but never provided any details in that email of the problems in the work environment. Supervisor2 responded on July 16, 2018, informing Complainant that he had been out of the office, but was back and available to meet. He requested Complainant contact his assistant and get on his schedule. Complainant never did so. Complainant next sent Supervisor2 an email dated September 6, 2018, stating that Supervisor2 never responded to his concerns.

Supervisor2 replied by email telling Complainant that was not the case, that Complainant never followed up by getting on his schedule to talk about his concerns. Supervisor2 did not forward Complainant's concerns to an Accountability Board because he had none of the specifics of what Complainant experienced in the workplace. Complainant indicated he wanted to speak with Supervisor2 but never did.

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 AJ. Complainant timely requested a hearing. The AJ issued a summary judgment decision in favor of the Agency.

In the decision, the AJ first found that Complainant failed to establish a prima facie case of reprisal as he failed to show that the alleged actions were related to his prior protected EEO activity. Nonetheless, the AJ found that the Agency articulated legitimate, non-retaliatory reasons for its actions. For example, regarding claims (1) – (3), the Agency explained Complainant's duties shifted as a result of an ongoing investigation into Complainant's conduct, which resulted in his placement on Restrictive Duty. While on Restrictive Duty, Complainant's role was not a Team Lead; rather, he was assigned to multiple special projects.

Regarding incident (4), Complainant alleged that Supervisor1 required him to provide summaries of his work when working remotely; however, he admitted she expected the same from his coworkers. The Agency asserted a report of accomplishments was required of all teleworking staff. As to incident (5), the Agency asserted that this claim was born out of feelings of resentment and embarrassment and was not connected to his prior EEO activity. Regarding claim (6), the Agency asserted that evidence supports Supervisor2 did respond to Complainant's request, instructing Complainant to make an appointment to discuss this issue. Further, Supervisor2 asserted he contacted Supervisor1 to discuss Complainant's claims.

Regarding incident (7), Complainant alleged Supervisor1 assigned high-profile tasks to less-experienced employees. Supervisor1 explained that she assigned these high-profile tasks to all senior EEO Specialists to help develop their skills within the job. Regarding incident (8), Complainant alleged he received a disrespectful email from EEO Specialist2. The Agency noted that Complainant did not personally contact Supervisor1 requesting any action. Furthermore, the Agency noted that Complainant failed to establish he suffered an actual harm.

Regarding claim (9), Complainant alleged Supervisor1 prevented him from using \$2,500.00 designated to him for professional development training. Instead of allowing him to choose, Complainant alleged Supervisor1 registered Complainant for an Agency program. The Agency asserted that this decision was within Supervisor1's power. The nature of her position allowed Supervisor1 to make decisions with the needs of the Agency in mind.

As to incident (10), Complainant alleged that his rating of "Fully Successful" in FY 2018 should have been a rating of "Exceeds" expectations. The Agency explained that Supervisor1 had given Complainant higher ratings in the past, demonstrating this FY 2018 rating was not a result of discrimination. The Agency stated that Complainant received the rating he deserved per his performance for the year.

Finally, the AJ determined that the alleged incidents were insufficiently severe or pervasive to establish a hostile work environment. Thus, the AJ concluded that Complainant's constructive discharge claim failed. Accordingly, the AJ found that Complainant was not subjected to reprisal, a hostile work environment, or constructive discharge as alleged.

The Agency subsequently issued a final order fully adopting the AJ's decision. The instant appeal followed.

#### CONTENTIONS ON APPEAL

Complainant asserts that the AJ erred in failing to consider Complainant's evidence and arguments and failed to view the record in the light most favorable to Complainant. Complainant also argues that facts alleged in a previous EEO complaint establish evidence of Supervisor1's retaliatory motives. Specifically, with regard to Claim 5, Complainant asserts that he cited similarly situated comparison employees who were treated differently in his opposition to the Agency's motion for summary judgment which was not considered by the AJ. Complainant also generally asserts that the AJ erred in accepting the assertions of Supervisor1 and Supervisor2 without corroborating evidence.<sup>2</sup>

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<sup>2</sup> Attached to his opposition to the Agency's motion for summary judgment were affidavits from three of Complainant's former coworkers who worked with Complainant and Supervisor1 in the late 2000s but not beyond October 2010. The affidavits described each coworker's difficult relationship with

### STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, 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, 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”).

The Commission's regulations allow an AJ to grant summary judgment when he or she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). 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. 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*).

### ANALYSIS

In order 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. Such a dispute would indicate that a hearing is necessary to produce evidence to support a finding that the Agency was motivated by retaliatory animus.

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Supervisor1 and their belief that Supervisor1 held animosity toward them and Complainant as well. The coworkers also cited numerous reasons for Supervisor1’s animosity, ranging from non-discriminatory personal conflicts to racial and retaliatory biases as the perceived basis for Supervisor1’s animosity.

Here, however, Complainant has failed to establish such a dispute. Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable fact-finder could not find in Complainant's favor.

### Retaliatory Hostile Work Environment

To establish a retaliatory hostile work environment claim, Complainant must show that: (1) he engaged in protected activity; (2) he was subjected to a materially adverse action taken by his employer; (3) there is a causal connection between the protected conduct and the adverse action; and (4) there is a basis for imputing liability to the Agency. See EEOC Enforcement Guidance on Retaliation and Related Issues, EEOC Notice No. 015.004, § II(B)(3) & n. 137 (Aug. 25, 2016) (Retaliation Guidance).

Complainant must show that he was subjected to conduct sufficient to dissuade a "reasonable person" from making or supporting a charge of discrimination. See Burlington Northern & Santa Fe Ry. Co. v. White, 548 U.S. 53, 57 (2006); Retaliation Guidance.

Complainant has established that he engaged in prior protected EEO activity and that the incidents alleged were materially adverse to him. However, Complainant's claim of retaliatory harassment falls short on the question of causal connection between the incidents in question and his prior EEO activity. Aside from Complainant's bare uncorroborated assertions, the record does not support a finding that any of the alleged actions were based on his prior EEO activity. Rather, the record reflects that the alleged incidents were more likely the result of routine supervision, general workplace disputes, personal animosity, and poor management. There is no persuasive relevant evidence in the record that retaliatory animus played a role in any of the Agency's actions.

Moreover, to the extent Complainant claims that he was subjected to disparate treatment, the Commission finds that Complainant has not proffered any evidence from which a reasonable fact finder could conclude that the Agency's explanation for its actions was pretext for reprisal. Therefore, we agree with the AJ in concluding that even assuming the facts as alleged by Complainant, the evidence is insufficient in establishing unlawful reprisal or a retaliatory hostile work environment.

### *Constructive Discharge*

The central question in a constructive discharge claim 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 Commission has established three elements which a complainant must prove to substantiate a claim of constructive discharge: (1) a reasonable person in the complainant's position would have found the working conditions intolerable; (2) conduct that constituted discrimination against the complainant created the intolerable working conditions; and (3) the complainant's involuntary resignation resulted from the intolerable working conditions. See Walch v. Dep't of Justice, EEOC Request No. 05940688 (Apr. 13, 1995).

In this case, we conclude that a finding of constructive discharge is precluded by our finding that Complainant was not subjected to a retaliatory hostile work environment. See Val L. v. Dep't of Veterans Affairs, EEOC Appeal No. 2021004383 (Feb. 23, 2023) ("The law does not permit an employee's subjective perceptions to govern a claim of constructive discharge."); Terrence F. v. Nat'l Aeronautics and Space Admin., EEOC Appeal No. 2021001419 (Nov. 22, 2021).

### 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 order.

### 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

January 21, 2025

Date