



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Laverne O.,¹
Complainant,

v.

Gina M. Raimondo,
Secretary,
Department of Commerce
(Patent and Trademark Office),
Agency.

Appeal No. 2023004270

Agency No. 22-56-01

DECISION

On July 21, 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 June 22, 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. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission AFFIRMS the Agency's final decision.

ISSUE PRESENTED

The issue is whether the Agency properly issued a final decision (FAD) concluding that Complainant was not discriminated against regarding non-selections for positions to which he applied based on his race (Asian/Indian), national origin (Indian), sex (male), and age (52 [born July 1969]).

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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Primary Patent Examiner, GS-1224-14 at the Agency's Art Unit (AU) 3625, Technical Center (TC) 3600 in Alexandria, Virginia. Complainant's first-level supervisors (Supervisors 1A and 1B) were Supervisory Primary Patent Examiners (SPEs). His second-level supervisors (Supervisors 2A and 2B) were Group Directors. Report of Investigation (ROI) at 81. Complainant, born in 1969, was 52. He is an Asian/Indian male of Indian descent. ROI at 82.

On October 6, 2021, Complainant initiated EEO contact. On January 10, 2022, Complainant filed an EEO complaint (with subsequent amendment on March 1, 2022) alleging that the Agency discriminated against him on the bases of race (Asian), national origin (Indian), sex (male), and age (52) when:

1. On or about September 14, 2021, Complainant was non-selected for a Supervisory Patent Examiner ("SPE"), GS-15, position under Vacancy Announcement Number TC3600-2021-0002;
2. On or about October 13, 2021, Complainant was non-selected for a Supervisory Quality Review Specialist, GS-12, position under Vacancy Announcement Number OPQA-2021-0001;
3. On or about October 22, 2021, Complainant was non-selected for a Patent Examiner Trainer, GS-1224-14, detail under Vacancy Announcement Number JJ-21-0008-DT;
4. On or about October 27, 2021, Complainant was non-selected for a Technology Quality Assurance Specialist, GS-14, detail under Vacancy Announcement Number KC-2021-0002-DT;
5. On or about November 2021, Complainant was non-selected for a SPE Trainer, GS-15, position under Vacancy Announcement Number OTA-2021-0002; and
6. On or about February 15, 2022, Complainant was non-selected for a Data Scientist, GS-14, detail under Vacancy Announcement Number WMD-22-07.

The Agency stated that Complainant withdrew Claims 2 through 6, conceding that no evidence of discrimination existed for those claims.

Complainant did not contest the Agency's statement, later citing to the Final Agency Decision (FAD) at 2, and asserting on appeal that the procedural history as described by the Agency was correct.

The Agency conducted an investigation into the complaint. The investigation revealed that on or around May 28, 2021, the Agency's Office of Human Resources (OHR) posted vacancy announcement for a SPE position in TC3600, which was announced under vacancy number TC3600-2021-0002 on USAJOBS. ROI at 133-37. The vacancy announcement listed the duties of the SPE position and contained the requisite materials necessary to apply and the qualification and evaluation standards used by OHR and the hiring managers. ROI at 134-35. The vacancy announcement explained eligibility for consideration and qualifications for the SPE position would be determined based on applicant's detailed resumes and their response to job-specific self-assessment questions about their knowledge, skills, abilities, and competencies ("KSA"). ROI at 134. The vacancy announcement also explained that OHR would evaluate resumes and KSA responses and that "[t]he best qualified candidates [would] be identified for referral to the hiring manager and may be invited for an interview." ROI at 134-35.

The selecting officials for the SPE position were Supervisor 2A (South Asian, Pakistan, male, YOB: 1965); a third Group Director (Selecting Official 2 [White, American, female, YOB: 1967]); a fourth Group Director (Selecting Official 3 [White, American, male, YOB: 1966]); and an Acting Group Director (Selecting Official 4 [White, American, male, YOB: 1985]). ROI at 94, 100, 106, 111, 370-71; and Supplemental Case File (SCF) at 83. Selecting Official 2 was the designated selection official for the vacancy announcement; however, each Group Director was responsible for selecting new SPEs for their respective AUs based on specific needs and backgrounds. ROI at 95 and SCF at 83. The Group Directors were also responsible for conducting second-round interviews. SCF at 83.

