



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

[REDACTED]
Truman B.,¹
Complainant,

v.

Alejandro N. Mayorkas,
Secretary,
Department of Homeland Security
(Transportation Security Administration),
Agency.

Appeal No. 2023001328

Hearing No. 470-2022-00029X

Agency No. HS-TSA-01378-2021

DECISION

On December 28, 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 December 19, 2022 final order concerning his 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 REVERSES the Agency's final order.

ISSUE PRESENTED

Whether the EEOC Administrative Judge (AJ) properly issued a decision without a hearing concluding that Complainant failed to prove that he was discriminated against and subjected to a hostile work environment regarding

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.

job performance monitoring, training, leave, discipline and shift change based on his disability (autism spectrum disorder/Asperger's Syndrome)

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Transportation Security Officer (TSO), SV-1802/E-Band, at the Agency's Lexington Bluegrass Airport (LEX) in Lexington, Kentucky. Report of Investigation (ROI) at 75. Complainant has been employed at the Agency since February 19, 2017. Complainant stated that he was formally diagnosed with Autism Spectrum in 2018. He has Asperger's syndrome, a high-functioning form of Autism. Complainant explained that he is socially different in terms of how he communicates and processes information, but he denied he was intellectually limited or restricted in any way. Complainant stated that he does not take any medication for his disorder(s); however, he noted he attends therapy appointments once or twice per month. ROI at 76. Complainant provided an official medical diagnosis of his Asperger's syndrome to the Agency on June 8, 2021, when he gave a copy of his official diagnosis to Supervisor 2. ROI at 101-02 and 294. Complainant did not state that his disability limited his ability to perform his essential job functions as a TSO. Nor did he request a reasonable accommodation from the Agency for any disability.

In 2019, Complainant's first-level supervisor (Supervisor 1A) was a Supervisory Transportation Security Officer (STSO). A second STSO was Complainant's first-level Supervisor (Supervisor 1B) from April 2020 until April 2021. ROI at 138. A third STSO (Supervisor 1C) replaced Supervisor 1B as Complainant's first-level supervisor in May 2021. ROI at 153. A Transportation Security Manager (TS Manager) was Complainant's second-level supervisor (Supervisor 2). ROI at 162.

Complainant initiated EEO contact on May 26, 2021. On May 26, 2021, Complainant contacted an EEO Counselor and filed a formal EEO complaint on July 14, 2021, alleging that the Agency discriminated against him on the basis of disability (mental) when:

1. On October 6, 2019, a management official cursed at Complainant and hit him in the back of his head;
2. On March 5, 2021, management denied Complainant's request for sick leave;
3. On April 18, 2021, a management official blamed Complainant for an incident at the Advance Individual Technology area;

4. On April 19, 2021, a coworker informed Complainant that he was dangerously close to being fired and management was watching him while pointing his finger at Complainant's chest;
5. On April 22, 2021, two management officials yelled at, cursed at, and glared at Complainant;
6. On April 22, 2021, a management official questioned Complainant about his family related stress;
7. On April 23, 2021, a management official informed Complainant that he was going to be watched on every single position on the checkpoint;
8. On May 6, 2021, management issued Complainant a Letter of Counseling (LOC);
9. From May 7-21, 2021, management observed Complainant for an unofficial performance plan;
10. On May 22, 2021, a management official extended Complainant's unofficial performance plan for an additional two weeks and stated Complainant had no critical thinking skills and was book smart but not street smart;
11. On June 8, 2021, a management official informed Complainant that he would be monitored until the performance plan was done; and
12. On June 10, 2021, management switched Complainant's shift with less than a 24-hour notice.

We note that the Agency, and subsequently the AJ, stated that Claims 1 and 2 were not independently actionable because they were untimely. The Commission's regulations require that prior to filing a complaint of discrimination, a complainant must initiate contact with an EEO counselor with the Agency within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action. 29 C.F.R. § 1614.105(a)(1). Here, Complainant initiated EEO contact on May 26, 2021. ROI at 54. Based on the record, Complainant's EEO contact was more than 45 days after the facts that form the bases for Claims 1 and 2. Complainant was also aware of the EEO contact requirement having received EEO "No Fear Act" training on February 3, 2019, which put complainant on notice of the 45-day requirement.

Both Claims 1 and 2 were addressed as part of Complainant's overall hostile work environment allegations.

