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

[redacted]
Kellye C.,[1]
Complainant,

v.

Antony Blinken,
Secretary,
Department of State,
Agency.

Appeal Nos. 2023003028 & 2023004161

Hearing Nos. 440-2019-00258X & 440-2021-00190X

Agency Nos. DOS-0271-18 & DOS-0514-19

DECISION

On April 27, 2023, and July 16, 2023, Complainant filed two appeals with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's final orders dated March 28, 2023 and June 16, 2023, concerning her equal employment opportunity (EEO) complaints 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 the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For ease of processing, we consolidate these appeals and for the following reasons, the Commission AFFIRMS the Agency's final orders.

[1] This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

ISSUES PRESENTED

Whether the AJs' grant of summary judgment in favor of the Agency was appropriate, or whether genuine disputes of material fact exist that require a hearing.

Whether the Agency properly found that Complainant was not subjected to discrimination or a hostile work environment on the bases of her sex, sexual orientation, or in reprisal for her prior protected EEO activity when it subjected her to a variety of actions with respect to her duty station and hours, assignments, and her security clearance.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Special Agent, GS-1811-13, with the Agency's Diplomatic Security Service in Minneapolis, Minnesota.

On July 26, 2018, and December 11, 2018, Complainant filed two EEO complaints[2] alleging that the Agency discriminated against her on the bases of sex (female), sexual orientation (lesbian), age (54), and in reprisal for prior protected EEO activity when:

1. on August 1, 2018, Complainant was denied a transfer to the Chicago office;
2. on March 19, 2018, Complainant's cases were transferred to another agent;
3. on March 19, 2018, Complainant discovered she had 11 hours of compensatory (comp) time removed from her record;
4. on March 23, 2018, Complainant was denied the use of a government car to attend training;
5. on April 12, 2018, Complainant was subjected to an interview for her security clearance background investigation during which the interviewer asked her questions not typical for such an investigation;

[2] Because the complaints involve similar allegations and individuals, and take place over a continuous period of time, for ease of processing we consolidate the complaints herein and renumber the allegations for continuity's sake. We have also adjusted the order in which the claims appear to place them in chronological order.

6. on July 27, 2018, Complainant's temporary duty assignment (TDY) to Chicago was canceled;
7. On or about August 5, and September 25, 2019, Complainant was not selected for a Criminal Investigator 1811 position in Diplomatic Security (DS);
8. On or about August 5, 2019, Complainant was not selected for a Cyber Tech 1811 position in DS;
9. On October 29, 2019, Complainant received a negative mid-year performance appraisal;
10. On November 1, 2019, Complainant became the subject of an Office of Special Investigations (OSI) inquiry regarding allegations of timesheet and voucher fraud;
11. On January 29, 2020, Complainant's security clearance was suspended;
12. On January 29, 2020, Complainant was placed on administrative leave; and
13. In addition to the above allegations, Complainant alleged, between the two complaints, that she was subjected to a hostile work environment characterized by, but not limited to, having her work and activities micromanaged, lack of productive communications with her supervisors, being subjected to onerous administrative requirements and unnecessary scrutiny of her time and attendance records, yelling and threats of removal from the program, being pressured to answer management regarding her transfer to Chicago, and heightened scrutiny and deductions on her firearms requalification score.[3]
14. On or about February 6, 2020, Complainant was removed from the Minneapolis Document Benefit Fraud Task Force (DBFTF).

In Minneapolis, Complainant worked on passport fraud cases and performed other duties as part of the DBFTF, which was a joint task force with the Department of Homeland Security (DHS). The Agency's Minneapolis office is part of, and reports to, the Agency's Chicago Field Office. In her deposition, Complainant testified that DHS housed the DBFTF in the Federal building in Minneapolis, separate from the Agency's Minneapolis office.

[3] During the hearing process, Complainant withdrew the basis of age with respect to Claims 1-6.

In 2017, Complainant requested a transfer to the Chicago office to be closer to her family. Complainant also expressed a desire to move away from an Analyst in the Minneapolis Office.

S1 testified that he investigated Complainant's concern about the Analyst. S1 said that the Analyst had a professional reason to be in the Minneapolis office and that Complainant had not provided any substantive reason, other than to allege that the Analyst was hostile, to suggest that action needed to be taken. In her affidavit, Complainant also did not provide any details regarding the Analyst.

Another Analyst in Minneapolis had oversight of Human Resources (HR) matters (HR Analyst). On June 5, 2017, HR Analyst responded by email to Complainant's transfer request. Therein, HR Analyst said that Chicago did not have an open position but hoped that they could "get creative" to arrange a transfer. On the same day, HR Analyst followed up and thought that they could work toward a September 3, 2017, start date in Chicago. HR Analyst cautioned that further coordination was necessary.

On June 27, 2017, the Agency's Bureau of Human Resources instituted an Agency-wide hiring freeze, which covered all position upgrades, reorganizations, and lateral reassignments. HR Analyst then confirmed to Complainant that the hiring freeze likely applied to her transfer. In her affidavit, Complainant acknowledged that she did not transfer to the Chicago office because of the hiring freeze.