Except for Selecting Official 3, the Group Directors were unaware of Complainant's race, national origin, age, and sex during the time of his application and interviews. Supervisor 2A however knew that Complainant was from South Asia; and Selecting Officials 3 and 4 also perceived him as being over 40 years old. ROI at 94, 100, 106, 111, and 370-71. Two Technology Center Operations Managers (Manager 1 [White, American, female, YOB: 1975]); and (Manager 2 [Asian, Asian-American, male, YOB: 1982]), also participated in the interviews but did not have decision making authority regarding selections. ROI at 118 and 124.

After the vacancy announcement closed on June 19, 2021, OHR referred approximately 155 qualified applicants, including Complainant, to TC3600 for consideration. ROI at 94, 118, and SCF at 82. A panel of three SPEs then use a rubric to review and score each applicant's submission on qualifications that included leadership, technical experience, and written communication. ROI at 95 and 118. The SPE panelist interviewed 75 of the 155 applicants and referred the top 39 interviewees, including Complainant, to the Group Directors for second interviews. Id.

The Group Directors conducted the second-round of interviews from August through September 2021. ROI at 118. During the interviews, each panelist (participating Group Directors, and Managers 1 and 2) took turns asking candidates the same predetermined questions, which were formulated to assist the Group Directors in obtaining information about each candidate's skills and qualifications. ROI at 101 and 118. Following the interviews, the Group Directors discussed and ranked each candidate's performance based on the depth and quality of their responses to the predetermined questions, with only the top ranked candidates receiving further consideration. ROI at 101, 107, 112-13, 118-19, 124; and SCF at 36 and 83.

Based on these rankings and a review of candidates' work product and performance, the Group Directors selected 11 candidates (Selectees) for the SPE positions. Selectee 1 (White, male, YOB: 1972) ranked second. Selectee 2 (White, female, YOB: 1981) ranked ninth. Selectee 3 (White, male, YOB: 1978) ranked sixth. Selectee 4 (White, male, YOB: 1982) ranked 24th. Selectee 5 (Asian, female, YOB: 1982) ranked fifth. Selectee 6 (White, female, YOB: 1984) ranked tenth. Selectee 7 (Asian, male, YOB: 1977) ranked third. Selectee 8 (White, male, YOB: 1984) ranked 25th. Selectee 9 (White, female, YOB: 1982) ranked seventh. Selectee 10 (White, male, YOB: 1981) ranked 20th. Selectee 11 (Asian, male, YOB: 1984) ranked 17th. ROI at 127-31, SCF at 33, and Supplemental ROI (SROI) at 178, 388, 416, 485, 555, 626, 697, 797, 857, 922, and 986. Once the Group Directors agreed on the final selections, Selecting Official 2 signed the certificate list as the designated selection official. SCF at 83.

Complainant had his second interview with Supervisor 2A, Selecting Officials 3 and 4, and Managers 1 and 2 on August 24, 2021. Selecting Official 2 did not participate in Complainant's second interview because she was on leave. ROI at 82 and 95. According to Supervisor 2A, a lot of the assessment was based on the substance of the answers. ROI at 101. He stated that while some of the candidates "went really into depth about how they would respond to certain situations," Complainant did not. Id.

Selecting Official 3 stated that he was “looking for a more-in-depth answer that showed that the candidate really understood the situation, how an examiner’s personality might affect their approach, and may other complications of the situation.” ROI at 107. He also noted that candidates who gave that kind of in-depth answer would score higher than those who did a “very light touch” with their answers. Id. Regarding Complainant’s interview, Selecting Official 3 stated that Complainant “did ok” but the four selectees assigned to Selecting Official 3 “answered more in-depth.” Id.

Selecting Official 4 was unable to recall Complainant’s interview specifically, stating that he did not write down as much about Complainant’s interview as he did for other candidates because Complainant “was not saying things that [he] thought were good points and important to remember about him.” ROI at 113. Manager 1 stated that she did not believe Complainant “stood out as good or bad” and that it was just a “middle of the road interview.” ROI at 119.

