



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

[REDACTED]

Lyle P.,<sup>1</sup>  
Complainant,

v.

Martin J. O'Malley,  
Commissioner,  
Social Security Administration,  
Agency.

Appeal Nos. 2023001221  
2023003307

Agency Nos. SF-22-0188-SSA  
NY-23-0307-SSA<sup>2</sup>

DECISION

On December 16, 2022 and May 16, 2023, Complainant filed appeals with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's November 17, 2022 and April 17, 2023, final decisions 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. and 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 decisions.

ISSUES PRESENTED

1. Whether the Agency subjected Complainant to disparate treatment based on reprisal (prior EEO activity) and disability (mental and physical) when on September 23, 2021, he was notified of his nonselection for the position of Auditor, GS-0511-9, 11, or 12.

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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.

<sup>2</sup> The Commission may, in its discretion, consolidate two or more complaints of discrimination filed by the same complainant. See 29 C.F.R. § 1614.606. Accordingly, the Commission exercises its discretion to consolidate the captioned cases.

2. Whether the Agency properly dismissed Complainant's claim regarding dissatisfaction with the EEO process as a spinoff claim.
3. Whether the Agency properly dismissed Complainant's claims regarding his denied reasonable accommodation request, dissatisfaction with the EEO process, and nonselection as stating the same claim that was pending before or decided by the Agency or Commission.
4. Whether the Agency properly dismissed Complainant's claim regarding three position nonselections as untimely.
5. Whether the Agency properly dismissed Complainant's claim regarding the alleged denial of union representation as a collateral attack on the negotiated grievance process.
6. Whether the Agency properly dismissed Complainant's March 22, 2023 complaint for abuse of the EEO process.

### BACKGROUND

At the time of events giving rise to this complaint, Complainant was a former Legal Assistant, Senior Case Technician in the Office of Hearings Operations (OHO) located in Brooklyn, New York.<sup>3</sup>

#### *Appeal 2023001221 (Complaint 1)*

On February 16, 2022, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of disability (mental and physical)<sup>4</sup> and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 and Section 501 of the Rehabilitation Act of 1973 when:

- A. On September 23, 2021, Complainant was notified of his nonselection for the position of Auditor, GS-0511-9, 11, or 12.

During the process of the investigation, Complainant raised concerns regarding the processing of his case during the informal counseling and formal stages. Specially, Complainant alleged:

- B. On July 29, 2022, his attempts to communicate on the EEO process had been ignored.

The Agency procedurally dismissed claim B pursuant to in 29 C.F.R. § 1614.107(a)(8) for alleging dissatisfaction with the processing of a complaint. See ROI at 6-8. At the conclusion of the investigation for claim A, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final

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<sup>3</sup> Complainant resigned effectively on September 27, 2018.

<sup>4</sup> Complainant described his disabilities as depression and avascular necrosis and provided proof of his disability when he was hired in 2018. ROI at 238.

decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

*Appeal 2023003307 (Complaint 2)*

On March 22, 2023, Complainant filed an EEO complaint alleging the Agency discriminated against him and subjected him to harassment on the bases of disability (mental and physical) and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 and Section 501 of the Rehabilitation Act of 1973 when:

1. In July 2010, management denied his reasonable accommodation;
2. On July 27, 2018, he was terminated from Federal Service;
3. On July 29, 2022, Complainant's attempts to communicate regarding the EEO process had been ignored;
4. On November 26, 2022, he was notified of his nonselection for the position of Claims Specialist, GS-07;
5. In September 2022 (unspecified date), September 22, 2022, and September 23, 2022, Complainant was notified of his nonselection in three positions;
6. On an unspecified date, management denied Complainant union representation; and
7. On June 9, 2010, and ongoing in terms of work conditions, withholding of pay, non-selection, reinstatement, and transfer to an Agency New York location, his attempts to communicate regarding the EEO process were ignored, reasonable accommodation, termination, assignment of duties, and threats of prison and fines.

