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

[redacted]
Fawn G.,[1]
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Appeal No. 2023003134

Hearing No. 520-2022-00337X

Agency No. 4B-070-0244-21

DECISION

On May 3, 2023, 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 March 27, 2023, final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission AFFIRMS the Agency's final decision.

[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

The issues presented are whether Complainant's appeal is timely; and whether the Agency properly determined that Complainant did not establish discrimination or harassment as alleged.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier at the Agency's Union City Post Office in Union City, New Jersey.

On December 30, 2021, Complainant filed an EEO complaint alleging that the Agency subjected her to discriminatory harassment on the bases of sex (female) and disability (pregnancy) when:

1. on April 6, 2021, Complainant was charged 1.5 hours of emergency annual leave;
2. on April 14, June 9, and August 19, 2021, Complainant was not accommodated per her medical restrictions;
3. on April 16, 2021, Complainant was given an office observation without prior notice;
4. on April 28, and June 12, 2021, and possible subsequent dates, management questioned her work performance;
5. on June 8, 2021, management talked about Complainant on the workroom floor;
6. on July 1, 2021, Complainant was placed on the "Deems Desirable" list;
7. on August 19, 2021, Complainant was told to go home;
8. on August 21, 2021, the Postmaster "taunted" Complainant;
9. on an unspecified date, Complainant learned that management used 32 hours of her annual leave in Pay Period 3 (January 15-28, 2022), without her approval; and
10. on an unspecified date, Complainant's request to use annual leave during Pay Period 6 was denied.

The Agency accepted the claims for investigation. However, any discrete acts that occurred more than 45 days prior to Complainant's initial EEO contact on June 17, 2021, were untimely as discrete acts and would be considered as part of the harassment claim. Report of Investigation (ROI) at 38.

The EEO investigation revealed that on April 6, 2021, Complainant was charged with 1.5 hours of emergency leave. She claimed that she completed her work within eight (8) hours and the Postmaster usually exercises the "701 rule." The Postmaster explained that the "701 rule" applied when a carrier works more than seven (7) hours, but less than eight (8) hours, and is credited for eight (8) hours of time. The Postmaster stated that if Complainant was charged 1.5 hours of leave, that meant she only completed 6.5 hours of work, and the "701 rule" did not apply. ROI at 79-80, 124-5.

Complainant alleged that the Postmaster did not accommodate her medical restrictions to work eight (8) hours, with no heavy lifting or bending on April 14, June 9, and August 19, 2021. Specifically, on April 14th, the Postmaster instructed her to case and carry a "third bundle," even though their office was a "two-bundle," and it was not safe for Complainant to carry heavy lifts. On April 27, 2021, Complainant's doctor restricted Complainant to no more than eight (8) hours of work per day, with no lifting more than ten (10) pounds. Complainant's first-line supervisor ("Supervisor") allowed Complainant to use the Postmaster's van, but on June 9th, the Postmaster took the keys and Complainant had to walk 23 blocks. On July 6, 2021, Complainant's restrictions were updated to add limitations for standing for five (5) hours and walking for three (3) hours. After Complainant's restrictions were changed to limit her standing and walking, she began to case mail. While she was casing mail on August 19th, the Postmaster allegedly stated, "people need to stop playing on the floor and get out of the office." ROI at 81-2, 108-9.

Complainant claimed that the Postmaster had a supervisor perform an office observation on Complainant on April 16, 2021, without prior notice. ROI at 83. The Agency's record of Complainant's observations revealed one conducted on March 29, 2021, and the next on June 1, 2021, but not on April 16, 2021. ROI at 176.

On April 28, and June 12, 2021, and possibly other dates, the Postmaster questioned Complainant's work performance, such as asking why it was taking her so long to get out of the office; asking the Supervisor why Complainant was still in the office; and stating that it was always the same "fing" people. ROI at 85. The Postmaster also allegedly talked about Complainant on the workroom floor on June 8, 2021. ROI at 87.