The Agency conducted an investigation into the complaint. The investigation revealed that Complainant reported that a Lead Transportation Security Officer (LTS Officer 1 [not a supervisor]) slapped him in the back of the head and yelled, "just hit the damn button!" when Complainant asked a question. ROI at 78-9. LTS Officer 1 stated that he was in a hurry and under a lot of stress; and that he considered Complainant's question silly. LTS Officer 1 admitted that he yelled at Complainant to "hit the damn button!" but only intimidated hitting him in the back of the head with his hand. According to LTS Officer 1, he could not recall if he physically made contact with the back of Complainant's head. ROI at 215-16. He later changed his story, stating that he only instructed Complainant to "hit the button" and jokingly made an upward swipe toward the back of Complainant's head. ROI at 258.

Supervisor 2 stated that LTS Officer 1 did not physically hit Complainant but made a swiping at him. ROI at 164. Complainant's coworker (Coworker 1), also a TSO, stated that on the day at issue, Complainant approached him and asked what he should do if a coworker hit him. ROI at 239 and 254. CCTV footage was in a fixed location and could verify that LTS Officer 1 did not hit Complainant. ROI at 255.

Complainant alleged that management denied his leave request to care for his wife. ROI at 82-3. Management asserted that Supervisor 1B initially denied the request because of a Facebook post regarding a dog. Supervisor 1B later stated that Complainant should have requested a different type of leave. ROI at 139. Supervisor 1B also advised Complainant that he should contact a Lead or supervisor to resolve his confusion. ROI at 141.

According to Complainant, on April 22, 2021, LTS Officer 1 and Supervisor 1A yelled, cursed, and glared at Complainant after he pulled what appeared to be an unsecured firearm from a passenger bag. When Complainant covered for Supervisor 1A in baggage, he noticed a passenger bag which triggered an alarm. Complainant cleared the alarmed item and saw what appeared to be a loose gun without a case in the upper corner of the bag. Complainant called for a Lead/ supervisor as he had been trained to do in such situations. When LTS Officer 1 and Supervisor 1A arrived together, Complainant explained to them why he pulled the bag. They in return chastised and cursed at Complainant. Specifically, Supervisor 1A commented, "You mean to tell me you did not see the damn gun case?" LTS Officer 1 stated that Supervisor 1A was clearly frustrated with Complainant. ROI at 87-9 and 217-18.

Complainant alleged that management issued him a Letter of Counseling stating that he would have two weeks to complete supervised rotations at each position where management would monitor his performance. ROI at 145-46. Complainant was not to perform any of his screening duties without a training instructor, lead, or supervisor present at all times. ROI at 102. According to Complainant, Supervisor 2 stated that Complainant was going through informal "re-training" for two weeks where he would be observed without any tangible benchmarks for him to meet at the end of the two-week period because the goal was for him to demonstrate confidence and accuracy with his decision-making and critical thinking. Complainant alleged that Supervisor 1B stated that Complainant was under an unofficial plan in which supervisors, Leads, and training instructors/coaches would conduct a two-week interactive evaluation of his performance. He stated that a Master Security Training Instructor (MSTI) acknowledged that he was unaware of any other officials who underwent a similar unofficial plan like Complainant. He alleged that LTS Officer 1 stated that he had observed other officers who had been subjected to a performance improvement plan or re-certification process, neither of which Complainant was under. ROI at 220.

A second LTSO (LTS Officer 2) stated that Complainant did frequently ask questions so he could clarify his duties and/or protocol in certain situations, but this usually occurred after the Agency had a Standard Operations Procedure (SOP) revision. She further stated that she did not perceive the volume of Complainant's mistakes or questions to exceed those of other officers with whom she worked. ROI at 224. Complainant alleged that after learning about his autism spectrum disorder/Asperger's Syndrome diagnosis, Supervisor 1C stated that she had concerns about Complainant's critical thinking skills; and LTS Officer 1 stated that Complainant displayed an uncertainty and/or lack of confidence. ROI at 157 and 219.

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 Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. The parties had the opportunity to engage in discovery. On May 23, 2022, the Agency submitted a motion for summary judgment (Agency's motion). On June 7, 2022, Complainant submitted an opposition to the Agency's motion (Complainant's response). The Agency submitted its reply in support of summary judgment (Agency's reply) on June 13, 2022.

