



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

[REDACTED]
Cathie K.,¹
Complainant,

v.

Mark Averill,
Acting Secretary,
Department of the Army,
Agency.

Appeal No. 2022005130

Hearing No. 430-2020-00566X

Agency No. ARCENORF20JAN00195

DECISION

On September 29, 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 29, 2022 final order concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission AFFIRMS the Agency's final order.

ISSUES PRESENTED

1. 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.

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.

2. Whether the Agency's final order properly found that Complainant was not subjected to discrimination on the bases of disability and reprisal.

BACKGROUND

Complainant worked as an Engineer Trainee/Student Intern, GS-0899-04. She was assigned to Arlington National Cemetery's Engineering Construction Branch in Fort Meyer, Virginia. In a formal EEO complaint that she filed on March 1, 2020, and amended on June 15, 2020, Complainant alleged that the Agency discriminated against her on the bases of disability (Graves' Disease, residual effects of a knee injury) and in reprisal for prior protected EEO activity when:

1. In August 2019 and January 2020, Complainant's immediate supervisor, the Area Engineer in charge of the Engineering Construction Branch (S1) provided copies of her medical information to coworkers (CW1, CW2, and CW3);
2. On December 19, 2019, during a farewell luncheon, S1 remarked to Complainant, "it was nice to see that you could show up for work more than two days in a row;"
3. On January 3, 2020, S1 verbally denied Complainant's request for advanced sick leave;
4. On January 3, 2020, S1 refused to let Complainant code a sick day as annual leave on her timecard;
5. On January 6, 2020, S1 ignored Complainant's phone calls and emails and failed to acknowledge receipt of medical documentation that she had submitted to him;
6. Between May 28, 2019 and February 14, 2020, S1 failed to provide Complainant with a performance plan;
7. Between May 28, 2019 and February 14, 2020, S1 failed to provide Complainant with performance appraisal reviews; and
8. On February 14, 2020, S1 terminated Complainant.

Complainant's Medical Conditions

Complainant was first diagnosed with Graves' Disease in October 2018. The condition, also called hyperthyroidism, is an autoimmune condition that causes the thyroid to overproduce hormones. Complainant averred that as a result of her condition, she experienced such symptoms as extreme fatigue, hand tremors, sensations of pressure building up behind her eyes, and muscle weakness. She also stated that her prognosis was permanent and that she takes medication for the condition, and that she had undergone surgery to have her thyroid removed on an unspecified date. When asked if she needed a reasonable accommodation to perform the essential duties of her position, she replied that she did not. Investigative Report (IR) 251, 275-79, 283. When asked what she told management about her condition, she responded that she texted S1 on August 21, 2019, that she was having thyroid issues and would not be coming into work that day. She further stated that S1 did not ask for any additional information and she did not provide it. IR 247, 324-26. In December 2019, Complainant injured her left knee in a fall and was treated in the emergency room. Doctors' notes dated December 22, 2019, January 6, 2020, and January 28, 2020, indicated that she had sustained a musculoskeletal injury for which she had undergone an arthroscopy on her left knee and would have to remain off work until February 28, 2020. IR 248-51.

Complainant's EEO Activity

According to the EEO Counselor's report, Complainant initiated contact with the EEO Office on January 24, 2020. IR 16. Complainant averred that on January 29, 2020, the EEO Counselor contacted S1 as well as her second- and third-line supervisors in connection with her allegations. IR 324. S1 stated that he first became aware of Complainant's EEO claim on January 29, 2020. IR 338.

Allegation (1): Complainant claimed that in August 2019 she called in sick and told S1 that she was having thyroid problems, and that the following day, CW1 told her that S1 had told him that he did not believe her thyroid problem was real. IR 327. She also averred that in January 2020, she was speaking with her Timekeeper about how to code her time when the Timekeeper mentioned that CW1 had seen her doctor's note and had told her that S1 had commented that the note was probably not real. IR 327.