Complainant argued that she had consistently applied for a transfer to Chicago, as early as 2013, and the selectees were all heterosexual White men, except for one, who was a heterosexual female. Complainant believed her sexual orientation was a factor in her inability to move to Chicago. Complainant argued that she was far more qualified than any selectee because she had 30 years of criminal investigative experience, dating back to her time in the U.S. Marine Corps.

At varying points during the Agency's efforts to effect Complainant's transfer, S1 referenced Complainant's EEO complaint in emails with HR Agent and other supervisors. In one email, the subject line was "Misery Loves Company" and referred to the complaint as "the gift that keeps on giving."

While Complainant remained in the Minneapolis office, in late 2017, she was tasked with a search warrant operation that involved multiple agencies. By all contemporaneous accounts, the operation went well.

However, on December 15, 2017, the Special Agent in Charge (SAC) counseled Complainant and her supervisor (S1). SAC said that the search warrant plan was late and that Complainant had missed deadlines and failed to timely submit reports on cases. Initially, SAC required Complainant and S1 to submit weekly reports on their activities but lifted this requirement after the third report.

Complainant emailed S1 on January 20, 2018, disputing SAC's reasons for counseling her. In her affidavit, Complainant said that, while she was preparing to serve the search warrant in Kentucky, S1 called her to say that SAC was canceling the warrant. When Complainant spoke with SAC directly, he said that she had not provided an operational plan. Complainant explained that SAC was new to the region, and that the region's practices were to submit operational plans 24 hours prior to the operation. Complainant also learned that SAC called around her to cancel the search warrant. However, after she provided SAC with the operational plan, SAC approved the search. Complainant contended that SAC's actions were highly irregular.

In an affidavit, SAC testified that he did not know Complainant was in Kentucky, and that the search warrant operational plan was incomplete. SAC said he decided to call off the search only after he requested a completed operational plan and Complainant did not provide it. SAC said he was concerned for personnel safety. After Complainant provided the completed information, SAC authorized the search.

In January 2018, HR Analyst emailed Complainant and said that the Agency had issued new guidance that meant Complainant would be able to transfer to Chicago if a position opened up and became available. HR Analyst noted that there was a position in DBFTF in Chicago. However, that position was encumbered by another Agent. Complainant argued that, while the Agent filled the position, he was in an unpaid administrative leave status for more than three years because he was under criminal indictment. Further, Complainant argued that her transfer would not have cost the Agency money regardless of whether she worked in Minneapolis or Chicago.

SAC averred that he spoke with Complainant about her transfer request and understood that she sought the transfer out of a desire to be closer to her family in Wisconsin. SAC said his "reaction was guarded optimism to support the transfer" due to administrative hurdles. In addition to the Agency hiring and transfer freeze, SAC noted that the position Complainant sought was encumbered by the Agent who was on administrative leave.

SAC said that having Complainant work out of Chicago on TDY would have required the Agency to expend funds on temporary lodging and other daily expenses. He further stated, "Task Force investigators and analysts are usually co-located with Department of Homeland Security" which required their approval. When SAC approached DHS, they preferred that the Analyst's criminal case be resolved prior to transferring Complainant to Chicago.

In March 2018, as alleged in Claim 2, Complainant testified that S1 reassigned a case from her, and gave it to a heterosexual man. Complainant argued that she spent two years developing the case despite little interest from the Agency. However, after she "cracked" the case, the Agency began to take an interest. According to Complainant, none of her other cases were reassigned, "only the one with the highest potential for big success."

S1 responded that case assignments and reassignments "are fluid and evolve regularly for a host of reasons." Here, S1 felt that the other Agent was "better positioned to execute my managerial intent and close out this case in a timely manner." Complainant, on the other hand, "was either otherwise occupied with travel and TDY support, or unresponsive to my managerial guidance on this case." S1 was also concerned that Complainant was going to be absent for the next 12-15 weeks due to 12 weeks of ATLaS[4] training and an additional three weeks of leave.

In Claim 3, Complainant explained that she accepted a protective detail assignment for two weeks in March 2018 that required her to travel to and from Africa. At the completion of the assignment, Complainant submitted timesheets to S1 that included her work during the assignment, including compensatory time. S1's revisions to the timesheets reclassified four hours of visa fraud work to four hours of travel time, reduced 24 hours of travel time to 16 hours, and reclassified another eight hours of visa fraud work to administrative work time. Complainant argued that she was the only Agent who has ever had their superiors spend two days reviewing an Agent's entitlement to compensatory time.

S1 testified that he had objective concerns regarding Complainant's timekeeping practices. S1 noted that Complainant's timesheets had been rejected multiple times by Chicago Field Office timekeepers. As a result, S1 "was compelled to provide increased and reasonable managerial scrutiny to Complainant's timesheets," identifying errors and correcting mistakes.

[4] This abbreviation is not defined in the record.

In Claim 4, Complainant attended ATLaS training in West Virginia in March 2018. Complainant sought the use of a government vehicle to attend the training, which was approximately 1,000 miles away. Complainant's request was denied without explanation. However, the Agency approved Complainant's request to use her personal vehicle up to the cost of a round-trip plane ticket. Complainant protested that male and heterosexual agents from Florida were granted approval to use a government vehicle for the same training.

