



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Marx H.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2023003555

Agency No. 200J-618-2022-146193

DECISION

On June 5, 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 May 9, 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.

ISSUES PRESENTED

1. Whether the Agency properly determined that Complainant failed to meet her burden in proving that the Agency denied her a reasonable accommodation.
2. Whether the Agency properly determined that Complainant failed to meet her burden in proving she was subjected to discrimination based on disability and reprisal.

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.

3. Whether the Agency properly determined that Complainant failed to meet her burden in proving she was subjected to a hostile work environment based on disability and reprisal.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Program Support Assistant in the Nutrition & Food Services (NFS) at the Agency's Health Care System facility in Minneapolis, MN. Complainant's supervisor was the Supervisory Administrative Associate for NFS (RMO1). Complainant's second-level supervisor was the Director of NFS (RMO2).

On July 27, 2022, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of disability (mental)² and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 and Section 501 of the Rehabilitation Act of 1973 when:

1. On March 15, 2022, RMO1 terminated Complainant's ability to telework;
2. On April 5, 2022, Complainant's reasonable accommodation request was denied;
3. On May 26, 2022, Complainant requested and was denied overtime pay after she worked late;
4. Complainant was subjected to harassment when:
 - a. On April 11, 2022, RMO1 accused Complainant of not being at her desk;
 - b. On June 2, 2022, RMO1 accused Complainant of saying f*** you during her mid-year review, and accused her of not completing work;
 - c. On August 10, 2022, Complainant was unable to complete a training, and RMO1 said, "it is unfortunate that you did not complete the task as directed," or words to the effect;
 - d. On August 12, 2022, Complainant was issued a Proposed Suspension;
 - e. On August 17, 18, and 22, 2022, Complainant was threatened with Absent without Leave (AWOL).

² Complainant described her medical conditions as migraine headaches, depression, and anxiety disorder. ROI at 108.

The evidence developed during the investigation revealed that Complainant worked from home part-time, as part of a telework agreement. Complainant's telework agreement was approved independent of a reasonable accommodation request. However, Complainant testified that telework allowed her to manage her depression and anxiety symptoms successfully. In January 2022, Complainant started working for a new supervisor, RMO1, who revoked her telework agreement on March 15, 2022, due to repeated performance related issues. Complainant subsequently requested that this be reconsidered and stated that she needed telework as an accommodation for the month of April 2022 for three days a week.

Complainant submitted medical documentation with her reasonable accommodation request that stated she needed to work only three days per week during the month of April 2022. Complainant second-level supervisor, RMO2, who approved this requested accommodation, stated that authorizing two days per week of telework would be inconsistent with Complainant's actual medical needs, which were to work reduced hours. Management also noted that Complainant's telework agreement had been revoked due to repeated production issues, failure to be logged into the system during work hours, and repeated work stoppage issues.

On April 11, 2022, when Complainant met with RMO2 virtually to appeal the denial of her request for telework as a reasonable accommodation at 2:00PM, she received a message from RMO1 at 2:39PM asking her why she was not at her desk. RMO1 also questioned why Complainant was not at her desk that morning. Complainant stated that when she arrives in the morning, she often has things to do away from her desk, including going into the Medical Assistance Service (MAS) Supervisor's office to discuss her work. Complainant alleged that whenever she would give RMO1 the name of someone she was working with, RMO1 would go to that person to verify if Complainant was doing what she said.

Complainant stated that her mid-year review occurred on May 4, 2022, and RMO1 made many negative comments about her work. RMO1 questioned how much work she was doing and regularly sent her emails asking about her work. RMO1 allegedly told Complainant that she needed to be professional and had to give her responses when questioned. Complainant denied using the foul language specified in the claim during the meeting and stated that she eventually hung up on RMO1. However, RMO1 testified that Complainant became very upset during the review meeting and stated, "I do not need to be professional to anyone here F*** you," before disconnecting the call.

RMO1 stated that she provided a copy of the mid-year review in Complainant Performance Appraisal. There was a subsequent meeting on June 1, 2022, to discuss what had happened on the mid-year review meeting. RMO1 brought evidence and a fact-finding report. Complainant stated that the report was never shared with her.

On May 26, 2022, Complainant alleged that she was denied for overtime pay. RMO1 testified that Complainant requested overtime to complete assignments that were part of her typical workload that she had failed to complete during normal work hours. RMO1 testified that Complainant's situation was not the purpose of overtime pay and therefore her request was denied.

Complainant had been given instructions by RMO1 on July 25, 2022, to complete training by an unspecified date. Complainant alleged that when RMO1 checked in with her about taking the training on August 10, 2022, she told Complainant that she needed to complete the training that day. Complainant stated that she was working on a deadline and could not complete the hour-and-a-half training that day, but completed the day after, when RMO1 questioned her again about completing it. Complainant alleged that RMO1 sent her an email using language about it being unfortunate that she did not complete the training. RMO1 stated Complainant did not completing that training as of 5:48PM on August 11, 2022.