Based on his performance as evaluated by the panelists, Complainant was placed near the bottom of the list of the 39 candidates interviewed during the second-round. Specifically, Complainant ranked 31. ROI at 82. As a result of his ranking, Complainant was not selected for a SPE position. ROI at 95, 101, 107, and 113. On September 14, 2021, Complainant learned that he was referred but was not selected for the position. ROI at 24, 36, and 81.

Complainant contended that he was more qualified for the SPE position than the female Selectees, asserting that he was not selected for the SPE position because Selectees 5 and 6 (who he stated he has more supervisory and training experience than when combined) received preferential treatment due to their race, sex, and age. He noted that he has over 20 years of experience as a patent examiner and previously worked in the private industry as a mechanical engineer for several years. He also noted that he has trained over 75 patent examiners at the Agency, and supervised 50 patent examiners as a trainer in the Patent Training Academy (Academy) from 2008-2009.

According to Complainant, he is one of the few patent examiners who have examined applications in both the Business Methods and Mechanical areas of TC3600, and has conducted multiple 101 workshops for patent examiners in other TCs. Complainant maintained that none of the Group Directors could provide a single example of an answer from Selectees 5 and 6 that was more thoughtful and in-depth as his responses to the predetermined questions. ROI at 83-5 and 921-24.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. The AJ assigned to the case ordered a supplemental investigation and requested extensive documentation and written discovery. Complainant however subsequently withdrew his request. On April 28, 2023, the AJ issued an order dismissing and remanding the complaint back to the Agency. The AJ also ordered that the Agency supplement the ROI with the documents Complainant obtained during the hearing stage. SCF at 1-161. Consequently, the Agency issued a final decision (FAD) pursuant to 29 C.F.R. § 1614.110(b). The Agency concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

CONTENTIONS ON APPEAL

On appeal, among other things, Complainant contests the FAD and reiterates his allegations. He asserts that the Agency's conclusion that discrimination did not occur was a mistake, stating that the Agency did not consider all the facts in the record. To support his assertions, Complainant contests the Agency's statements that selecting officials were unaware of his protected bases, stating that this was unreasonable due to his interactions with some of them during his years of employment at the Agency. Complainant also cites extensively to information obtained in depositions during the hearing process that would require credibility determinations.

For example, Complainant asserts that he was treated differently because Supervisor 2A used a set of criteria to evaluate his interview performance that Supervisor 2A did not use to evaluate Selectees' interview performance. Complainant bases that assertion on interview notes, including Supervisor 2A's observation about Complainant's interview presence, energy, emotion, and vocal variations. While Complainant asserts that such observation was not in interview notes for the Selectees, he cites to Supervisor 2A's observation that Selectee 4 was having trouble finishing his sentences. Complainant also cites to an alleged argument between Selecting Officials 2 and 3 regarding selection of Selectee 10 who, Complainant asserts, ranked 3rd in the final rankings. This, he argues, shows that there is a bias against hiring older Indian males as supervisors.

Complainant requests that the Commission reverse or change the FAD, listing the relief he should be granted if the Commission finds in his favor.

In response, among other things, the Agency reiterates its stated reasons for Complainant's non-selection. The Agency also cites extensively to information in Complainant's deposition, including that Complainant himself conceded he could have added much more detail to his second-round interview responses; and acknowledging he failed to mention multiple specific instances that could have bolstered his performance. The Agency requests that the Commission reject Complainant's appeal and affirm its FAD.

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

Preliminary Matter

We note the parties' extensive citation to information obtained in depositions while this case was before an AJ in the hearing process. We also note that the AJ ordered that the Agency supplement the ROI with the documents Complainant obtained during the hearing stage. Those documents are mostly Complainant's analysis and reactions to the interview notes. However, because Complainant withdrew his hearing request, he failed to avail himself of the discovery process which would have allowed for an examination of the credibility or lack thereof of management's explanations, and we can only evaluate the facts based on the weight of the evidence presented to us. Therefore, while we consider as background for Complainant's claims the documents he obtained during the hearing stage, we decline to address the substance of information obtained in depositions as they raise credibility determinations that can only be made by an AJ.