S1 denied Complainant's allegation, asserting that the only person to whom he had given Complainant's medical note was the Timekeeper. IR 340-41.

S1 also affirmed that on one occasion, he overheard Complainant discussing her medical conditions with her coworkers, CW1 in particular, and that it was very easy to overhear conversations due to the configuration of the work area. IR 341.

CW1 denied that he had seen Complainant's medical notes or that he discussed Complainant's medical condition with S1 or anyone else. IR 560-61. CW2 and CW3 also denied being privy to Complainant's medical information. IR 565, 569.

Allegation (2): Complainant alleged that at a celebratory luncheon held off site, S1 made a comment to her out of the blue that it was nice to see that she could show up for work more than two days in a row. She further stated that there were multiple witnesses to the incident and that S1 had made a similar comment to CW2 that it would be nice if he could show up for work before 11:00 a.m. IR 327.

S1 responded that everyone was in a jovial mood, joking around with each other, and that Complainant responded back that S1 was "short and bald." S1 asserted that he did not take offense to Complainant's remark. He also admitted to making the comment to CW2 in the context of a reprimand for chronic tardiness, and that CW2's attendance did improve afterward. IR 341.

CW1 corroborated S1's version of events, and CW2 admitted that the reprimand from S1 was appropriate. IR 562, 566-67.

Allegation (3): Complainant claimed that on January 3, 2020, S1 verbally denied Complainant's request for advanced sick leave. She stated that S1 had given her leave without pay as her only option and that the reason he gave for denying her request was that she had already taken 112 hours of advanced sick leave. When asked whether other employees were treated more favorably, she replied that no one else was in the situation she was in, but that there were others whose leave requests S1 had approved after he had denied hers. IR 327-28.

S1 confirmed that he did deny Complainant's leave request after consulting with a Human Resource Specialist (HRS) and the General Counsel's office.

He averred that advanced sick leave was not guaranteed but was determined on a case-by-case basis, and that given Complainant's status as a student intern, he was not certain that she would be able to pay back the 112 hours that she had already taken before she graduated. IR 296-97, 302-03, 341-43. HRS stated that S1 had followed the guidance she had given him. IR 417, 421.

Allegation (4): Complainant claimed that in January 2020, S1 verbally refused to let her take annual leave in lieu of sick leave to cover one of her sick days. She stated that she had 15 hours of annual leave available and that S1 would not let her use that or take leave without pay. She also stated that the Timekeeper sent her a text message saying that because the day in question was a sick day she could not use annual leave. IR 329.

S1 disputed Complainant's version of events. He averred that as long as Complainant had annual leave, she was free to use it, and that at the time, Complainant had six hours off available annual leave. IR 343-44. In an email to Complainant dated January 29, 2020, S1 informed her that she had six hours of annual leave that can be used at any time and that if she would like to use that leave during that pay period, she should let the timekeeper know. IR 358.

Allegation (5): Complainant alleged that in January 2020, S1 failed to acknowledge receipt of medical documentation she submitted to him, ignoring her phone calls and emails requesting confirmation. She admitted, however, that S1 eventually responded with an email to the effect that he was busy but that if she had questions to let him know. IR 329.

S1 denied that he ignored her. He asserted that he did not explicitly tell her that he had received the documentation, but that she should have been able to tell that he had received it due to the fact that he had opened the attachment to the email. IR 344. In an email to Complainant dated January 27, 2020, S1 informed Complainant that he was busy that day attending numerous meetings but that he got her message and should email him with any questions she might have. IR 356.

Allegations (6) & (7): Complainant claimed that between May 28, 2019 and February 14, 2020, S1 did not issue her a performance plan or performance appraisals, despite her multiple requests for those items. IR 333-35. S1 responded that as a student intern, Complainant was not under the Defense Performance Management and Appraisal Program (DPMAP) and consequently was not entitled to a performance plan or formal appraisals.

Rather, she was given a position description and assigned projects with progressively more responsibility as she gained experience. The individuals to whom Complainant compared herself, CW1, CW2, CW3 and others, were all permanent employees. IR 143-55, 244, 346-47, 408-10.