The AJ assigned to the case determined that there were no genuine disputes as to the material facts of the case, and that summary judgment in favor of the Agency was appropriate.

On November 30, 2022, the AJ granted the Agency's motion and issued a decision without a hearing in favor of the Agency pursuant to 29 C.F.R. § 1614.109(g).

The AJ adopted and incorporated by reference the Agency's Statement of Material Facts into their decision. The AJ also found that the Agency's motion and reply accurately applied the appropriate legal standards to the facts of this case. The AJ stated that Complainant could not establish a prima facie case of disability discrimination or harassment and presented no evidence of pretext with respect to the Agency's articulated legitimate nondiscriminatory reasons for its actions.

With respect to management's decision to place Complainant on a training program, the Agency asserted that these actions were necessitated by Complainant's repeated mistakes and concerns related to his ability to apply his training to real-life scenarios. According to the AJ, though Complainant may disagree with management's assessment of his performance, Complainant presented no evidence of pretext with respect to the Agency's articulated reasons for its actions.

The AJ noted that though Complainant asserted that some of the allegedly discriminatory acts came after he alerted management to his diagnosis, Complainant presented no evidence except his own subjective belief that the allegedly discriminatory actions occurred because of his disability. Specifically, asserted the AJ, there was no indication that anyone ever made mention of Complainant's diagnosis; no evidence that similarly-situated individuals were treated more favorably; and no other evidence cited from which a discriminatory motive could be inferred.

According to the AJ, as outlined in the Agency's motion, claims 1 and 2 were untimely and, therefore, were not independently actionable claims. Further, with respect to these claims, Complainant cited no facts to compel an equitable tolling of the 45-day deadline to contact an EEO counselor. Also as noted in the Agency's motion and reply, the AJ stated that the alleged incidents were not sufficiently severe or pervasive to support a claim of harassment. The AJ observed that the majority of the actions which formed the basis of Complainant's complaint appeared to be normal disputes over personnel issues, workplace practices, and supervisory oversight. Such disputes, asserted the AJ, are generally not indicative of discrimination or harassment and cannot typically support a hostile work environment claim.

As for Complainant's claim that LTS Officer 1 slapped him in the back of the head in October 2019, and that he was yelled and cursed at in April 2022, the AJ stated that even accepting Complainant's version of events as true,

these incidents were insufficiently severe or pervasive to constitute harassment. The AJ also noted that at the time it occurred, management addressed this incident alleged in Claim 1 with Complainant's coworker and warned the coworker against engaging in such behavior in the future. The AJ observed that there was no evidence that such behavior reoccurred.

The Agency's final action implemented the AJ's decision.

CONTENTIONS ON APPEAL

On appeal, Complainant contests the AJ's decision, reiterating his allegations and reasserting that he was subjected to severe and pervasive conduct in the form of unwelcome verbal and physical conduct involving his protected class (autism spectrum disorder/Asperger's Syndrome diagnosis). According to Complainant, the AJ's decision to dismiss the case without a hearing was in error of fact and law because there are a number of material facts that remain in dispute and issues of credibility that must be examined before a decision can be rendered in this case. Complainant states that the record is filled with contradictory evidence and testimony; and that a hearing is necessary to allow Complainant to question witnesses, scrutinize the Agency's unsupported proffers to ensure all remaining questions are adequately answered and to complete the record. Complainant requests that the Commission reverse the AJ's decision and find that Complainant is entitled to a hearing.

In response, the Agency opposes Complainant's appeal, reiterating arguments previously stated before the AJ. The Agency states that the AJ properly determined that a hearing was not necessary and that there was no evidence of harassment or disparate treatment or any evidence that would support a finding that the Agency's legitimate, nondiscriminatory reasons were a pretext for discrimination or retaliation.

STANDARD OF REVIEW

In rendering this appellate decision, we must scrutinize the AJ's legal *and* factual conclusions, and the Agency's final order adopting them, de novo. See 29 C.F.R. § 1614.405(a) (stating that a "decision on an appeal from an Agency's final action shall be based on a de novo review . . ."); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (Aug. 5, 2015) (providing that an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed de novo). This essentially means that we should look at this case with fresh eyes. In other words, we are free to accept (if accurate) or reject (if erroneous) the AJ's, and

Agency's, factual conclusions and legal analysis – including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. See id. at Chapter 9, § VI.A. (explaining that the *de novo* standard of review “requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker,” and that EEOC “review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission’s own assessment of the record and its interpretation of the law”).