S1 countered that Complainant's request was unique and not routine. Therefore, S1 consulted with management in the Chicago Field Office, which said that it was not their practice to authorize government vehicle use to/at ATLaS training in West Virginia.

In her deposition, Complainant acknowledged that she was given the option of flying to ATLaS training or taking her personal vehicle and receiving reimbursement up to the cost of an airplane ticket.

In her affidavit, with respect to Claim 5, Complainant averred that she received notice from the Agency's Office of Personnel Security and Suitability (PSS) that she was due for her security clearance reinvestigation. During the course of the investigation, PSS obtained documents from the Agency's Office of Inspector General (OIG), which had received allegations against Complainant for waste and fraud, timesheet and travel voucher fraud, and misuse of a government vehicle.

Complainant insinuated that the reinvestigation was not appropriate because "[i]t was a normal update; however, our agency is normally a year or more behind for renewal." Complainant also suggested that the questions she was asked were atypical, such as asking how she claimed compensatory time, whether she has ever broken an electronic law[5] while driving a vehicle, or whether she reads texts or emails while driving. Complainant said that she held a security clearance for more than 35 years without ever having to answer similar questions.

In the course of interviewing Complainant's coworkers during the security clearance investigation, PSS learned that there was an ongoing Office of Special Investigation (OSI) investigation regarding Complainant's timekeeping practices.

[5] This is a reference to rules against texting while driving.

Upon request, Complainant provided details about these investigations, but denied the allegations. Complainant generally argued that she was subjected to discrimination because "no males or heterosexuals have had to ensure the accusations and micromanagement that I have had to endure."

The Agency provided email correspondence discussing allegations of inaccurate time and attendance. Among the allegations was that Complainant was claiming four hours of drive time from her home in Wisconsin to her office in Minneapolis as overtime. In the email, S1 was told that such problems "can cast a long, dark shadow over DS's task force programs. Another DS agent on a DBFTF was suspected of false timesheets, she was fired, and DS is still working to heal that black eye."

Complainant first contacted an EEO Counselor on May 1, 2018. On May 15, 2018, HR Analyst informed Complainant that staffing level restrictions remained in place but was discussing options to move Complainant to Chicago.

On July 25, 2018, HR Analyst said that Complainant's transfer could not be completed because the position into which she was to be transferred was occupied. However, the Agency was willing to transfer Complainant to Chicago if she would accept not being tasked to the DBFTF.

As to Claim 6, Complainant asserted in her affidavit that, in July 2018, she was supposed to start a temporary duty (TDY) assignment in Chicago. However, it was canceled and she was told by S1 that "it was pending the outcome of [her] informal EEO, clearly making the cancelation of [her] TDY a retaliatory action." During the hearing process, the Agency deposed Complainant, and she testified that no TDY was ever approved. Rather, it was an idea that the parties were exploring.

HR Analyst emailed Complainant on August 1, 2018, and reiterated that Complainant would not be able to transfer to the DBFTF team in Chicago, but that she would be able to transfer as a "normal" 1811. If Complainant was interested, then they could process the transfer.

The record indicates that Complainant refused the offer but eventually secured a TDY in Chicago. The Chicago office ultimately finalized Complainant's transfer to Chicago in late 2019.

S1 acknowledged that Complainant's EEO activity "may have impacted how I interacted with Complainant but it was only out of deference to the process and an awareness that all management decisions were being viewed through the lens of EEO allegations. I did not treat Complainant any different than usual, except with perhaps additional compassion."

In May 2019, another Agent became Complainant's supervisor (S1-b).

Regarding Claim 7, the Agency generated a certificate of eligibles for the Criminal Investigator 1811 position, which was only available to internal candidates. That list contained seven men and Complainant, for a total of eight candidates. Four of the candidates were over 40 years old. All eight candidates were offered an interview with a selection panel of three individuals: the Special Agent in Charge for Chicago, the Unit Chief for the Visa and Passport Analysis Unit, and a third employee.[6]

Following interviews, the panelists unanimously agreed on the top three candidates, one of whom was over the age of 40. The third-ranked candidate accepted the position after the top two candidates declined an offer.

The Unit Chief testified that Complainant's interview was not as good as the others. By comparison, the selectee "was very conversant on the types of investigations to be conducted, his work with DS, and was able to provide good investigative examples that fit the interview."

In Claim 8, the Agency advertised the Cyber Tech 1811 position both internally and externally. This time, the selection panel consisted of the Division Chief of the Computer Investigation and Forensics Division, the Unit Supervisor for the East Criminal Investigative Unit, and the Branch Chief of the Criminal Fraud Investigations branch. The selection panel decided to interview five internal candidates, including Complainant. Two of the three panelists agreed on the same first choice, who ultimately declined an offer. The Agency did not make any other offers and the position remained unfilled.

For both positions, the Agency produced email communications among the interview panelists and HR Analyst. In both positions, the panelists made recommendations as to their top three candidates. The panelists did not rank any of the remaining candidates.

---

[6] The Agency explained that the panel was composed of three members—a member from the office with the vacancy, a subject matter expert, and an otherwise random participant.

The Division Chief testified that, although Complainant had a strong background in investigations, "she did not have very much training or experience with Computer Forensics or Technical Surveillance. She had some, but not as much as some other candidates, and what forensic and tech training/experience she did have was from a long time ago." Conversely, the selectee had more extensive and recent relevant training and experience. The Unit Supervisor and Branch Chief offered similar testimony.