Allegation (8): In a memorandum dated January 30, 2020, S1 notified Complainant that she would be terminated from her position as a student intern effective February 14, 2020. S1 stated that the reason for the termination was that her performance failed to demonstrate her suitability and fitness for continued employment. S1 cited the following occurrences as examples:

- October 3, 2019 – Complainant was instructed to assist in developing a real estate transfer form. Despite clear direction, Complainant's submitted draft omitted quantities, contained numerous errors, and contained no back up data.
- November 26, 2019 – Complainant failed to conduct a curb caulking inspection. S1 noted that upon Complainant's return, she reported that the curb caulking was acceptable despite the fact that she had not done the required inspection.
- December 11, 2019 – Complainant was instructed to collect samples of an old epoxy and provide samples of a new epoxy, both of which she failed to accomplish.
- December 13, 2019 – Complainant was instructed to inspect and ensure that contractor had cleaned up a project site in preparation for an event at Arlington National Cemetery the following day. Contractor had not cleaned up the site and Complainant had no legitimate reason for the omission.

IR 168-71, 195-98, 206-13, 215, 221, 570-74. When asked why she believed that her termination was inappropriate, Complainant averred that the reasons given for her termination could be proven to be untrue, that there were no errors in her work, and that she had never received performance-related counseling at any time. IR 330.

S1 affirmed that he terminated Complainant after consulting with HRS and his immediate supervisor, who concurred in the decision.

He further averred that he based his decision on his own observations of Complainant's performance deficiencies as well as input from the various employees with whom Complainant had worked, particularly CW1 and CW3. IR 344-46, 418, 422-28, 561-62, 570-74.

At the conclusion of the ensuing investigation, the Agency provided Complainant with a copy of the investigative report (IR) and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. Over Complainant's objections, the AJ granted the motion and issued a summary judgment decision in favor of the Agency.

In his order granting the Agency's motion for summary judgment (AMSJ) dated July 21, 2022, the AJ adopted the findings of fact set forth in the motion. As to incident (1), the AJ found that the only individuals with whom S1 shared Complainant's medical documentation was the Timekeeper, who needed that information to account for Complainant's absences. AMSJ, p. 14. As to incident (2), the AJ found that S1 had made the comment in jest at an office party and that Complainant responded with a joke about S1 being short and bald. AMSJ, p. 15. As to incident (3), the AJ found that S1 denied Complainant's request for advanced sick leave due to concerns about whether she would be able to pay it back, that S1 had given her the option to take leave without pay, and that none of the employees who Complainant cited as comparators had requested advanced sick leave. AMSJ, p. 15. As to incident (4), the AJ found that S1 had allowed Complainant to use the six hours of annual leave she had remaining. AMSJ, pp. 15-16. As to incident (5), the AJ found that S1 did reply to Complainant's email concerning the doctor's note she had sent him. AMSJ, p. 16. As to incidents (6) and (7), the AJ found that because Complainant was a student intern and a trainee, she was not entitled to receive the performance plan and appraisals normally given to permanent employees. AMSJ, p. 17. As to incident (8), the AJ found that S1 had provided specific and detailed examples of the performance deficiencies that led him to terminate Complainant, and that those deficiencies were based not only on S1's personal observations, but also those of CW1, CW2, and CW3. AMSJ, pp. 23-25.

The AJ found that the record did not support a conclusion that Complainant was subjected to disability discrimination or reprisal. The AJ concluded that Complainant failed to show that the Agency's reasons for its actions were pretextual. As a result, the AJ found that Complainant was not subjected to discrimination or reprisal as alleged.

When the Agency failed to issue a final order within 40 days of receipt of the AJ's decision, the AJ's decision became the Agency's final action pursuant to 29 C.F.R. § 1614.109(i).

The instant appeal followed.