On July 1, 2021, the Postmaster placed Complainant on the "Deems Desirable" list. ROI at 88. The Postmaster explained that management requests documentation from employees who frequently call-out and/or are tardy. ROI at 119.

Complainant alleged that the Postmaster instructed her to go home after she stated that she could not complete an assignment that was outside of her restrictions on August 19, 2021. ROI at 90. The Postmaster denied ordering Complainant to go home. She asserted that Complainant worked a full day and provided the "TACS" report showing that Complainant worked eight hours. ROI at 120, 142. Complainant accused the Postmaster of taunting her on August 21, 2021, when the Postmaster stated that "it's always something with them," and that the Supervisor "babied" Complainant. ROI at 92.

Complainant learned that management used 32 hours of her annual leave without her approval, instead of Family and Medical Leave Act (FMLA) leave without pay for January 15-28, 2022. ROI at 96. Complainant also claimed that her request for annual leave from February 26, 2022, through March 11, 2022, for 80 hours was denied, after the Supervisor initially approved the request. ROI at 100.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the ROI and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). Complainant requested a hearing, but the AJ denied the hearing request for failure to follow orders and remanded the complaint to the Agency.

The Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The Agency found that Complainant was not denied a reasonable accommodation because the evidence showed that she was restricted to an 8-hour workday, and she acknowledged that the Supervisor granted this accommodation. For claims 2, 6, 7, 9, and 10, the Agency assumed that Complainant established a prima facie case of discrimination based on sex and disability, and it found that management officials articulated legitimate, nondiscriminatory reasons for the actions and Complainant did not show pretext for discrimination. For the harassment claim, the Agency determined that the events together were not sufficiently severe or pervasive to unreasonably interfere with her performance or to create an intimidating, hostile, or offensive work environment. The Agency concluded that Complainant failed to prove that she was subjected to discrimination as alleged.

The instant appeal followed.

CONTENTIONS ON APPEAL

Complainant did not submit any arguments in support of her appeal.

The Agency opposes Complainant's appeal and requests that it be dismissed as untimely. The Agency notes that the final decision was delivered to Complainant on March 31, 2023, and she filed her appeal after 30 days on May 3, 2023. If the appeal is not dismissed as untimely, the Agency requests that the Commission affirm the final decision because it is supported by the record and contains no errors.

STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that EEOC "review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law").

ANALYSIS

Timeliness

As an initial matter, we address the Agency's request to dismiss the instant appeal as untimely. Appeals to the Commission must be filed within thirty (30) calendar days after Complainant receives notice of the Agency's final action. 29 C.F.R. § 1614.402(a). The Agency asserts that the final decision was delivered on March 31, 2023, and Complainant filed her appeal on May 3, 2023, which was three days late.

Where, as here, there is an issue of timeliness, "[a]n agency always bears the burden of obtaining sufficient information to support a reasoned determination as to timeliness." Guy v. Dep't of Energy, EEOC Request No. 05930703 (Jan. 4, 1994) quoting Williams v. Dep't of Defense, EEOC

Request No. 05920506 (Aug. 25, 1992). With its opposition brief, the Agency provided a printout of delivery information of a parcel listing only a city, state, and zip code. The Commission has found that a generalized reference to a city and zip code is insufficient to establish the actual delivery date of receipt by a complainant. See Ciera B. v. Social Security Admin., EEOC Appeal No. 0120161197 (May 19, 2016); Lipscomb v. U.S. Postal Serv., EEOC Appeal No. 0120081267 (Mar. 25, 2008). The Agency has not met its burden to prove the date of receipt of the final decision by Complainant. As such, we will consider Complainant's appeal to be timely.

Failure to Accommodate (Claim 2)

Disability

Complainant's claims include an allegation of a failure to accommodate based on disability of her pregnancy. However, pregnancy is not an impairment within the meaning of the Americans with Disabilities Act, and is therefore, not a disability, but a pregnancy-related impairment that substantially limits a major life activity is a disability. 29 C.F.R. Part 1630 app. § 1630.2(h). Here, Complainant did not show limitations due to a pregnancy-related impairment. She noted backaches, fatigue, and increased urination throughout her pregnancy, and Complainant's medical documents only listed her restrictions for working; lifting; standing; and walking due to her pregnancy and hot weather conditions, without evidence of any medical condition or impairment. ROI at 79, 108-9. As such, Complainant's failure to accommodate claim is not based on a disability but based on her pregnancy, discussed further below.