In her affidavit, Complainant argued that the Agency did not want to select her for either position because she had less than 36 months until mandatory retirement. Further, Complainant further argued that SAC was retaliating against her for having engaged in EEO activity; he "has stated to [S1-b] that he wanted to see me punished. [S1] said that my TDY to [Chicago] was pending my EEO complaint."

As to Claim 9, on October 29, 2019, S1-b issued to Complainant a "Mandatory Mid-Year Performance Review" for the period July 1, 2019, to December 31, 2019. In this review, S1-b told Complainant that she was headed for a "Not Successful" rating in some job performance elements.

The record indicates that, prior to the mid-year performance reviews, S1-b met with all agents she supervised and informed them that "[D.C.] loves their stats and besides closing cases, they check case diaries for progress." S1-b indicated that some cases were missing diary entries or otherwise indicated little to no progress. Specific to Complainant, S1-b notified Complainant that she had four cases that had no new activity despite several quarterly reviews. On June 3, 2019, S1-b encouraged Complainant to "be better about noting activity in IMS. May seem silly but HQ thrives off those stats, both in the positive and negative way."[7] S1-b then reminded all agents to update their case reviews in the IMS on September 5 and 16, 2019.

As a result of the mid-year performance review, S1-b gave Complainant five specific goals to accomplish by the end of the year in order to earn "Fully Successful" ratings. Complainant ultimately received a "Fully Successful" end-of-year evaluation.

Complainant argued that the mid-year performance review was the first time she heard of any issues with her performance. Complainant took issue with the mid-year performance review being the first time she heard that she was heading for a "not fully successful."

[7] Investigative Management System (IMS).

During the meeting, Complainant said that S1-b pointed out that Complainant had not been accepting S1-b's meeting requests. In response, Complainant printed out and showed to S1-b that she had accepted meeting requests. Complainant also said that the meeting was the first time she was aware that her case diary entries were insufficient.

In her affidavit, S1-b agreed that Complainant was performing work, but said that Complainant needed to document her work in the IMS so that she could be credited for the work. S1-b noted that Headquarters relied on case diaries to determine each office's performances. S1-b clarified the warning she gave Complainant at the time, which was that Complainant was headed for unsatisfactory ratings in specific work requirements, as opposed to an overall unsatisfactory rating.

S1-b responded to Complainant's assertion that she was, in fact, responding to S1-b's meeting requests. According to S1-b, she and Complainant discussed the issue and S1-b discovered that Complainant had been accepting S1-b's meeting requests without sending an email response. When S1-b realized what was happening, she considered the matter resolved.

Regarding Claim 10, although Complainant states that she became the subject of an OSI investigation on November 1, 2019, the record demonstrates that OSI opened two investigations regarding Complainant, one on March 10, 2017, and the second on July 20, 2018. The second investigation concluded on January 15, 2020, and substantiated allegations of fraud and misconduct against Complainant. Complainant's security clearance was therefore suspended on January 29, 2020, by the Agency's Human Resources department.

The OSI investigation that began on March 10, 2017, and concluded on September 22, 2017, substantiated allegations of timesheet fraud by claiming excessive overtime and unauthorized amounts of compensatory time. The investigation also substantiated allegations that Complainant "broke local traffic laws by using an electronic device while driving a vehicle" and "used poor judgment with a GOV [government-owned vehicle] by using its light group inappropriately."

The investigator compared Complainant's timesheets with her vehicle logs and noticed several occasions that demonstrated Complainant stopped claiming time in her vehicle several hours prior to when her work shift ended. According to the investigator, normally, the time at which an employee stops claiming time in a vehicle should correspond closely to the end of the employee's shift.

As a result, Complainant was claiming "several more hours of overtime beyond those times noted in her vehicle logs." The investigator also interviewed a timekeeper at the Minneapolis office, who said that he no longer wanted to handle Complainant's timesheets because he "began to see inordinate amounts of overtime that he believed were disproportionate to the amount of work being done on [Complainant's] cases . . . [he] rarely saw any case diary entries, interview records, or evidentiary collections."

The investigator investigated whether Complainant was working the hours she claimed to be working. To this end, he interviewed employees in the Minneapolis office and DHS employees with the DBFTF. These employees recalled that Complainant was "not always around" and rarely arrived early or stayed late.

When the investigator interviewed Complainant, she said that she was "the last one out 'three or four times a week,' and said that she had several times been there past midnight." Complainant also said that she sometimes left work early to drive to her home in Wisconsin and said that she "was told by my RAIC [Resident Agent in Charge] that as long as I was driving and able to answer my phone and emails while driving, that he was okay with that." Complainant claimed to be "an expert at reading and driving."

In the second investigation, OSI compelled Complainant's interview on November 1, 2019, during which Complainant could not explain discrepancies between her vehicle logs, garage/building entry access logs, fuel purchase logs, and return dates of travel on three travel vouchers. Complainant also admitted that she took audio recordings of her managers without their consent, in contravention to Agency policy. Based on these findings, on January 14, 2020, OSI substantiated allegations that Complainant submitted fraudulent government travel vouchers and misrepresented the time that she worked. It was recommended that Complainant's security clearance be suspended.

