



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

[REDACTED]  
Taylor Z.,<sup>1</sup>  
Complainant,

v.

Carlos Del Toro,  
Secretary,  
Department of the Navy,  
Agency.

Appeal No. 2023003464

Agency No. 22-62473-01261

DECISION

On May 28, 2023, Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's April 28, 2023, final decision concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq.<sup>2</sup>

ISSUE PRESENTED

The issue presented is whether Complainant has proven that the Agency subjected him to discriminatory disparate treatment and/or harassment based on his race, national origin, color or in reprisal for protected EEO activity.

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

<sup>2</sup> On June 22, 2023, Complainant's Counsel requested an extension of time to file a brief in support of the appeal. Counsel provided details of the degree to which he was incapacitated as a result of his age and COVID-19 diagnosis. The extension was granted until July 19, 2023, and Complainant's brief was timely filed by that date.

### BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Utilities and Energy Manager (Branch Head), GS-1601-13, in the Utilities & Energy Management (UEM) Branch, Production Division, Public Works Office, NAVFAC (Naval Facilities Engineering Systems Command) Southwest, at Naval Base Ventura County (NBVC), in Ventura, California.

On July 8, 2022, Complainant filed a formal complaint alleging that the Agency subjected him to hostile workplace discrimination on the bases of race (Asian), national origin (Filipino), color (Brown), and reprisal for prior protected EEO activity. In support of this claim, Complainant alleged the following:

- a. On or about March 9, 2022, Complainants' first-level supervisor at the time issued him a written oral counseling sheet for work disruption, inappropriate behavior, and lack of adherence to the Commanding Officer's Personal Conduct Policy.
- b. On or about March 24, 2022, Complainants' first-level supervisor issued him a second version of a written oral counseling, via e-mail.
- c. On or about April 4, 2022, Complainants' first-level supervisor issued him a third version of a written oral counseling, via e-mail.
- d. On or about April 5, 2022, Complainants' first-level supervisor denied Complainant's request for a temporary duty order to UEM Branch Head at Point Loma, citing the current UEM demand and workload for Naval Base Ventura County missions.
- e. From on or about March 1, 2022, to May 5, 2022, Complainants' first-level supervisor e-mailed minorities to not attend weekly staff meetings, which Complainant's second-level supervisor at the time condoned.
- f. On or about April 20, 2022, Complainant received his Civilian Performance Plan (Progress Review and Appraisal) that contained negative statements regarding his performance.
- g. On an unspecified date, Complainant's second-level supervisor verbally told him to drop the case against a subordinate (HVS) who erroneously cut a live high voltage power line and blatantly disobeyed the Energized Permit Policy.
- h. On an unspecified date, Complainant was placed in a single-group of minorities, which was isolated by seating arrangements from other participants at the conference table.
- i. On an unspecified date, Complainant and other minority personnel were required to check-in during telework, while other Naval Base Ventura Public Works Department personnel allowed to telework were not mandated to check-in.

- j. On or about June 6, 2022, Complainant's application for Administrative Leave for recovering from hospitalization due to Coronavirus disease (COVID-19) was denied.
- k. On or about June 22, 2022, Complainant was stripped of his supervisory duties and responsibilities, and relocated to another workspace, different from his original place of work, due to an alleged complaint against him.
- l. On or about September 2, 2021, Complainant's second-level supervisor took no action after Complainant reported a physical assault to him involving the former High Voltage Supervisor slapping a High Voltage Electrician.
- m. On or about July 28, 2022, Complainant's second-level supervisor issued him an oral counseling regarding submittal of FY23 Facility Planning Integrated Priority List (FPIPL), which cited senior management involvement and correction, in order to meet a critical milestone.
- n. On or about July 29, 2022, Complainant's second-level supervisor sent an e-mail notification to UEM members about revised duties (UEM Branch Tasks and Responsibilities).
- o. On or about August 9, 2022, Complainant's subsequent second-level supervisor directed him, in the presence of Complainant's initial second-level supervisor, to have no contact with UEM personnel, either by text, e-mail, or eye contact even after work hours.
- p. On or about August 10, 2022, Complainant received an amended "No Contact Order" from his subsequent second-level supervisor.
- q. On an unspecified date, Complainants' first-level supervisor issued unpleasant or negative statements in Complainant's annual appraisal.

The Agency accepted the claims and conducted an investigation which produced the following evidence.