On August 12, 2022, Complainant received a proposal for suspension from the Assistant Director of NFS. The proposal included four counts of inappropriate behavior, including what happened in the mid-year review. The proposal also cited failure to follow instructions from her supervisor. Complainant stated that she submitted a response to the proposal but had not received the decision. RMO1 stated that she did not issue the suspension, but that it was the Assistant Director of NFS. The Assistant Director of NFS states that she received conflicting responses from Complainant about the incident during the mid-year review, leading her to question her credibility. The Assistant Director stated that Complainant agreed that what she did in using profanity and unprofessional language was inappropriate.

Complainant testified that she was informed by RMO1 that she would be charged with AWOL if she had not gotten permission from the Assistant Director to be off on August 17, 18, and 22, 2022 and was threatened with AWOL. Complainant stated that the Assistant Director verified that she gave Complainant permission to be off.

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). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

CONTENTIONS ON APPEAL

Complainant did not file a statement on appeal.

On appeal, the Agency argued that in not filing a statement on appeal, Complainant has offered no additional evidence to show the actions of RMO1 or any other management official were based on discrimination.

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

Reasonable Accommodation (Claim 2)

In order to establish that she was denied a reasonable accommodation, Complainant must show that: (1) she is an individual with a disability as defined by 29 C.F.R. § 1630.2(g); (2) she is “qualified” as defined by 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (Enforcement Guidance on Reasonable Accommodation), No. 915.002 (Oct.

17, 2002). The Agency does not dispute that Complainant is an individual with a disability and is qualified for her position. As such, an agency is required to make reasonable accommodations to the known physical and mental limitations of a qualified individual with a disability unless the Agency can show that accommodation would cause an undue hardship. See 29 C.F.R. §§ 1630.2(o), (p).

The term “reasonable accommodation” means, in pertinent part, modifications or adjustments to the work environment, or to the manner or circumstances under which the position held is customarily performed that enable a qualified individual with a disability to perform the essential functions of the position in question. See 29 C.F.R. §1630.2(o)(1)(ii). Reasonable accommodations may include but are not limited to job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities. 29 C.F.R. §1630.2(o)(2)(ii).

In her testimony, Complainant alleged that management denied her a reasonable accommodation in April 2022 to telework three days a week. In the initial denial on April 6, 2022, management stated that Complainant’s reasonable accommodation request for telework was denied because her previous telework agreement (separate from the reasonable accommodation process) was terminated due to Complainant not completing tasks in a timely manner and failing to communicate with management about work issues as they arose. ROI at 225.

We find that a request for telework in this situation was not an effective accommodation. It is well established in the record that Complainant had performance issues while teleworking, including specific issues related to communicating with management in a virtual setting. See e.g., ROI at 183. Given that Complainant did not perform adequately when teleworking, the Agency was not required to provide her with a telework agreement through the reasonable accommodation process.³

³ The Commission has long held that the Agency is not required under the Rehabilitation Act to lower the performance standards of a position to accommodate an individual with a disability. See Olson v. Department of Treasury, EEOC Appeal No. 01983200 (July 19, 2001); Graziano v Department of the Navy, EEOC Agency Appeal No. 0120070745 (April 15, 2009).

Additionally, in the official reasonable accommodation denial decision, RMO2 found that the accommodation requested would not only be ineffective, but that it would require removing essential functions of Complainant's job. ROI at ROI at 198-199. RMO2 stated that as part of Complainant's duties she was the primary contact to the department for those who come into NFS, sent appointment letters to patients that could only be performed in the office, and was needed to be in the office to timely address any pay related issues that arose regarding her timekeeping duties for the NFS. ROI at 217.

Nonetheless, it should be noted that Complainant was ultimately granted an accommodation to work three days a week during April 2022, after she submitted additional medical information to support her request. ROI at 228-229. Therefore, we find that Complainant has not established that she was denied a reasonable accommodation.

Disparate Treatment (Claims 1 and 3)

To prevail in a disparate treatment or reprisal claim, Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). First, she must generally 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. Co. v. Waters, 438 U.S. 567, 576 (1978). Proof of a prima facie case will vary depending on the facts of the particular case. McDonnell Douglas, 411 U.S. at 802 n. 13.

Prima Facie Case

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. Dep't of the Air Force, EEOC Appeal No. 2021004539 (August 17, 2023).

As stated herein, it is undisputed that Complainant is a qualified individual with a disability. It is also disputed that the adverse actions in claims 1 and 3 involved adverse actions as alleged. As it relates to prong (4) of a prima facie case of disability discrimination, Complainant offers arguments of pretext, but no convincing arguments to establish that a causal relationship existed

between her disability and the agency's actions in claims 1 and 3. However, in support of her disparate treatment claim in claim 3, Complainant alleged that another employee (C1) was allowed to have overtime or comp time when they worked outside of their regular tour of duty. C1 was identified as a Budget Tech. ROI at 379.