ANALYSIS

We must determine whether it was appropriate for the AJ to have issued a decision without a hearing on this record. The Commission's regulations allow an AJ to issue a decision without a hearing when he or she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). This regulation is patterned after the summary judgment procedure set forth in Rule 56 of the Federal Rules of Civil Procedure. The U.S. Supreme Court has held that summary judgment is appropriate where a court determines that, given the substantive legal and evidentiary standards that apply to the case, there exists no genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a motion for summary judgment, a court’s function is not to weigh the evidence but rather to determine whether there are genuine issues for trial. Id. at 249. The evidence of the non-moving party must be believed at the summary judgment stage and all justifiable inferences must be drawn in the non-moving party’s favor. Id. at 255. An issue of fact is "genuine" if the evidence is such that a reasonable fact finder could find in favor of the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A fact is "material" if it has the potential to affect the outcome of the case.

If a case can only be resolved by weighing conflicting evidence, issuing a decision without holding a hearing is not appropriate. In the context of an administrative proceeding, an AJ may properly consider issuing a decision without holding a hearing only upon a determination that the record has been adequately developed for summary disposition. See Petty v. Dep’t of Def., EEOC Appeal No. 01A24206 (July 11, 2003). Finally, an AJ should not rule in favor of one party without holding a hearing unless he or she ensures that the party opposing the ruling is given (1) ample notice of the proposal to issue a decision without a hearing, (2) a comprehensive statement of the allegedly undisputed material facts, (3) the opportunity to respond to such a statement, and (4) the chance to engage in discovery before responding, if

necessary. According to the Supreme Court, Rule 56 itself precludes summary judgment "where the [party opposing summary judgment] has not had the opportunity to discover information that is essential to his opposition." Anderson, 477 U.S. at 250. In the hearing context, this means that the administrative judge must enable the parties to engage in the amount of discovery necessary to properly respond to any motion for a decision without a hearing. Cf. 29 C.F.R. § 1614.109(g)(2) (suggesting that an AJ could order discovery, if necessary, after receiving an opposition to a motion for a decision without a hearing).

The courts have been clear that summary judgment is not to be used as a "trial by affidavit." Redmand v. Warrenner, 516 F.2d 766, 768 (1st Cir. 1975). The Commission has noted that when a party submits an affidavit and credibility is at issue, "there is a need for strident cross-examination and summary judgment on such evidence is improper." Pedersen v. Dep't of Justice, EEOC Request No. 05940339 (February 24, 1995).

After a careful review of the record, we find that the AJ erred when she concluded that there was no genuine issue of material fact in this case. In finding no discrimination, the AJ relied on management's statements that they decided to place Complainant into a short-term training plan due to his repeated mistakes that they felt could result in a security breach. Complainant's managers stated that he often consulted with his Leads and/or his fellow officers about basic screen tasks because he was confused or uncertain about what he needed to do. They noted that these types of incidents increased in frequency in 2021. ROI at 207-08. See also ROI at 249 for supporting statements provided by a TSO, Complainant's coworker, who added that Complainant struggled with applying SOP and his training to specific scenarios. Other Leads and supervisors expressed similar concerns. ROI at 143. See ROI at 157 and 261 for Supervisor 1C's supporting examples of Complainant's performance issues that required correction of basic knowledge that Complainant should have been able to apply.

The record contains no evidence that management took any steps to accommodate Complainant even though he had an obvious disability of which management was aware. The record reflects that management officials, including Supervisor 2, were aware of Complainant's disability prior to June 2021, as he voluntarily disclosed the information to them. Management also asserted that they were unaware of any limitations Complainant may have had due to his Autism/Aspergers; and he is certified to perform all checkpoint functions. See ROI at 138, 153-54, 163, 177, and 192. However, that the Agency began having concerns about Complainant's job performance contradicts management's assertions.

Complainant also explained that he is socially different in terms of how he communicates and processes information, but he denied he was intellectually limited or restricted in any way. ROI at 76-7. Yet, Complainant's allegation that he was scrutinized, made to endure remedial training, and received negative performance marks in his training logbook all indicate the potential need for reasonable accommodation, which the Agency did not provide, in this case.