Pregnancy

It is unlawful for an employer to "discriminate against any individual with respect to ... terms, conditions, or privileges of employment, because of such individual's ... sex." 42 U.S.C. § 2000e-2(a)(1). "The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions." § 2000e(k). "Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes ... as other persons not so affected but similar in their ability or inability to work...." Id.

A complainant alleging that the denial of an accommodation for a pregnancy-related condition constituted disparate treatment sex discrimination may state a prima facie case by showing that (1) she belongs to the protected class; (2) she sought accommodation; (3) the agency did not accommodate her; and (4) that the agency did accommodate others "similar in their ability or inability to work." Young v. United Parcel Service, 575 U.S. ___, 135 S. Ct. 1338, 1354 (2015). An agency may then seek to justify its refusal to accommodate the complainant by relying on "legitimate, nondiscriminatory" reasons for denying her accommodation. Id. at 1354 (citing McDonnell Douglas v. Green, 411 U.S. 792, 802 (1973)). "That reason normally cannot consist simply of a claim that it is more expensive or less convenient to add pregnant women to the category of those ('similar in their ability or inability to work') whom the employer accommodates." Id.

It is undisputed that Complainant belonged to a protected class, and she sought accommodations, based on her pregnancy. She averred that she informed the Supervisor and the Postmaster of her restrictions of working eight (8) hours per day; no lifting; and no bending in April 2021. ROI at 79.

Complainant alleged a failure to accommodate on three dates: April 14, June 9, and August 19, 2021. On April 14, 2021, Complainant claimed that the Postmaster instructed her to case and carry mail in the "third bundle," even though their office was "two bundle," and it was unsafe for her to carry a heavy load. Complainant averred that the Supervisor accommodated her by permitting her use of the Postmaster van. However, on June 9, 2021, the Supervisor was off and the Postmaster informed Complainant that the van was not available, and Complainant had to walk 23 blocks. On August 19, 2021, Complainant was casing mail when the Postmaster stated, "people need to stop playing on the floor and get out of the office." ROI at 81-2.

The Postmaster responded that she did not recall any conversations with Complainant on the dates in question about accommodations. For April 14, 2021, the Postmaster stated that there was no such thing as a "two bundle" office, and that carriers carry a third bundle if needed. We note that Complainant's initial medical document with her lifting restriction was not produced until April 27, 2021. ROI at 125, 109.

The Postmaster did not recall the event on June 9th, but she responded that if the van was unavailable, there would have been an alternate means of transportation, such as other drivers or supervisors dropping Complainant off on her route.

She noted that their office was a "walk-out location," and carriers are expected to walk; use their personal vehicles for reimbursement; use public transportation; or use management-provided transportation, if available. The Postmaster also did not recall making the alleged statement on August 19th, but if she used the term "people" or if Complainant was working, then she was not referring to Complainant. ROI at 114-15, 122, 125.

Even crediting Complainant's allegations that she was not accommodated on April 14th and June 9th, she did not assert that the Postmaster accommodated others who were "similar in their ability or inability to work." Complainant named a comparator but when asked how this comparator was treated more favorably in having her restrictions accommodated, Complainant was non-responsive in her statement, "my precomplaint was filed so she probably didn't want another case." Complainant offered another comparator but averred that this comparator was not accommodated. ROI at 82-3. There is no evidence that either comparator had restrictions similar to Complainant's and was treated differently with an accommodation.

In addition, the alleged August 19th statement that people needed to "stop playing" and get out of the office was not an action that can be considered a denial of an accommodation. As such, we find that Complainant did not establish a failure to accommodate based on her pregnancy.