Disparate treatment based on race, national origin, sex, and age (Claim 1)

The Commission has adopted the burden-shifting framework for analyzing claims of discrimination outlined in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). To establish a prima facie case of disparate treatment, a complainant must show that: (1) they are a member of a protected class; (2) they were subjected to an adverse employment action concerning a term, condition, or privilege of employment; and (3) they were treated differently than similarly situated employees outside their protected class, or there was some other evidentiary link between membership in the protected class and the adverse employment action. See Nanette T. v. U.S. Postal Serv., EEOC Appeal No. 0120180164 (March 20, 2019); McCreary v. Dep't of Def., EEOC Appeal No. 0120070257 (Apr. 14, 2008); Saenz v. Dep't of the Navy, EEOC Request No. 05950927 (Jan. 9, 1998).

In a non-selection case, a complainant can establish a prima facie case of discrimination by showing that they: (1) are a member of a protected group; (2) applied for a position for which they were qualified; (3) were not selected for the position; and (4) someone from outside of their protected group was selected for the position under circumstances that, if unexplained, would support an inference of discrimination. See German D. v. Dep't of Homeland Sec., EEOC Appeal No. 2019000743 (Aug. 19, 2020) (citing McDonnell Douglas Corp., 411 U.S. at 802).

A complainant may establish a prima facie case of age discrimination by showing that he or she is in the protected group (over age 40) and was treated less favorably than someone substantially younger than the complainant. See O'Connor v. Consolidated Coin Caterers Corp., 517 U.S. 308 (1996); Nevin v. Tennessee Valley Authority, EEOC Appeal No. 01992795 (February 14, 2002).

Once Complainant has established a prima facie case, the burden of production 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 Center v. Hicks. 509 U.S. 502 (1993).

Complainant established a prima facie case of discrimination to the extent that he is an Asian/Indian male of Indian descent who is over 40. He was also a qualified applicant to a vacancy, and he was not selected. The Agency has however provided legitimate nondiscriminatory reasons for Complainant's non-selection; and we find no persuasive proof of pretext.

The Group Directors deny discriminating against Complainant based on his protected classes. ROI at 96, 102, 108, 113, and 371. Supervisor 2A, Selecting Officials 3 and 4, and Manager 1 asserted that Complainant's interview performance was average at best, explaining that he failed to provide detail or in-depth responses to the predetermined questions as did the Selectees. ROI at 101, 107, 113, and 119. The record includes contemporaneous notes taken by the Group Directors and Managers 1 and 2 for each second-round interview that corroborate the Selecting Officials' assertions. ROI at 118 and 124. See SROI at 2, 51, 119, 128 and ROI at 227 (notes from Complainant's interview responses) to compare with SROI at 23, 53, 115, 130-31, SROI at 9, 19, 80, 163-64, 1071, SROI at 2, 17, 55, 132-33, SROI at 10, 33, 83, 165-167, 1073, SROI at 2, 22, 121-22, 128-29, SROI at 20, 89, 171-73, 1057, SROI at 3, 16, 60, 124-25, 138-40, SROI at 6, 36, 73, 152-54, 1062, 1079, SROI at 25, 68, 100, 149-51, 1063, SROI at 18, 66, 95-6, 147-48, and SROI at 7, 24, 75, 155-57, 1074 (interview notes for each of the Selectees).

We next turn to Complainant to show pretext. The Commission has stated that proof of pretext includes discriminatory statements or past personal treatment attributable to the named managers, unequal application of agency policy, deviations from standard procedures without explanation or justification, or inadequately explained inconsistencies in the evidentiary record. See Ricardo K. v. Dep't of Veterans Affairs, EEOC Appeal No. 2019004809 (December 10, 2020) (citing January B. v. Dep't of the Navy, EEOC Appeal No. 0120142872 (Dec. 18, 2015) (Citing Mellissa F. v. U.S. Postal Serv., EEOC Appeal No. 0120141697 (Nov. 12, 2015))).