The Office Director, who was also the DSS Deputy Assistant Director for Special Investigation, testified that between 2019 and 2020, OSI investigated 23 cases. Seventeen of these cases involved male employees, six cases involved female employees, and seventeen of the cases involved employees over the age of 40.

In her affidavit, Complainant states "[t]he investigation started in 2017 and nothing had been done with it for two years until my EEO case began to ramp up at the hearing level." Complainant also suggested that the Agency's actions were an attempt to force her to retire.

As to Claim 11, S1 explained that the DBFTF was sponsored by DHS, which relieved Complainant of her DBFTF duties. S1 did not provide further explanation as to why DHS chose to release Complainant from the DBFTF. During the hearing, the Agency produced an email from the Assistant Special Agent in Charge for Homeland Security Investigations in St. Paul, Minnesota. That email, dated May 30, 2017, formally requested that Complainant be removed from the DBFTF and asked that the Agency transition Complainant back to its office. In another email on June 1, 2017, S1 said that 90% of Complainant's work had been transitioned back to the Agency's Minneapolis office, and that Complainant's response was that she wanted to be moved to the Chicago office.

The Human Resources Officer for DS (HRO) averred that, because of the suspension of Complainant's security clearance on January 28, 2020, Complainant was placed on administrative leave on January 29, 2020. HRO noted that between 2019 and 2020, four other individuals, all men, were placed on administrative leave.

S1-b stated that Complainant was not removed from the Minneapolis DBFTF, but rather, Complainant's position on the task force remained "active but vacant" Following the suspension of her security clearance. Complainant's status would remain that way until Complainant's security clearance was reinstated unless Complainant resigned or was terminated from employment. Complainant retired at the end of June 2020. S1-b added that, because Complainant's security clearance was suspended, Complainant could not perform any Agency work, which included work on the DBFTF.

As part of her hostile work environment allegation, Complainant claimed that she received improper deductions to her firearms requalification score. In her affidavit, Complainant said that after firearms requalification at the shooting range was complete, the firearms instructor told her that S1-b had deducted 20 points from Complainant's pistol score. Complainant said that S1-b sat down directly behind her while she completed qualification, which was "slightly intimidating."

Complainant also said that she had not fired four rounds during qualification and raised her hand for an "alibi,"[8] which was granted to her. She then fired the remaining rounds. Therefore, Complainant believed her 20-point deduction was wrong.

S1-b denied that she sat directly behind Complainant and noted that Complainant never expressed her discomfort. S1-b also denied deducting points from Complainant's score. Rather, the firearms instructor deducted points because Complainant requested extra time. Specifically, S1-b "witnessed Complainant stop firing during one of the timed iterations. Complainant lowered their gun and stood at the low ready until time was called. At that point, Complainant told the range instructor they needed more time; they had not gotten all their rounds off. After that was over, I asked the range instructor why Complainant had gotten extra time. Complainant failed to perform the necessary actions required to earn extra time, aka an 'alibi' shot." S1-b further explained that Complainant did not have any of the problems that would qualify for an alibi according to Agency policy.

S1-b provided a copy of the relevant Agency policy, which would grant an alibi only if the employee had a malfunction with their weapon, tapped the bottom of the ammunition magazine, racked the slide to the rear, and attempted to refire. Rather, S1-b said that Complainant simply stopped firing. S1-b said that the firearms instructor agreed with S1-b's assessment, and then conferred with the alternate range instructor, who agreed with him.

Nonetheless, S1-b noted that Complainant still passed the qualification. Complainant was also offered an opportunity to go through qualification again if she wanted to increase her score. Complainant declined.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing for both of her complaints. Over Complainant's objections, the AJ assigned to each case granted the Agency's November 12, 2020, and September 30, 2021, motions for summary judgment and issued decisions without a hearing on February 16, 2023 (AJ1), and June 14, 2023 (AJ2).

[8] As more fully explained below, an "alibi" grants extra time to an employee seeking to qualify or requalify on firearms, usually due to a firearms malfunction.

AJ1 found that Complainant failed to demonstrate that the Agency's articulated reasons for Claims 1-6 were not legitimate or were pretext for discriminatory animus. AJ1 also rejected Complainant's contention that she was subjected to *per se* reprisal because AJ1 did not agree that management's statements, which were directed to each other and not at Complainant, had a chilling effect on the EEO process.

AJ1 also found that Complainant failed to establish she was subjected to a discriminatorily hostile work environment because she was unable to demonstrate that the environment was objectively hostile. Rather, Complainant's allegations amounted to complaints about the Agency's actions related to management and case oversight. AJ1 also found Complainant failed to establish she was subjected to *per se* reprisal.

As to the non-selections in Claims 7 and 8, AJ2 found that Complainant failed to demonstrate the Agency's hiring processes and decisions were tainted by discriminatory bias. As to Complainant's performance appraisal, AJ2 accepted S1-b's comments on Complainant's performance to be routine supervisory responsibilities/oversight. AJ2 concluded that Complainant failed to prove that her allegations regarding her security clearance and resulting actions – Claims 10 through 13 – were grounded in discriminatory animus. AJ2 found that the Agency's actions were appropriately based on management discretion and Agency policy.