Disparate Treatment (Claims 6, 7, 9, and 10)

Generally, claims of disparate treatment are examined under the analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Hochstadt v. Worcester Found. for Experimental Biology, Inc., 425 F. Supp. 318, 324 (D. Mass.), aff'd, 545 F.2d 222 (1st Cir. 1976). For Complainant to prevail, she must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978); McDonnell Douglas, 411 U.S. at 802 n.13. Once Complainant has established a prima facie case, the burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). If the Agency is successful, the burden reverts back to Complainant to demonstrate by a preponderance of the evidence that the Agency's reason(s) for its action was a pretext for discrimination.

At all times, Complainant retains the burden of persuasion, and it is her obligation to show by a preponderance of the evidence that the Agency acted on the basis of a prohibited reason. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993); U.S. Postal Service v. Aikens, 460 U.S. 711, 715-716 (1983).

To establish a prima facie case of disparate treatment discrimination based on disability, a complainant generally must prove the following elements: (1) they are an individual with a disability as defined in 29 C.F.R. §§ 1614.203(a) and 1630.2(g); (2) they are "qualified" as defined in 29 C.F.R. §§1614.203(a) and 1630.2(m); (3) the agency took an adverse action against them; and (4) there was a causal relationship between their disability and the agency's actions. See Annamarie F. v. Department of the Air Force, EEOC Appeal No. 2021004533 (August 17, 2023). As noted above, Complainant presented no evidence of any medical condition or impairment, and she did not establish a prima facie case of disability discrimination.

Complainants may establish a prima facie case of sex discrimination by providing evidence that: (1) they are a member of a protected class; (2) they suffered an adverse employment action; and (3) either that similarly situated individuals outside their protected class were treated differently, or other circumstances surrounding the adverse employment action give rise to an inference of discrimination. McDonnell Douglas, 411 U.S. at 802 n.13; Reeves v. Sanderson Plumbing, 530 U.S. 133, 142 (2000); Bodett v. CoxCom, Inc., 366 F.3d 736, 743-44 (9th Cir.2004) (internal quotation marks omitted). Complainant is a member of a protected class based on her sex, but she did not identify any similarly situated comparator who was outside of her protected class and treated more favorably for claims 6, 7, 9, or 10. Rather, her named comparators were also female. ROI at 89, 91, 98, 101. The circumstances of these actions did not raise an inference of discrimination. As such, Complainant did not establish a prima facie case of sex discrimination.

While Complainant did not establish a prima facie case of discrimination based on disability or sex, the Agency proffered legitimate, nondiscriminatory reasons for the actions. For claim 6, the Postmaster replied that the "Deems Desirable" list is for those who frequently call out or are tardy. The Postmaster placed Complainant on the list because she had 67.13 unscheduled hours, including tardiness. ROI at 119, 128. Regarding claim 7, the Postmaster denied telling Complainant to go home and averred that Complainant worked a full day on August 19, 2021. ROI at 120.

In response to claim 9, the Postmaster stated that Complainant was charged annual leave on January 15-23, 2022, because she was not under FMLA protection at the time. Complainant was advised of her need to provide appropriate documentation for her absences on December 13, 2021, and her FMLA was reinstated in February 2022. ROI at 131, 180-1, 141. For claim 10, the Postmaster responded that she was not aware of Complainant submitting a leave request. Complainant only inquired if she could take two weeks (80 hours) of leave, and she was informed that she did not have sufficient leave to cover the request. ROI at 133.

We find that Complainant has not shown that the proffered reasons were pretexts for discrimination. Pretext can be demonstrated by showing such weaknesses, inconsistencies, or contradictions in the Agency's proffered legitimate reasons for its action that a reasonable fact finder could rationally find them unworthy of credence. See Opare-Addo v. U.S. Postal Serv., EEOC Appeal No. 0120060802 (Nov. 20, 2007) (finding that the agency's explanations were confusing, contradictory, and lacking credibility, which were then successfully rebutted by the complainant), request for recon. denied, EEOC Request No. 0520080211 (May 30, 2008).