In a final agency decision (FAD) on April 17, 2023, the Agency procedurally dismissed claims 1, 3, and 4 pursuant to 29 C.F.R. § 1614.107(a)(1) for stating the same claim. The Agency dismissed claim 5 pursuant to 29 C.F.R. § 1614.107(a)(2) for untimely EEO counselor contact and claim 6 pursuant to 29 C.F.R. § 1614.107(a)(1) as a collateral attack on the grievance process. The Agency also dismissed all of Complainant's claims 1-7 pursuant to 29 C.F.R. § 1614.107(a)(9) for abuse of the EEO process.

The instant appeals followed. In both appeals, Complainant and the Agency filed briefs in support of their arguments. Notably, in his appellate brief for complaint 2, Complainant argues that the FAD is in error because it failed to consider that Complainant has a disability, had his appeals ignored, has a history of EEO activity, and that he was qualified for all the positions he applied for. On appeal, the Agency maintains that its FADs finding no discrimination or harassment and dismissing improperly brought claims are correct and should be upheld by the Commission.

## ANALYSIS AND FINDINGS

### *Standard of Review*

As complaint 1 is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, 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”).

### *Procedural Dismissals*

In complaint 1, the Agency procedurally dismissed claim B pursuant to 29 C.F.R. § 1614.107(a)(8). EEOC Regulation 29 C.F.R. § 1614.107(a)(8) provides that an agency shall dismiss a complaint that alleges dissatisfaction with the processing of a previously filed complaint. EEO MD-110 defines such a complaint as a “spin off” complaint, which should be referred to the agency official responsible for complaint processing and/or processed as part of the original complaint. See also Fields v. Dep't of Health and Human Servs., EEOC Request No. 05910159 (Feb. 11, 1991). We find Complainant’s allegation that his attempts to communicate on the EEO process were ignored to be a spin off complaint. Therefore, we find the Agency properly dismissed claim B pursuant to 29 C.F.R. § 1614.107(a)(8).

In complaint 2, the Agency dismissed claims 1, 3, and 4 for stating the same claim. The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides that the Agency shall dismiss a complaint that stated the same claim that is pending before or, has been decided by the Agency or Commission. In claim 1, Complainant alleges that he was subjected to discrimination based on disability when his reasonable accommodation was denied. According to the record, Complainant raised an identical reasonable accommodation claim when he filed a prior complaint on June 3, 2011, which the Agency accepted on July 16, 2011, and issued a FAD on January 23, 2015. See Complaint 2 Appeal File (AF) at 331-336. We find that this issue has been decided by the Agency.

In claim 3, Complainant alleges that his attempts to communicate with the Agency regarding his EEO process have been ignored. Complainant alleges an identical claim in appeal 2023001221 (complaint 1) claim B included in this decision which was dismissed pursuant to 29 C.F.R. § 1614.107(a)(8).

In claim 4, Complainant alleges that he was subjected to discrimination based on disability when he was notified of his nonselection for the Claims Specialist position.

A review of the record reveals that Complainant filed a prior complaint on February 7, 2023, and raised an identical claim, which the Agency accepted on March 1, 2023. See AF at 472-478. We find that this claim is already pending, if not already decided, by the Agency. Therefore, we further find that the Agency properly dismissed claims 1, 3, and 4 pursuant to 29 C.F.R. § 1614.107(a)(1).