The Agency subsequently issued final orders adopting the AJs' findings that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

The instant appeals followed.

CONTENTIONS ON APPEAL

In support of her appeals, Complainant largely reiterates arguments she set forth in her affidavits and re-submits evidence produced during the hearing processes. Complainant rejected the AJ's position that Complainant failed to provide comparator evidence in support of her prima facie claim and argues that a comparator is not required so long as an inference of discrimination can be made otherwise. Notwithstanding this, Complainant argued that weekly activity reports at the time identified other Chicago Field Office employees going on TDY.

Complainant insinuates that the hiring freeze should not have been an obstacle to her transfer because she requested a transfer prior to the freeze and suggests that the fact it was lifted on May 15, 2018, mere days after she filed an EEO complaint constitutes rebuttable evidence. Complainant opposes the idea that funding issues prevented a transfer because her job would have transferred with her to Chicago and the Agency would not have backfilled the DBFTF position in Minneapolis.

In Claim 4, Complainant argues that there was no Agency policy that prohibited the use of a government vehicle to attend training, despite the Chicago office's contention that agents could not utilize a government vehicle to attend ATLaS training. Complainant argues, to the contrary, that government regulations permit the use of government vehicles to conduct government business.

Regarding Claim 5, Complainant argues that "[t]he AJ did not take into consideration the discriminatory bias against [Complainant] embedded in the interviewer's questions[.]" Complainant believes that she should not have been asked questions about allegations against her regarding timekeeping and whether she claims work time while driving to work because they "should have no bearing or relation to the purpose of a security clearance investigation."

Complainant maintains that the Agency subjected her to *per se* reprisal and points to evidence produced by the Agency in discovery.[9] Therein, S1 and SAC discuss S1's responses to the EEO investigator, and SAC provided suggested edits.

Complainant addresses the non-selection in Claim 8 by arguing that she was observably the more superior candidate for the Cyber Tech position and her thirty years of criminal investigator experience rendered her more qualified than the other candidates.

As to Claim 10, Complainant acknowledged that she made audio recordings in violation of Agency policy that prohibits recording others without their consent, but contends that, because the recordings contain direct evidence of discrimination and "became the catalyst for the subsequent adverse actions taken by the Agency against [Complainant]," the Agency engaged in reprisal.

[9] Complainant attached the emails she previously submitted in her response to the Agency's motion for summary judgment.

In response to Complainant's arguments on appeal, the Agency states that "[w]ith one exception, however, the supposed comparator evidence is drawn exclusively from Complainant's own assertions in her affidavit."

The Agency responded to Complainant's use of recordings that she obtained without other employees' consent. The Agency maintains that the recordings were made in direct violation of federal policy. Even if admissible, the Agency argues, that the recordings fail to support Complainant's arguments regarding her security clearance; further, that Complainant has not provided any evidence showing that S1 or S1-b had any role in her security clearance being revoked.

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 animus. Here, however, Complainant has failed to establish such a dispute. Complainant's arguments rest solely on her own affidavit along with conjecture and speculative questions regarding evidence produced by the Agency. Such questions are insufficient to create genuine issues of material fact. Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable fact-finder could not find in Complainant's favor.

Disparate Treatment – Claims 1-13

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 that 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 ultimately prevail, Complainant must prove, by a preponderance of the evidence, that the Agency's explanation is pretextual. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 120 S. Ct. 2097 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993).

To establish a prima facie case of discrimination, a 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, Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 252-53 (1981), the requirements are "minimal," St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 506 (1993), and complainant's burden is "not onerous." Burdine, 450 U.S. at 253.

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).

In this case, Complainant demonstrates that she is a member of multiple protected groups by virtue of her sexual orientation and age, and by having engaged in prior protected EEO activity.

For purposes of our analysis, we assume, without so finding, that all of the allegations in both complaints constitute adverse actions. However, aside from reprisal, Complainant has not proffered evidence that demonstrates that S1, S1-b, SAC, or any Agency official took action against Complainant because of her protected bases. While Complainant suggests that there exist comparator employees, Complainant has not identified any employees who were similarly situated to her but were treated more favorably. For example, on appeal, Complainant argued that the Agency permitted other employees to go on TDY despite a hiring freeze but did not allow her to do so. However, the Agency correctly points out that the hiring freeze did not impact TDY assignments. Therefore, Complainant's argument fails. We note that Complainant correctly argues that evidence of comparator employees is not required to establish a prima facie case. See Lavonia M. v. Dep't of the Army, EEOC Appeal No. 2024000454 (May 30, 2024); Harris v. U.S. Postal Serv., EEOC Appeal No. 0120092438 (Feb. 4, 2011). However, Complainant provides no other evidence tending to establish a nexus between her bases and the Agency's actions.

As to reprisal, email communications between S1, SAC, and RSAC demonstrate that they were at the very least aware of Complainant's EEO activity, that they struggled with how to treat Complainant in light of her EEO activity, and expressed frustration at being involved in her EEO complaints. For purposes of our analysis only, these emails suggest a nexus between the Agency's actions and Complainant's EEO activity.[10]

Furthermore, we find that the Agency articulated legitimate, nondiscriminatory reasons with respect to each claim.