During the period of January 2022 to May 2022, Complainant's first-line supervisor (Caucasian/European; White; North American/European) was the Acting Production Division Director, and Complainant's second-line supervisor (White; United States) was the Acting Deputy Public Works Officer. Thereafter, Complainant's first-line supervisor was the Production Division Director, and Complainant's second-line supervisor (color not specified; American) was the Acting Deputy Public Works Officer. Complainant's third-line supervisor (White; pale; USA/European) throughout the entire period at issue was the Public Works Officer.

For all of Complainant's listed claims, management witnesses either outright denied the allegations or proffered legitimate, non-discriminatory reasons for taking the alleged actions.

Regarding claims (a) through (c), Complainant's first-line supervisor explained that there were concerns from the Public Works Office about e-mails exchanged between the DOD and Navy organizations regarding Complainant's concerns on the cost of rental equipment. He contended that he asked Complainant about the concerns and advised Complainant that he would look into the matter. Complainant's immediate supervisor maintained that he did not find any information substantiating Complainant's concerns of fraud. He asserted that he received verbal communication from other commands respectfully requesting that he make an effort to stop Complainant from sending future e-mails regarding the subject. The immediate supervisor declared that Complainant's e-mails on the subject were continuing to escalate, and Complainant continued to communicate with other commands about the subject, even though: (1) he had given Complainant verbal and written instructions to cease engaging in communications regarding the subject; and (2) the job was closed and completed. In an e-mail to the EEO Investigator, the immediate supervisor gave a similar explanation. He asserted that the events regarding the generator incident occurred in 2021, before he began his detail as Acting Director. He further asserted that Complainant's second and third-line supervisors instructed him to counsel Complainant because Complainant kept raising issues about the generator issue outside the Public Works Department (PWD) and kept bringing this up on unrelated power outages in 2022.

Concerning the denial of a temporary detail (claim (d)), Complainant's first-line supervisor stated that Complainant requested the detail through his second-line supervisor. He asserted that he was not aware of the request until his supervisor informed him of it. He maintained that the request was denied for not following the instruction provided in the e-mail, workload commitments and staff supervision coverage. The immediate supervisor maintained that he had no role in the decision. Complainant's second-line supervisor noted that Complainant did not follow the proper process for applying for the detail because Complainant did not obtain supervisory approval prior to making arrangements to go TDY (temporary duty) to Point Loma. He asserted that Complainant sent him an e-mail asking for TDY approval to go to San Diego with no details (e.g., what, why, where or for how long). He pointed out that Complainant did not include Complainant's first-line supervisor on the initial e-mail. This supervisor contended that he asked Complainant for the missing information and asked Complainant who would cover Complainant's responsibilities during the detail. He maintained that the detail request was denied because Complainant did not request permission from his immediate supervisor before committing to the detail. He pointed out that this was a requirement in the announcement for the 120-day detail. This supervisor also noted that the PWD was already short-handed in the UEM branch at the time of Complainant's request. He asserted that there was a vacant civil engineer position. He maintained that management did not have anyone who could fill in and perform Complainant's duties during the four-month detail. He pointed out that Complainant supervised 38 employees and had critical daily duties involving electrical, water, natural gas, wastewater, and storm water systems for three NBVC locations. The supervisor observed that Complainant was responsible for numerous utilities projects in various stages of planning and execution. He also asserted that Complainant was responsible for providing direction and oversight during 20-30 unplanned utility outages that occurred each year. He maintained that these concerns about coverage were the primary reasons why the detail request was denied.

Regarding Complainant's claim (e) that his immediate supervisor e-mailed minority employees to not attend weekly staff meetings, Complainant's first-line supervisor explained that DASHBOARD meetings provided a graphical summary of all bases associated with Ventura, California, for the overview of the Public Works Department regarding various subjects, including projects, funding and local work. He maintained that the following individuals typically attended the meetings: all third-line supervisors, including Complainant's third-line supervisor; the FEAD; the Requirements Department; the Production Department; and the Environmental Department. The immediate supervisor noted that all first-line and second-line supervisors attended a weekly Production meeting. He contended that the Production meeting presented the same information presented at the DASHBOARD meeting, so it was an inefficient use of time for first-line and second-line supervisors to attend the DASHBOARD meeting. He maintained that there were no supervisors in his division (the Production Division) who did not receive the same instruction. The supervisor indicated that no first-line or second-line supervisors in his division were permitted to attend the DASHBOARD meetings. Complainant's second-line supervisor stated that Complainant's first-line supervisor decided not to allow his branch heads to attend the weekly meetings. He asserted that none of the Production Division Branch Heads attended the meeting, and no other Production Division supervisors attended the meeting. He asserted that SNIUS and PS, who were not Branch Heads, did not attend the meetings.