To be considered "similarly situated" enough to support a claim of disparate treatment, all relevant aspects of the comparative employee's work situation must be identical or nearly identical to that of Complainant, including, but not limited to reporting to the same supervisor, performing the same job function, and working the same schedule. See Cantu v. Dep't of Homeland Sec., EEOC Appeal No. 01A60528 (Jul. 14, 2006); Grappone v. Dep't of the Navy, EEOC No. 01A10667 (Sept. 7, 2001) reconsideration denied, EEOC Request No. 05A20020 (Jan. 28, 2002). Since C1 is a Budget Tech and Complainant is a Program Support Assistant, we do not find that C1 is sufficiently similar to Complainant to provide support for a prima facie case of discrimination. Therefore, we find that Complainant has failed to establish a prima facie case of disability discrimination in claims 1 and 3.

A complainant may establish a prima facie case of reprisal by showing that: (1) she engaged in a protected activity; (2) the agency was aware of the protected activity; (3) subsequently, she was subjected to adverse treatment by the agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000). A causal link can be inferred where there is temporal proximity between the protected activity and the adverse treatment. The proximity must be "very close" and a period of more than a few months may be too attenuated. See Clark County School District v. Breeden, 532 U.S. 268, 273-4 (2001); see also, Whitmere v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000) (nexus found when agency action followed complainant's participation in protected activity by approximately four (4) months).

Here, Complainant described her protected activity as filing a formal complaint against the Department Director on February 24, 2022. Complainant asserted that she informed RMO1 about her protected activity in January 2022. However, RMO1 testified that she was not aware of any protected activity from Complainant besides the instant case. ROI at 182. In stating this, RMO1 did not provide any specific date indicating when she learned of Complainant's instant complaint. The record reveals that Complainant initially contacted an EEO Counselor for this complaint on May 18, 2022. ROI at 25.

Since Complainant's protected activity in the instant case occurred before the incident described in claim 1, we find that she has failed to establish a prima facie case of reprisal.

However, the incident described in claim 3 occurred on May 26, 2022, just a few days after Complainant initiated EEO contact for the instant complaint. Given RMO's vague response to the investigative question, we find that she may have had knowledge as early as the date Complainant initiated EEO contact. Therefore, we find that Complainant has established a nexus between her protected activity and the denial of overtime pay through temporal proximity. We further find that Complainant has established a prima facie case of reprisal in claim 3.

Legitimate, Nondiscriminatory Reasons

After establishing a prima facie case, the burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Tex. Dep't of Cmty. Affs. v. Burdine, 450 U.S. 248, 253 (1981). Should the Agency carry its burden, Complainant must then prove, by a preponderance of the evidence, that the Agency's explanation is a pretext masking discrimination. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 143 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993); Burdine, 450 U.S. at 256.

In claim 1, Complainant alleged that on March 15, 2022, RMO1 terminated her ability to telework. Complainant alleged that she teleworked for almost a year until RMO1 became her manager in January 2022. RMO1 stated that Complainant's telework was terminated because she failed to communicate with her supervisor within 15 minutes of an IT issue, that resulted in work stoppage; failed to complete high priority work in a timely manner, that impacted timely patient care; was continuously unprofessional; and failed to adhere to the Letter of Instruction that was issued to her on February 1, 2022. ROI at 183. RMO1 added that Complainant was not meeting deadlines or providing work in a timely manner. Id. RMO1 also stated that she had to send daily emails to Complainant regarding the work that she needed to complete. Id. RMO2 stated that Complainant had a history of not completing her full scope of assignment without reminders prior to or after the agreed upon due date. ROI at 213.

In claim 3, Complainant alleged that on May 26, 2022, she requested and was denied overtime pay after she worked late. Complainant stated that she worked 45 minutes late to complete a cleanup task (clearing her workspace for a new workstation) RMO1 ordered her to complete that day.

In response, RMO1 stated that Complainant was provided a notice in writing that stated all requests to stay late need to be sent in writing by 3:30PM. ROI at 191. RMO1 stated that Complainant did not do so in this instance but was nonetheless compensated for the time and provided a new written notice for her awareness moving forward. Id.; See ROI at 316-317 (showing Complainant's comp time was approved). When asked about the cleanup task, RMO1 stated that Complainant was provided well over a month to complete the task and clarified that she was not instructed to stay late to complete this task, nor was it necessary. Id.

We find that the Agency has proffered legitimate, nondiscriminatory reasons for its actions.