The Agency dismissed claim 5 for untimely EEO Counselor contact. EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination be brought to the attention of the Equal Employment Opportunity Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) days of the effective date of the action. In claim 5, Complainant alleges that he was subjected to discrimination based on disability and reprisal when he learned of his nonselection for three positions in September 2022. Complainant did not initiate contact with an EEO Counselor until February 9, 2023 which is well beyond the forty-five (45) day limitation period. On appeal, Complainant does not allege that he was unaware of the time limits or that despite due diligence, he was prevented by circumstances beyond his control from contacting a Counselor in the appropriate amount of time. As such, we find that the Agency properly dismissed claim 5 for untimely EEO Counselor contact.<sup>5</sup>

The Agency dismissed claim 6 as a collateral attack pursuant to 29 C.F.R. § 1614.107(a)(1). A claim that can be characterized as a collateral attack, by definition, involves a challenge to another forum's proceeding, such as the grievance process, the workers' compensation process, an internal agency investigation, or state or federal litigation. See Fisher v. Dep't of Defense, EEOC Request No. 05931059 (July 15, 1994). The Commission has held that an employee cannot use the EEO complaint process to lodge a collateral attack on another proceeding. See Wills v. Dep't of Defense, EEOC Request No. 05970596 (July 30, 1998); Kleinman v. U.S. Postal Serv., EEOC Request No. 05940585 (Sept. 22, 1994); Lingad v. U.S. Postal Serv., EEOC Request No. 05930106 (June 25, 1993). In claim 6, Complainant alleges that he was subjected to discrimination based on disability and reprisal when he was denied union representation. The proper forum for Complainant to have raised his claim that he was denied a union representative is within the negotiated grievance process. Therefore, we find that the Agency properly dismissed claim 6 as a collateral attack.

The Agency also independently dismissed all of Complainant's claims in complaint 2 (claims 1-7) pursuant to 29 C.F.R. § 1614.107(a)(9) for abuse of the EEO process. EEOC regulations provide for dismissal of complaints that are part of a "clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of employment discrimination." 29 C.F.R. § 1614.107(a)(9).

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<sup>5</sup> In his appellate brief, Complainant mentions his disability and its general effects on his major life activities. We do not find that this statement alone is sufficient to justify a waiver of the applicable time limit. See Crear v. United States Postal Serv., EEOC Appeal No. 01921543 (April 15, 1992); request for recon. denied, EEOC Request No. 05920700 (Oct. 29, 1992); and Zelmer v. United States Postal Serv., EEOC Request No. 05890164 (Mar. 8, 1989).

The criteria required to justify dismissal for abuse of process, as set forth in Commission decisions, must be applied strictly, and require: (i) evidence of multiple complaint filings; and (ii) claims that are similar or identical, lack specificity or involve matters previously resolved; or (iii) evidence of circumventing other administrative processes, retaliating against the agency's in-house administrative processes or overburdening the EEO complaint system. Id.

As a policy, the Commission aims at preserving a complainant's EEO rights, whenever possible, and we rarely permit dismissal of a complaint for abuse of process. See Kessinger v. U.S. Postal Serv., EEOC Appeal No. 01976399 (June 8, 1999); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 5, § IV.A.4 (Aug. 5, 2015). Given this policy and concern about protecting complainants and their rights under the EEO statutes, the Agency bears a very high standard of proof ultimately to show that Complainant's actions reveal "an ulterior purpose to abuse or misuse the EEO process." Id.

To support its determination, the Agency cited Complainant's numerous discrimination and harassment complaints that allege similar claims involving denials of reasonable accommodations, working conditions, and other denied promotions. See Agency's April 17, 2023 FAD at 5. However, filing numerous complaints alone is not a sufficient basis for dismissal. The Agency must show evidence that somehow in filing numerous complaints, a complainant specifically intended to misuse the EEO process. See Abell v. Dep't of Interior, EEOC Appeal No. 01A33023 (May 13, 2004) (finding abuse of process where complainant filed 40 complaints of non-selection with no intention to take the job). In the Complainant's filings for this complaint, there is no evidence of intent to abuse the process. In fact, in his appellate brief, Complainant provides several arguments in support of his appeal and documents.