The record reflects that despite an inquiry by the EEO Investigator, Complainant did not describe what his immediate supervisor stated in the e-mails that discouraged minority employees from attending the meeting. Instead, Complainant asserted that "the e-mail spoke for itself."

Regarding purported, negative comments made in Complainant's performance appraisal (claims (f), (q)), Complainant's first-line supervisor stated that Complainant performed at a fully successful level during the rating period. He asserted that he did not provide Complainant's second-line supervisor with any input regarding Complainant's performance during the rating period. He asserted that he recognized Complainant's successful performance and gave him words of encouragement for improvements. Complainant's second-line supervisor disputed Complainant's allegation that his rating contained false and negative comments. He asserted that Complainant's immediate supervisor graded Complainant based on his observations of Complainant during his 120-day detail as first-line supervisor. Complainant's second-line supervisor noted that he concurred with the immediate supervisor's recommendations during the rating period. He maintained that Complainant's input was taken into consideration. He also maintained that Complainant's performance did not rise to the level of Outstanding. The second-line supervisor stated that there were several occasions when Complainant's work products required major revisions in order to be forwarded for higher review, the accuracy, thoroughness, and timeliness of Complainant's work was not always reliable and required re-work or supervisory oversight, and the quality and quantity of Complainant's work did not exceed the standards for what is expected of someone with Complainant's grade and experience. Complainant's second-line supervisor maintained that Complainant's work met standards most of the time, so Complainant was rated as "Fully Successful."

Concerning claim (h), management denied there were any seating arrangements and that minorities were assigned to sit together.

Concerning claim (i), Complainant's second-line supervisor stated that all employees were required by telework instructions to check in and check out with their supervisors via e-mail and provide brief bullet statements outlining their work accomplishments when in telework status. Complainant's third-line supervisor maintained that all employees were instructed to check in and check out while teleworking.

With respect to Complainant's denial of administrative leave during COVID-19 (claim (j)), Complainant's second-line supervisor stated that NAVFAC Southwest's command policy of granting administrative leave (LN) changed in late spring such that supervisors were no longer authorized to allow employees to use LN for COVID-19-related illnesses or for vaccination purposes. He maintained that employees were required to use either Annual Leave (LA) or Sick Leave (LS). Complainant's subsequent second-line supervisor noted that he was provided COVID leave policy by Labor and Employment Relations on June 29, 2022. He also noted that this policy stated that LN was not appropriate for use when an employee presents COVID symptoms (or any illness symptoms). He contended that he was advised that LS was the appropriate designation.

Regarding Complainant being stripped of his duties and relocated due to a complaint lodged against him (claim (k)), Complainant's second-line supervisor stated that he was aware that the Production Controller filed a sexual harassment complaint against Complainant. He maintained that he did not know the details of the complaint. He contended that management's action was taken at the direction of Labor and Employee Relations because of the sexual harassment complaint. He asserted that management had the responsibility to remove or relocate the alleged harasser away from the work center where the alleged sexual harassment occurred to prevent recurrence. Complainant's second-line supervisor explained that she received guidance from command counsel and EEO employees to relieve Complainant of his supervisory duties pending the investigation into allegations of inappropriate conduct by Complainant towards other PWD employees.

With respect to claims (g) and (l), where Complainant's second-level supervisor *purportedly* took no action after Complainant reported a physical assault to him, Complainant's second-line supervisor stated that the arc flash incident occurred on January 17 or 18, 2020, but it was not reported until late August 2021 (roughly 19 months later). He asserted that the date of the alleged slapping incident was not determined, and the allegation was not known until SSM began investigating the arc flash incident in August or September 2021. He further stated that he advised Complainant that the arc flash incident was very serious and that it was reported up the chain of command. He maintained that the arc flash incident was reported to Complainant's third-line supervisor on the same day that Complainant reported the incident.