CONTENTIONS ON APPEAL

Complainant contends that the AJ's decision did not fully address her complaint. Rather, Complainant contends that the Agency's articulated reasons for its actions were based on "multiple inaccuracies and contradictions," the Agency's failure to follow correct procedures, and the Agency's "creation of false records." In addition, Complainant maintains that S1 disclosed her private, sensitive medical information to CW1. Accordingly, Complainant requests that the Commission reverse the final action.

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 discriminatory or retaliatory animus. 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.

Disclosure of Confidential Medical Information – Allegation (1)

Improper disclosure of medical information by the Agency constitutes a *per se* violation of the Rehabilitation Act. Ricky S. v. Soc. Sec. Admin., EEOC Appeal No. 2019000442 (Feb. 19, 2020). The disclosure of a specific condition, diagnosis, or symptoms is a violation. Id. However, there is no violation where the Agency's disclosure does not disclose a particular condition, diagnoses, or symptoms. Id. Where the complainant fails to establish that the Agency disclosed a particular condition, diagnosis or symptoms, the Agency does not breach the complainant's confidential medical information in violation of the Rehabilitation Act. See id.

Beyond the statements she made in her affidavit, Complainant presented no documentary or testimonial evidence tending to show that S1 disclosed her medical notes to anyone without a need-to-know basis. In particular, CW1 denied that he had seen Complainant's doctor's notes or that he had discussed Complainant's medical conditions with S1 or any of his colleagues. Complainant likewise presented no evidence that contradict or undercut CW1's affidavit testimony. We therefore agree with the Agency that there is insufficient evidence of a violation of the Rehabilitation Act due to unauthorized disclosure of confidential medical information in connection with allegation (1).

Disparate Treatment

To prevail in a disparate treatment claim, Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Complainant must initially establish a prima facie case by demonstrating she was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Corp. v. Waters, 438 U.S. 567, 576 (1978). Proof of a prima facie case will vary depending on the facts of the particular case. McDonnell Douglas, 411 U.S. at 804 n.14. 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). To warrant a hearing on a disparate treatment claim, Complainant must raise a genuine issue of material fact as to whether the Agency's explanation for its actions is pretextual. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993).

To establish a prima facie case of discrimination, Complainant must show that: (1) she is a member of a protected group; (2) she suffered an adverse employment action; and (3) the circumstances give rise to an inference of discrimination. We note that, although a complainant bears the burden of establishing a "prima facie" case, Burdine, 450 U.S. at 252-53, the requirements are "minimal," Hicks, 509 U.S. at 506, and complainant's burden is "not onerous." Burdine, *supra*.

To establish a prima facie case of disparate treatment discrimination based on disability, a complainant generally must prove the following elements: (1) they are an individual with a disability as defined in 29 C.F.R. §§ 1614.203(a) and 1630.2(g); (2) they are "qualified" as defined in 29 C.F.R. §§ 1614.203(a) and 1630.2(m); (3) the agency took an adverse action against them; and (4) there was a causal relationship between their disability and the agency's actions. See Annamarie F. v. Department of the Air Force, EEOC Appeal No. 2021004539 (August 17, 2023).

Complainant identified Graves' Disease and the residual effects of the injury to her left knee as disabilities. Graves' Disease caused her to experience fatigue, tremors in her hands, pressure behind her eyes, and muscle weakness. She was a qualified individual with a disability in that she acknowledged that she did not need a reasonable accommodation of her thyroid condition to perform the essential duties of her intern/trainee position.

S1 admitted that he was aware that Complainant had outpatient surgery on her thyroid but noted that Complainant did not ask for time off beyond a few days. As to her knee injury, there is no evidence in the record tending to show that S1 or anyone else considered her knee problems to be anything more than a temporary condition in that she was given a date certain as to when she could return to work. Ultimately, we find that Complainant is unable to establish a prima facie case of disability discrimination because she presented no evidence contradicting S1's assertion that he was aware of any condition other than her knee issue, which was a temporary condition and not a disability.