Pretext

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

In claims 1 and 3, Complainant alleged that her disability was a factor in the Agency terminating her telework agreement and denying her overtime pay because she believes management was unhappy about the time she spent on leave for FMLA. Complainant stated that her EEO activity was a factor in claims 1 and 3 because RMO1 was upset that she filed an EEO complaint. In arguing this, Complainant does not provide any evidence to support her assertions. We note, as discussed above, that the Agency did in fact approve Complainant's time for working late in claim 3. Additionally, we find that Complainant has not shown that the Agency's proffered reasons are not worthy of belief and her bare assertions that management officials discriminated against her are insufficient to prove pretext or that their actions were discriminatory or retaliatory.

Accordingly, we find that Complainant has failed to establish that the Agency subjected her to discrimination based on disability and reprisal in claims 1 and 3.

Harassment/Hostile Work Environment (Claim 4)

As discussed above, Complainant has not provided sufficient arguments or evidence that claims 1, 2, or 3 were motivated by discrimination or reprisal. As such, we do not find those claims to be supportive of Complainant's harassment claim. See Oakley v. U.S. Postal Serv., EEOC Appeal No. 01982923 (Sept. 21, 2000). Complainant, therefore, remains with claims A-E to support her harassment claim on the bases of disability and reprisal.

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).

To prevail in her claim of retaliatory harassment, Complainant must show that she was subjected to conduct sufficient to dissuade a "reasonable person" from making or supporting a charge of discrimination. See Burlington Northern and Santa Fe Railway Co. v. White, 548 U.S. 53, 57 (2006); EEOC Enforcement Guidance on Retaliation and Related Issues, EEOC Notice No. 915.004, § II(B)(3) & n. 137 (Aug. 25, 2016). It is important to note, that only if both elements are present, a chilling effect on protected EEO activity *and* retaliatory motivation, will the question of Agency liability for reprisal-based harassment present itself. See Janeen S. v. Dep't of Commerce, EEOC Appeal No. 0120160024 (Dec. 20, 2017) (emphasis added).

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). In this case, we find that the complained of conduct in these claims did not occur as Complainant described, or it was related to the management of Complainant's assignments, performance, and conduct.

In claim A, Complainant alleged that she was subjected to harassment when RMO1 accused her of not being at her desk. Complainant stated that RMO1 was working from home when she accused her of not being at her desk. However, Complainant herself admitted that she was in fact not at her desk at one point when RMO1 was inquiring into her whereabouts. ROI at 134-135. In response, RMO1 stated that she is not aware of this specific instance but added that she does morning check ins with her staff every day. ROI at 184. RMO1 added that Complainant was late almost every day, and after she is late, she leaves her area. Id.

In claim B, Complainant alleged that she was subjected to harassment when RMO1 accused Complainant of using profanity and being unprofessional during her mid-year review. Complainant denied using profanity and stated that RMO1 only had negative comments about her work. RMO1 testified that Complainant did in fact use profanity in a meeting with her when they were discussing her performance. ROI at 185. RMO1 stated that a fact-finding investigation was done on the incident. Id.

In claim C, Complainant alleged that she was subjected to harassment when RMO made a negative comment to her when she did not complete a requested training. Complainant admitted that she did not complete the training as her supervisor, RMO1, requested but still that RMO1 was just looking for a reason to be critical of her. ROI at 136. RMO1 stated that this happened as alleged when Complainant did not complete a training that she had a month to complete. ROI at 185.⁴

⁴ We note that Title VII is not a civility code. Rather, it forbids "only behavior so objectively offensive as to alter the conditions of the victim's employment." Oncale v. Sundowner Offshore Serv., Inc., 523 U.S. 75, 81 (1998).

In claim D, Complainant alleged that she was subjected to harassment when she was issued a proposal of suspension. Complainant did not deny any of the incidents cited in the proposal of suspension. In fact, Complainant admitted to doing some of the incidents cited in the proposal and that her behavior was inappropriate. See ROI at 136, 245.

In claim E, Complainant alleged that she was subjected to harassment when she was threatened with AWOL. However, Complainant admits that she was given annual leave after RMO1 was able to verify that Complainant had prior approval for leave. RMO1 denied this allegation stating that Complainant was not threatened with AWOL and paid appropriately for her time. ROI at 186. RMO1 also stated that she was out on leave at the time of this incident, so she was unable to talk with the Director of FNS (who approved Complainant's leave) before speaking with Complainant. Id. The Director of FNS confirmed that she acknowledged Complainant's message stating that she was going to be late, and that Complainant was paid for her time. ROI at 233-234.

Reviewing the record, we find no evidence to establish that these work-related incidents were abusive or offensive, or taken in order to harass Complainant on the basis of a protected class. Accordingly, we find that Complainant did not establish that the Agency subjected her to harassment based on disability or in reprisal for prior protected EEO activity.

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.

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

December 30, 2024

Date