Concerning claims (o) and (p), Complainant's second- and third-line supervisors maintained that they were guided by Labor and Employment Relations to have Complainant removed from the UEM Team members pending the results of an investigation regarding Complainant's actions. Complainant's third-line supervisor declared that he agreed with this guidance. He stated that it was his duty to protect all of the employees at PWD Mugu. He asserted that action had to take place in order to keep all employees safe and make sure the alleged conduct did not happen again. This supervisor further asserted that removing Complainant and physically separating him from UEM personnel was the best course of action based on the facts presented to him.

Finally, for the remaining claims (including claims (m), (n) listed above were addressed by management in an effort to counsel Complainant in his duties, or directly related to Complainant's relocation and the Agency's sexual harassment investigation into Complainant's conduct.

At the conclusion of the investigation, Complainant was provided with a copy of the report of investigation and notice of his right to request either a final agency decision or a hearing before an EEOC Administrative Judge (AJ). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant failed to prove that the Agency subjected him to discrimination or unlawful retaliation as alleged. The Agency further concluded that Complainant's allegations were insufficiently severe or pervasive to rise to the level of a hostile work environment given the Agency articulated legitimate, nondiscriminatory reasons for the alleged actions.

The instant appeal followed.

#### 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 AND FINDINGS

##### *Disparate Treatment*

A claim of disparate treatment based on indirect evidence is examined under the three-part analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

For Complainant to prevail, he or 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. McDonnell Douglas, 411 U.S. at 802; Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978). 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). Once the Agency has met its burden, Complainant bears the ultimate responsibility to persuade the fact finder 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).

This established order of analysis in discrimination cases, in which the first step normally consists of determining the existence of a prima facie case, need not be followed in all cases. Where the Agency has articulated a legitimate, nondiscriminatory reason for the personnel action at issue, the factual inquiry can proceed directly to the third step of the McDonnell Douglas analysis, the ultimate issue of whether Complainant has shown by a preponderance of the evidence that the Agency's actions were motivated by discrimination. U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 713-714 (1983); Hernandez v. Dep't. of Transp., EEOC Request No. 05900159 (June 28, 1990); Peterson v. Dep't. of Health and Human Serv., EEOC Request No. 05900467 (June 8, 1990); Washington v. Dep't. of the Navy, EEOC Petition No. 03900056 (May 31, 1990).

Here, the Agency correctly found that Complainant failed to establish he had been subjected to discrimination or retaliation based on his protected bases. The Agency has articulated legitimate, non-discriminatory reasons for its actions. Regarding claims (a) through (c), Complainant's first-line supervisor explained that there were concerns from the Public Works Office about e-mails exchanged between the DOD and Navy organizations regarding Complainant's concerns on the cost of rental equipment. Complainant's second and third-line supervisors instructed the immediate supervisor to counsel Complainant because Complainant kept raising issues about the generator issue outside the Public Works Department (PWD) and kept bringing this up on unrelated power outages in 2022. Concerning the denial of a temporary detail (claim (d)), Complainant's first-line supervisor stated that Complainant requested the detail through his second-line supervisor. He asserted that he was not aware of the request until his supervisor informed him of it. He maintained that the request was denied for not following the instruction provided in the e-mail, workload commitments and staff supervision coverage. Regarding Complainant's claim (e) that his immediate supervisor e-mailed minority employees to not attend weekly staff meetings, Complainant's first-line supervisor noted that all first-line and second-line supervisors attended a weekly Production meeting. He contended that the Production meeting presented the same information presented at the DASHBOARD meeting, so it was an inefficient use of time for first-line and second-line supervisors to attend the DASHBOARD meeting. Regarding purported, negative comments made in Complainant's performance appraisal, claims ((f), (q)), Complainant's first-line supervisor stated that Complainant performed at a fully successful level during the rating period. He asserted that he did not provide Complainant's second-line supervisor with any input regarding Complainant's performance during the rating period.