Based on the totality of Complainant's claims, circumstances, and intentions (as described in Complainant's appellate briefs), we find that the Agency has not met its burden to show that the Complainant had an ulterior purpose to abuse or misuse the EEO process. Therefore, we find that the Agency's procedural dismissals of claims 1-7 pursuant to 29 C.F.R. § 1614.107(a)(9) was improper.<sup>6</sup> However, since claim 7 is the only claim that remains, we find that it must be dismissed pursuant to 29 C.F.R. § 1614.105(a)(1) for untimely EEO activity.

The Commission has recognized that harassment/hostile work environment can involve harassing incidents linked by a pattern of conduct. A discriminatory harassment complaint will not be time barred where acts constituting the claim are part of the same unlawful practice and at least one act fell within the time limit. See Wegener v. Dep't of the Interior, EEOC Appeal No. 01A03847 (June 11, 2003); National Railroad Passenger Corp. v. Morgan, 536 U.S. 101, 122 S. Ct. 2061 (2002). In this claim, Complainant alleges several instances of harassment that occurred when he was still employed with the Agency.

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<sup>6</sup> Since claims 1-6 were independently dismissed, we do not find that this determination affects our earlier finding that claim 1-6 were properly dismissed.

The record reveals that Complainant retired in 2018, so any claims regarding his employment with the Agency are not within the applicable time limit. In claim 3 (and claim B), the complainant complained of conduct occurred in 2022, also outside of the applicable time limit. Complainant last alleged incidents of harassment in claim 7 are his nonselections for various positions. His last alleged nonselection was November 2022. Complainant does not allege any other nonselection as part of this complaint. Since Complainant did not contact an EEO Counselor until February 9, 2023, we do not find any incidents described in claim 7 to be within the applicable time limits. Since Complainant's allegation of harassment/hostile work environment is without at least one act that fell within the time period, we find that this claim must be dismissed pursuant to 29 C.F.R. § 1614.105(a)(1) for untimely contact with EEO Counselor.

*Disparate Treatment (Claim A)*

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). First, he must generally establish a prima facie case by demonstrating that he was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Co. 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 802 n. 13. The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Tex. Dep't of Cmty. Affs. v. Burdine, 450 U.S. 248, 253 (1981). Should the Agency carry its burden, Complainant must then prove, by a preponderance of the evidence, that the Agency's explanation is a pretext for discrimination. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 143 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993); Burdine, 450 U.S. at 256.

In order to establish a prima facie case of disability discrimination, a complainant must show proof of the Title VII criteria set forth in McDonnell Douglas. Complainant may establish a prima facie case of discrimination in the non-selection context by showing that: (1) he is a member of a protected class; (2) he was qualified for the position; (3) he was not selected for the position; and (4) he was accorded treatment different from that given to persons otherwise similarly situated who are not members of his protected group. Obas v. Dep't of Just., EEOC Appeal No. 01A04389 (May 16, 2002); Williams v. Dep't of Educ., EEOC Request No. 05970561 (Aug. 6, 1998). Complainant may also set forth evidence of acts from which, if otherwise unexplained, an inference of discrimination can be drawn. Furnco Constr., 438 U.S. at 576.

After establishing a prima facie case, the burden then shifts to the agency to articulate a legitimate, non-discriminatory reason for its actions. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 256 (1981). Once the agency has met its burden, the complainant bears the ultimate responsibility to persuade the fact finder by a preponderance of the evidence that the agency's articulated reasons are pretextual and that the agency instead acted on the basis of a prohibited reason. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993).

Indicators of pretext include, but are not limited to, discriminatory statements or past personal treatment attributable to those responsible for the personnel action that led to the filing of the complaint, comparative or statistical data revealing differences in treatment across various protected-group lines, unequal application of Agency policy, deviations from standard procedures without explanation or justification, or inadequately explained inconsistencies in the evidentiary record. Mellissa F. v. U.S. Postal Serv., EEOC Appeal No. 0120141697 (Nov. 12, 2015). At all times, the ultimate burden remains with Complainant to demonstrate by a preponderance of the evidence that the Agency's reasons were not the real reasons, and that the Agency instead was motivated by a prohibited reason.