Complainant may establish a prima facie case of reprisal by showing that she (1) engaged in a protected activity; (2) the Agency was aware of her protected activity; (3) Complainant was subjected to adverse treatment by the Agency; and (4) a nexus exists between the protected activity and the adverse action. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2010).

Here, the incidents in question occurred, or had been occurring in January 2020, at around the time Complainant first contacted the EEO office and the EEO Counselor interviewed S1 and the other officials in Complainant's chain of command. In particular, we note that the Counselor contacted S1 on January 29, 2020, and S1 issued Complainant her notice of termination the following day. This is sufficient for Complainant to establish a prima facie case of reprisal in connection with incidents (2) through (8).

As noted above, the burden of production now shifts to the Agency to articulate legitimate and nondiscriminatory reasons for its actions in connection with incidents (2) through (8). Concerning incident (2), S1, CW1 and CW2 averred that the comments in question were made in jest at an office party and that Complainant responded in jest. Regarding incident (3), S1 stated that after consulting with the HRS, he had concerns about the amount of advanced sick leave Complainant had already taken, particularly whether Complainant would be able to pay it all back. With respect to incident (4), S1 believed that Complainant had only six hours of annual leave available, not fifteen, as Complainant asserted, and that he allowed her to take those six hours. With regard to incident (5), S1 asserted that he had read Complainant's medical note even though he did not explicitly tell her so in an email. Concerning incidents (6) and (7), S1 averred that as a student intern/trainee, Complainant was not entitled to receive the performance plan and appraisals normally given to permanent employees. Regarding incident (8), the termination letter dated January 30, 2020, as

well as the affidavits of S1, CW1, and CW3 documented Complainant's extensive performance deficiencies.

To warrant a hearing on her EEO complaint, Complainant must present enough evidence to raise a genuine issue of material fact as to whether the Agency's explanations for the actions of S1 were pretext designed to conceal a retaliatory motive on the part of these officials. Pretext can be demonstrated by showing such weakness, implausibilities, inconsistencies, incoherencies, or contradictions in the Agency's proffered legitimate reasons for its action that a reasonable fact finder could rationally find them unworthy of credence. Lorraine D. v. Dep't of Def., EEOC Appeal No. 2022002980 (Oct. 27, 2022). Indicators of pretext include discriminatory statements or past personal treatment attributable to those responsible for the personnel action that led to the filing of the complaint, unequal application of Agency policy, deviations from standard procedures without explanation or justification, and inadequately explained inconsistencies in the evidentiary record. Tammy S. v. Dep't of the Army, EEOC Appeal No. 2021000578 (May 5, 2022).

When asked by the EEO Investigator why she believed that her medical condition was a factor in the various alleged incidents, Complainant responded that S1 did not believe her medical conditions were real, and that S1 was "fed up" with her claims about Graves' Disease. IR 329. When she was asked why she believed that her termination was because of her medical condition, she averred that all of the animosity between her and S1 was due to S1's belief that she was not at work enough and that he wanted nothing to do with her. IR 330. When asked why she believed that her termination was due to the fact that she had initiated the instant EEO complaint, she responded that she was notified of her termination the day after S1 became aware of her informal complaint. IR 330-31. She maintained that her performance was the same as that of the permanent employees she identified as comparatives. IR 331.

Other than these statements, Complainant has presented neither affidavits, declarations, or unsworn statements from witnesses other than herself nor documents which contradict or undercut the agency's explanations for the various actions at issue. Complainant likewise did not present documentary or testimonial evidence that would cause us to question the truthfulness of S1 and Complainant's coworkers as witnesses or which tends to raise a genuine issue of material fact as to the existence of at least one of the indicators of pretext listed above.

Construing all inferences in favor of Complainant, we ultimately agree that the evidentiary record is not sufficient to raise a genuine issue of material fact that the Agency's reasons for its actions were pretextual. Accordingly, the Commission finds that Complainant was not subjected to discrimination or reprisal as alleged.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, we AFFIRM the Agency's final action.

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

February 3, 2025

Date