He asserted that he recognized Complainant's successful performance and gave him words of encouragement for improvements. Complainant's second-line supervisor disputed Complainant's allegation that his rating contained false and negative comments. He asserted that Complainant's immediate supervisor graded Complainant based on his observations of Complainant during his 120-day detail as first-line supervisor. Concerning claim (i), Complainant's second-line supervisor stated that all employees were required by telework instructions to check in and check out with their supervisors via e-mail and provide brief bullet statements outlining their work accomplishments when in telework status. With respect to Complainant's denial of administrative leave during COVID (claim (j)), Complainant's second-line supervisor stated that NAVFAC Southwest's command policy of granting administrative leave (LN) changed in late spring such that supervisors were no longer authorized to allow employees to use LN for COVID-19-related illnesses or for vaccination purposes. Regarding Complainant being stripped of his duties and relocated due to a complaint lodged against him (claim (k)), Complainant's second-line supervisor stated that he was aware that the Production Controller filed a sexual harassment complaint against Complainant. He maintained that he did not know the details of the complaint. He contended that management's action was taken at the direction of Labor and Employee Relations because of the sexual harassment complaint. He asserted that management had the responsibility to remove or relocate the alleged harasser away from the work center where the alleged sexual harassment occurred to prevent recurrence. With respect to claim (l), where Complainant's second-level supervisor *purportedly* took no action after Complainant reported a physical assault to him, Complainant's second-line supervisor maintained that the arc flash incident was reported to Complainant's third-line supervisor on the same day that Complainant reported the incident. Finally, concerning claims (o) and (p), Complainant's second- and third-line supervisors maintained that they were guided by Labor and Employment Relations to have Complainant removed from the UEM Team members pending the results of an investigation regarding Complainant's actions. Complainant's third-line supervisor declared that he agreed with this guidance. He stated that it was his duty to protect all of the employees at the facility. Complainant failed to show that management's reasons were pretext for unlawful discrimination.

### *Hostile Work Environment*

To prove his harassment claim, Complainant must establish that he 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, his race, national origin, color or prior EEO activity. Only if Complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993). See also, Enforcement Guidance on Harris v. Forklift Systems Inc., EEOC Notice No. 915.002 (March 8, 1994).

Having reviewed the record, including Complainant's affidavit, we have concluded that the preponderance of the evidence does not support Complainant's claim of unlawful harassment. In sum, the preponderance of the evidence does not establish that management was motivated by discriminatory or retaliatory animus. The image which emerges from considering the totality of the record is that there were conflicts and tensions with Agency management style that left Complainant feeling aggrieved. However, the statutes under the Commission's jurisdiction do not protect an employee against all adverse treatment. See Bouche v. U.S. Postal Serv., EEOC Appeal No. 01990799 (Mar. 13, 2002). See also Jackson v. City of Killeen, 654 F.2d 1181, 1186 (5th Cir. 1981) ("Title VII is not a shield against harsh treatment at the workplace; it protects only in instances of harshness disparately distributed. The essence of the action is, of course discrimination."). Discrimination statutes prohibit only harassing behavior that is directed at an employee because of his or her protected bases. Here, the preponderance of the evidence does not establish that management was motivated by discriminatory or retaliatory animus. Complainant's claim of harassment in violation of Title VII is precluded based on our findings that Complainant failed to establish that any of the actions taken by the Agency were motivated by his protected bases. See Oakley v. U.S. Postal Service, EEOC Appeal No. 01982923 (Sept. 21, 2000).

As for Complainant's assertions, on appeal, that the Agency Representative(s) engaged in misconduct affecting witness statements, Complainant's Counsel fails to provide support for such claims. Further, while Complainant's Counsel attacks the Agency's handling of the investigation, we find the investigation sufficiently addressed the issues as they relate directly to whether there should be a finding of discrimination in this matter. Lastly, Complainant opted not to request a hearing and instead requested an Agency final decision. The Commission views the hearing process as an extension of the investigative process, designed to ensure that the parties have "a fair and reasonable opportunity to explain and supplement the record and, in appropriate instances, to examine and cross-examine witnesses." See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), 7-1 (November 9, 1999).

Upon careful review of the Agency's final decision and the evidence of record, we find that the Agency correctly determined that Complainant failed to establish that the Agency subjected him to discrimination as alleged. In reaching this conclusion, we note that Complainant has not presented any arguments on appeal that would contradict the Agency's finding of no discrimination or unlawful retaliation.

Accordingly, we AFFIRM the Agency's final decision.

#### STATEMENT OF RIGHTS - ON APPEAL

##### RECONSIDERATION (M0124.1)

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

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

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

Complainant should submit their request for reconsideration, and any statement or brief in support of their request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>

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

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

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

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

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

If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

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

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

FOR THE COMMISSION:



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Carlton M. Hadden, Director  
Office of Federal Operations

January 25, 2024

Date