In that regard, the Commission has held that when the need for an accommodation is obvious, an agency may not always require employees to go through the formal process. See Wade v. Dep't of Health and Human Serv., EEOC Appeal No. 0120180367 (Sept. 2019) (citing EEOC Enforcement Guidance at 6).

While the record is devoid of documentary evidence that Supervisor 2, in fact, requested the medical documentation that Complainant submitted on June 8, 2021, after his supervisors began raising concerns about his performance deficiencies, such a request would have been improper as the need for the accommodation in this case was obvious since 2019, when Complainant voluntarily disclosed his disability to his supervisors and colleagues. See Iliana S. v. Dep't of Justice, EEOC Appeal No. 0120081848 (Oct. 13, 2015) (finding that the complainant's need to use the elevator during a fire drill was obvious since her disability made it difficult to walk).

Also missing from the record are the Agency's explanations for its decision to not disclose to Complainant the report from a June 4, 2021-July 5, 2021, fact-finding inquiry conducted into Complainant's allegations that Supervisor 2 harassed and subjected him to a hostile work environment because of his high-functioning Autism as a result of the incidents described in Claims 1 through 5, 7, and 9 through 11. See ROI at 309-13 and 332-53. However, as the fact-finding inquiry was in response to Complainant's workplace harassment complaint, Complainant should have received a copy of its report, and the Agency's plan to address his allegations. That the Agency asked that the fact-finder to abstain from making a determination or recommendations about the inquiry is suspect at best. ROI at 332-47. See ROI at 314-15 for statements provided by the official who conducted the fact-finding inquiring that he was assigned to conduct a full inquiry into the circumstances of Complainant's allegation(s), but to refrain from any determinations or recommendations.

The Agency's decision and management's failure to share the report of the fact-finding inquiry could corroborate Complainant's allegation that since learning of his Autism/Aspergers in the spring of 2019, he has been treated as if he were stupid, incompetent, lower-functioning, and a lesser person;

that the way he was treated caused him to feel stupid and ashamed to have Autism/Aspergers; and that management was less inclined to take his complaint seriously because of his disability. ROI at 84, 89, and 98.

We note that the hearing process is intended to be an extension of the investigative process, designed to ensure that the parties have "a fair and reasonable opportunity to explain and supplement the record and, in appropriate instances, to examine and cross-examine witnesses." See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), 7-1 (Aug. 5, 2015); see also 29 C.F.R. § 1614.109(e). "Truncation of this process, while material facts are still in dispute and the credibility of witnesses is still ripe for challenge, improperly deprives Complainant of a full and fair investigation of her claims." *Bang v. U.S. Postal Serv.*, EEOC Appeal No. 01961575 (March 26, 1998). See also *Peavley v. U.S. Postal Serv.*, EEOC Request No. 05950628 (October 31, 1996); *Chronister v. U.S. Postal Serv.*, EEOC Request No. 05940578 (April 25, 1995). In summary, there are simply too many unresolved issues which require an assessment as to the credibility of the various management officials, co-workers, and Complainant, himself. Therefore, judgment as a matter of law for the Agency should not have been granted as to whether Complainant was discriminated against and subjected to a hostile work environment regarding job performance monitoring, training, leave, discipline and shift change in Claims 1-12 based on his disability (autism spectrum disorder/Asperger's Syndrome).

CONCLUSION

Therefore, after a careful review of the record, including Complainant's arguments on appeal, the Agency's response, and arguments and evidence not specifically discussed in this decision, the Commission reverses the Agency's final action and remands the matter to the Agency in accordance with this decision and the order below.

ORDER

Within fifteen (15) calendar days of the date this decision is issued, the Agency is directed to submit a renewed request for a hearing on Complainant's behalf, the complaint file, and a copy of this appellate decision to the Hearings Unit of the EEOC's Indianapolis District Office. The Agency shall provide written notification to the Compliance Officer at the address set forth below that the complaint file has been transmitted to the Hearings Unit.

Thereafter, the Administrative Judge shall hold a hearing and issue a decision on the complaint in accordance with 29 C.F.R. § 1614.109 and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.** A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

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

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

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

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files their request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the request for reconsideration.** The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(f).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0124)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by their full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. **Filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

December 4, 2024
Date