[10] Complainant's claims of reprisal are addressed further in the section "Per se Reprisal," below.

In Claim 1, the Agency maintained that transferring Complainant to the Chicago office was logistically difficult because another Agent encumbered the DBFTF position housed in the Chicago office. When the Chicago office believed they had succeeded in a workaround, there was an Agency-wide hiring and transfer freeze. The Agency was ultimately able to offer Complainant a transfer in 2018, following the hiring freeze but Complainant did not want to accept a non-DBFTF position. Complainant eventually finalized her transfer in 2019.

In Claim 2, the Agency explained that it transferred one of Complainant's cases because she had not documented any work on the case for a year and she was going to be out of the office for several months. Regarding Claim 3, S1 provided testimony that he was concerned about Complainant's timekeeping practices and that Complainant's timesheets had been rejected multiple times by Chicago office timekeepers.

The Agency explained that Complainant was denied the use of a government vehicle, as alleged in Claim 4, because the use of a government vehicle between Minneapolis and West Virginia was unusual and Chicago management had not previously received a similar request. Therefore, the Agency rejected Complainant's request and approved airfare or the use of her personal vehicle up to the cost of airfare.

In Claim 5, the Agency explained that questions regarding timekeeping fraud were appropriate questions for a security clearance investigation because they touched on Complainant's honesty and integrity.

The Agency also explained that it did not deny Complainant a TDY assignment as alleged in Claim 6, but rather a TDY assignment was being explored and did not come to fruition. The Agency further noted that a TDY assignment would ordinarily require per diem and other expenses that were not feasible as a long-term solution.

As to the non-selections in Claims 7 and 8, the selecting officials explained that Complainant was not among the top three candidates for either position. For the Criminal Investigator 1811 position, the Unit Chief said that the selectee interviewed better than Complainant and was "very conversant on the types of investigations to be conducted" and provided specific examples of his work. For the Cyber Tech position, the Division Chief testified that Complainant did not have recent experience or training in computer forensics or technical surveillance. By comparison, the top three candidates' experience was more extensive and recent.

Regarding Claim 5, Complainant said that she had never received questions similar to the allegations of timekeeping fraud in more than 35 years, but Complainant does not demonstrate that such questions were inappropriate. Regarding her non-selection for the Cyber Tech 1811 position, Complainant asserts that her thirty years of criminal experience rendered her a superior candidate for the Cyber Tech position. While Complainant notes that she had more overall years of experience than the Selectee, the Commission has previously held that greater years of experience do not necessarily make an individual more qualified for a particular position.

In Claim 9, S1-b explained that Complainant was behind on documenting her work and provided contemporaneous emails showing that she had articulated an expectation to Complainant and other Agents that they document their work more frequently. When Complainant did not do so, S1-b documented the deficiency in the mid-year performance review.

For Claim 10, the Agency explained that Complainant was suspected of engaging in timesheet and voucher fraud, and as a result, she was referred to the OSI for investigation. This investigation led to Claims 11 through 13 because the OSI investigation substantiated the allegations. Because Complainant was found to have engaged in timesheet and voucher fraud, she suffered professional consequences, including removal from the Minneapolis DBFTF, having her security clearance revoked, and being placed on administrative leave.

In response, Complainant relies on her own affidavit and conjecture to suggest that the Agency had discriminatory motives. Complainant's arguments do not establish pretext. Complainant provides no evidence or authority to suggest that the timing of her transfer request exempted it from the hiring freeze. Additionally, Complainant states that there is nothing in Agency regulations that prohibit her from taking a government vehicle to ATLaS training. While that may be true, the converse is also true, in that there is nothing that prevented her supervisors from denying the request and opting for a more fiscally prudent alternative.

We note Complainant's argument in Claim 10 that the Agency is retaliating against her because she made audio recordings that she believes show the Agency engaged in discriminatory conduct. In doing so, Complainant conceded that she did not have permission to make the recordings and that such recordings violated the Agency's policies.

We find it difficult to accept Complainant's premise, because that would require us to accept that a complainant may be shielded from the consequences of illegal actions because of the information gained therein. Complainant is asking us to allow the ends to justify the means. We decline to do so.

Hostile Work Environment – Claim 14

Complainant claims that she was subjected to a hostile work environment due to the events surrounding her firearms qualification, her attempt to execute a search warrant, and other incidents outlined in her formal complaints.

In order to establish a prima facie case of harassment, Complainant must prove, by a preponderance of the evidence, the existence of five elements: (1) that she is a member of a statutorily protected class; (2) that she was subjected to unwelcome conduct related to her protected class; (3) that the harassment complained of was based on her protected class; (4) that the harassment had the purpose or effect of unreasonably interfering with her work performance and/or creating an intimidating, hostile, or offensive work environment; and (5) that there is a basis for imputing liability to the employer. See Celine B. v. Dep't of Navy, EEOC Appeal No. 2019001961 (Sept. 21, 2020); Humphrey v. U.S. Postal Serv., EEOC Appeal No. 01965238 (Oct. 16, 1998). See also Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982), approved in Meritor Savings Bank v. Vinson, 477 U.S. 57, 66-67 (1986); see generally Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (April 29, 2024).; Flowers v. Southern Reg'l Physician Serv. Inc., 247 F.3d 229 (5th Cir. 2001). The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the victim's circumstances. Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (April 29, 2024).