Complainant did not show that the proffered reasons are not worthy of belief. Rather, the record contains evidence that supports the explanations. For example, Complainant averred that she had excellent attendance and hardly called out in response to claim 6. However, a review of her attendance records reveals that she had ten (10) instances of unscheduled absences or tardiness from January 2, 2021, until she was placed on the Deems Desired list on July 1, 2021. Complainant's attendance record also confirms the Postmaster's account that Complainant worked a full day on August 19, 2021. ROI at 88, 177-8, 142.

Complainant's bare assertions that management officials discriminated against her are insufficient to prove pretext or that their actions were discriminatory. Accordingly, we find that Complainant did not establish discrimination based on disability or sex for claims 6, 7, 9, or 10.

Harassment

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); 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, disability, or sex. Only if Complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself.

As discussed above, we found that Complainant did not establish a case of discrimination on any of her alleged bases for claims 2, 6, 7, 9, and 10. Further, we conclude that a case of harassment is precluded based on our finding that Complainant did not establish that any of these actions taken by the Agency were motivated by her protected bases. See Oakley v. U.S. Postal Serv., EEOC Appeal No. 01982923 (Sept. 21, 2000). Accordingly, we find that Complainant did not show that the Agency subjected her to harassment based on disability or sex for claims 2, 6, 7, 9, or 10.

Even crediting Complainant's version of events for the remaining incidents, most occurred during the normal course of business and were unrelated to a protected category. For claim 1, the Postmaster explained that Complainant was charged 1.5 hours of leave because she completed 6.5 hours of work and the "701 rule" did not apply. ROI at 124-5. The Postmaster did not recall the specific events of subjecting Complainant to an office observation without prior notice (claim 3); questioning her work performance (claim 4); and discussing employees on the workroom floor (claim 5). However, the Postmaster responded that management has the right to observe carriers at all times in their performance of duties; question Complainant if she was engaging in time-wasting practices; and discuss carriers with supervisors. ROI at 116-17, 126-7.

The Commission has held that routine work assignments, instructions, and admonishments do not rise to the level of harassment because they are common workplace occurrences. See Gray v. U.S. Postal Serv., EEOC Appeal No. 0120091101 (May 13, 2010). Unless it is reasonably established that the common workplace occurrence was somehow abusive or offensive, and that it was taken in order to harass Complainant on the basis of her protected class, we do not find such common workplace occurrences sufficiently severe or pervasive to rise to the level of a hostile work environment or harassment as Complainant alleges. See Complainant v. Dep't of Veterans Affairs, EEOC Appeal No. 0120130465 (Sept. 12, 2014). There is no evidence that the work-related incidents were abusive or offensive, or taken in order to harass Complainant on the basis of a protected class.

Further, even if the Postmaster used foul language in stating that it was the same "fing" people on June 12, 2021, anti-discrimination statutes are not general civility codes, and the Commission has found that personality conflicts; general workplace disputes; and trivial and petty annoyances do not rise to the level of harassment. See Jeffrey R. v. Dep't of Justice, EEOC Appeal No. 2022003500 (Aug. 9, 2023); Rita F. v. U.S. Postal Serv., EEOC Appeal No. 2021002876 (Aug. 16, 2022); Lassiter v. Dep't of the Army, EEOC Appeal No. 0120122332 (Oct. 10, 2012).

The Supervisor confirmed that the Postmaster stated that the Supervisor was "babying" Complainant due to her pregnancy (claim 8). ROI at 146. However, this isolated comment was not severe to rise to the level of harassment. Accordingly, we find that Complainant did not show that the Agency subjected her to harassment based on disability or sex.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's final decision finding no discrimination or harassment as alleged.

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

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

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or

2. The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

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

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

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

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

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

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

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0124)

You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by their full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint**.

RIGHT TO REQUEST COUNSEL (Z0815)

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

FOR THE COMMISSION:

Carlton M. Hadden, Director
Office of Federal Operations

January 13, 2025
Date