In a non-selection case, pretext may be found where the complainant's qualifications are plainly superior to the qualifications of the selectee. See Wasser v. Dep't of Labor, EEOC Request No. 05940058 (Nov. 2, 1995); Bauer v. Bailar, 647 F.2d 1037, 1048 (10th Cir. 1981). When candidate qualifications are relatively equal, an Agency has the discretion to choose the best candidate as long as the decision is not premised on an unlawful factor. Devance-Silas v. U.S. Postal Serv., EEOC Appeal No. 0120110338 (March 23, 2011), citing Texas Dep't of Cmty. Affairs, 450 U.S. at 248, 252-259; Mitchell v. Baldrige, 759 F.2d 80 (D.C. Cir. 1985); Canham v. Oberlin College, 555 F.2d 1057, 1061 (6th Cir. 1981).

This established order of analysis in disparate treatment cases, in which the first step normally consists of determining the existence of a prima facie case, need not be followed in all cases. Where the agency has articulated a legitimate, nondiscriminatory reason for its actions, the factual inquiry can proceed directly to the third step of the McDonnell Douglas analysis, the ultimate issue of whether complainant has shown by a preponderance of the evidence that the agency's actions were motivated by discrimination.<sup>7</sup>

In claim A, Complainant alleges his nonselection for an Auditor position was motivated by discrimination on the basis of his disability and in reprisal of his prior protected EEO activity. Specifically, Complainant asserts that he applied for reinstatement for the Auditor position and should have been selected because of his prior experience in auditing cases for the Agency, his BA degree in Law and Society, and should have had priority for reinstatement under Schedule A. Complainant also alleged that a management official emailed him stating that he would not be picked for reinstatement.

In response, a management official stated that Complainant was not referred for the position because the experience listed on Complainant's resume was insufficient to meet the experience requirement for the job. ROI at 245-246. The selecting official also stated that because Complainant was no longer a current Federal employee serving on a Schedule A appointment, he was ineligible for referral under Schedule A. ROI at 246. The Human Resources Specialist (HRS) who posted and evaluated applications for the position stated that he evaluated Complainant at the GS-9 and GS-11 levels and found the Complainant ineligible because Complainant did not have one of the required degrees (LL.B or J.D) specified in the job posting.

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<sup>7</sup> U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 713-714 (1983).

ROI at 252. The HRS also stated that in order to be considered for Schedule A priority hiring, an applicant must meet minimum qualifications for the job, which Complainant did not have. ROI at 253. A review of the position announcement corroborates that there was a required specialized experience in order to qualify for even the lowest grade of the position (GS-9). ROI at 287.

Additionally, the management official that Complainant alleges emailed him about the Agency unwillingness to reinstate him said that the email was sent in the specific context of a settlement discussion in June – August 2021. ROI at 484. The management official stated that as provision in this settlement agreement, Complainant wanted to be hired by the Agency and that in direct response to Complainant’s proposed provision, the management official responded that he believed it was unlikely that the Agency was interested in hiring him at the time, but that only the Agency could make that determination. Id.

We find that Complainant has not shown that the Agency’s proffered reasons are not worthy of belief, given that the record supports the fact that Complainant did not have the specialized education requirement for the position or a current Schedule A appointment. In the absence of evidence of unlawful discrimination, the Commission will not second guess the Agency’s assessment of the candidates’ qualifications. Texas Dep’t of Cmty. Affairs, 450 U.S. at 259. As such, we find that Complainant cannot establish pretext in this claim and therefore, cannot establish that the Agency discriminated against him on the basis of his disability or in reprisal for his protected EEO activity when he was not selected for the Auditor position.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency’s final decision on the merits of complaint 1 finding no discrimination, and the Agency’s final decision procedurally dismissing Complainant’s claims in complaint 2.

### 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

January 25, 2024

Date