In other words, to prove her hostile work environment claim, Complainant must establish that she was subjected to conduct that was either so severe or so pervasive that a "reasonable person" in Complainant's position would have found the conduct to be hostile or abusive. Complainant must also prove that the conduct was taken because of a protected basis; in this case, her age, sexual orientation, or engagement in prior EEO activity. Only if Complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself.

In these complaints, Complainant identifies her protected bases as being a Lesbian over the age of 40 and that she has engaged in prior protected EEO activity. Complainant indicates that she found the conduct by Agency management to be unwelcome. However, Complainant does not establish that S1, S1-b, SAC, or RSAC subjected her to unwelcome conduct because of her protected bases, or that the conduct was objectively severe or pervasive so as to constitute a hostile work environment. Although Complainant's work environment may not have been ideal, we do not find that it was hostile and/or abusive based on Complainant's protected bases. We note that not every unpleasant or undesirable action which occurs in the workplace constitutes an EEO violation. See Shealey v. EEOC, EEOC Appeal No. 0120070356 (Apr. 18, 2011) (citing Epps v. Dep't of Transp., EEOC Appeal No. 0120093688 (Dec. 19, 2009). Even assuming that the conduct alleged was sufficiently severe or pervasive to create a hostile work environment, we find that Complainant has not shown that any of the alleged incidents were motivated by discriminatory or retaliatory animus. We find that the Agency's actions toward Complainant here were ordinary workplace interactions, with no abusive conduct based on Complainant's protected classes.

Per Se Reprisal

Complainant alleged, in response to the Agency's motion for summary judgment, that S1's and SAC's communications with each other is proof of *per se* reprisal against her. Specifically, in some of these emails, S1 and SAC expressed their frustration about Complainant's EEO activity and the stress it generated. In one email, S1 provided to SAC a copy of his draft responses to the EEO investigator and requested that SAC review and provide input.

EEOC Regulation 29 C.F.R. § 1614.101(b) provides that no person shall be subject to retaliation for opposing any unlawful discriminatory practice or for participating in any stage of the EEO complaint process. "When a supervisor's behavior has a potentially chilling effect on the ultimate tool that employees have to enforce equal employment opportunity, the behavior is a per se violation." Vincent v. U.S. Postal Serv., EEOC Appeal No. 0120072908 (Aug. 3, 2009), request for reconsideration denied, EEOC Request No. 0520090654 (Dec. 16, 2010). Central to a finding of *per se* reprisal is that the conduct is reasonably likely to have a chilling effect on deterring the complainant or a reasonable employee from engaging in, or pursuing, protected activity. Christeen H. v. U.S. Postal Serv., EEOC Appeal No. 0120162478 (June 14, 2018).

In this case, we do not find that S1 and SAC's communications about Complainant and her EEO complaints constitute *per se* reprisal because Complainant provided no evidence that the comments were directed at her or reasonably likely to have a chilling effect on the EEO process. We note in particular that Complainant only became aware of these emails during the discovery process, and so it would be difficult to conclude that her EEO activity, or the EEO activity of a reasonable employee, would be chilled by their existence. See Chere S. v. Dep't of Defense, EEOC Appeal No. 2022004791 (July 29, 2024) (alleged comment did not constitute *per se* reprisal in part because it was not directed at the complainant); Lindsey T. v. Dep't of Labor, EEOC Request No. 2024002576 (July 17, 2024) (not *per se* reprisal when the complainant was not aware of the comments at the time they were made or during her employment);

That is not to say that the communications were appropriate. Most egregiously, S1's request that SAC review and comment on his draft affidavit clearly undermined the integrity of the EEO process. We generally comment on such matters where Agency legal counsel interject themselves into the investigative process. See, e.g., Annalee D. v. General Serv. Admin., EEOC Request No. 2019000778 (Nov. 27, 2019), citing Tammy S. v. Dep't of Defense, EEOC Appeal No. 0120084008 (June 6, 2014); Rucker v. Dep't of the Treasury, EEOC Appeal No. 0120082225 (Feb. 4, 2011). However, the instant situation is analogous. By revealing to SAC his recollection of events and responses to Complainant's allegations, S1 affected both his and SAC's ability to testify truthfully as to the allegations. In addition to influencing SAC's recollection and testimony, S1 made it difficult for factfinders to assign credibility to his statements.

Accordingly, we believe that all management officials in the Chicago Field Office should undergo appropriate training, as directed in the Order below.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the findings of no discrimination in part and REVERSE the findings to the extent that Agency management improperly interfered in the EEO process. We ORDER that Agency management undergo training as directed in the ORDER below.

ORDER

The Agency is ordered to take the following remedial action within one hundred and twenty (120) days of the date of this decision:

> The Agency shall provide at least two (2) hours of in-person training to all management officials assigned to the Chicago field office, including any offices subject to oversight by the Chicago field office, regarding their responsibilities concerning EEO case processing.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

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 (T0124)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. 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 on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by their full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint**.

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests.

Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:

Carlton M. Hadden, Director
Office of Federal Operations

January 21, 2025
Date