Here, Complainant's allegations are based on his belief that his protected bases were factors in his non-selection. He however failed to show pretext because he failed to establish a link between the challenged non-selection and those protected bases. Nor did he present any evidence to refute management's explanations or demonstrate that the non-selection was motivated by discriminatory animus.

For example, the record reflects that the 11 candidates were within and outside of Complainant's protected bases, including at least two Asian males.

Despite his appeal contentions, Complainant also failed to dispute the Selecting Officials' interview notes reflecting that in response to question 1, pertaining to the role of a SPE and qualifications for the position, panelists' notes uniformly indicate that Complainant stated that a SPE is a leader, coach, and mentor for examiners with little additional detail or depth in response. In response to question 3, regarding pendency reduction, panelists' notes indicate that he responded by talking about a case he had paused on his docket for a year and not on specifics of how he, as a SPE, would handle the situation besides indicating a "good relationship" with examiners is important. In response to question 4, regarding changes to patent application routing, he stated that office morale for examiners was low because of too many changes happening all at once, indicating that communication will assist a SPE in addressing these changes. In response to question 5, regarding potential disagreement with a director's policy decision, panelists' notes indicate he reinforced the "hierarchy" of the office and the need to respect the policy, without offering much detail or depth on how he would handle that with his examiners. ROI at 227 and SROI at 2, 51, 119, and 128.

Moreover, contrary to Complainant's assertions, the record does include interview response notes taken for each of the female selectees, including Selectees 5 and 6 for whom Complainant alleged the Agency did not include examples of interview responses that was more thoughtful and in-depth as his responses. The notes reflect that in responding to question 1, Selectee 5 mentioned her role as a trainer and discussed her experiences training work groups and the Patents office on various issues. In response to question 3, she provided details about multiple aspects of the new classification system. At the end of her interview, she again referenced her experiences as an examiner and trainer. SROI at 2, 22, 121-22, and 128-29. As for Selectee 6, in response to question 1, [REDACTED] referenced her past employment at Exxon Mobil, her TQAS details, her work on signatory authority panels, and her experience examining patent applications in discussing the role of a SPE and what skills she would bring to the position. In response to question 3, she referenced the Strategic Plan and discussed specific ways to support the Agency and examiners in reducing pendency. In response to question 4, she again referenced the mission of the Agency in addressing the new classification system and how she would handle those issues as a SPE. At the end of her interview, she mentioned her experiences outside Business Methods, her work at Lockheed Martin building satellites, her experience with nuclear regulatory communication, and her experience with other technologies. SROI at 20, 89, 171-73, and 1057.

Complainant also contended that he should have been selected for the SPE position because he had more supervisory and training experience than Selectees 5 and 6 combined, asserting that the two Selectees received preferential treatment due to their race, sex, and age; and insinuating that favoritism occurred. However, while favoritism is a practice prohibited by most agencies, favoritism, without more, is not a violation of Title VII or EEOC Regulations. See Alcocer v. U.S. Dep't of the Air Force, EEOC Appeal No. 01851239 (Jan. 30, 1987).

Importantly, the Commission has also held that employers have the discretion to choose among equally qualified candidates as long as the selection is not based on unlawful criteria. See Merle J. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120143212 (Feb. 11, 2016); King v. Dep't of the Army, EEOC Appeal No. 0120064903 (Apr. 11, 2008) (noting that agency officials are afforded broad discretion in the use of subject criteria when filling a supervisory position).

The Commission has also held that agencies may select candidates with fewer years of experience if they believe that such candidates are best qualified to meet the needs of the organization. Complainant v. Dept. of Justice, EEOC Appeal No. 0120131151 (Feb. 25, 2015). They may even preselect a candidate as long as the preselection is not premised upon a prohibited basis. Complainant v. Dept. of Homeland Sec., EEOC Appeal No. 0120132858 (Mar. 9, 2015).

Here, Complainant has failed to describe any management action or inaction to support a conclusion that his non-selection was premised on a prohibited basis. Therefore, while Complainant believed he was more qualified than some of the selectees, that belief, without more, does not prove that his non-selection was based on any of Complainant's protected bases. Nor does an argument between Selecting Officials 2 and 3 regarding whether a selectee within Complainant's protected bases would not make a good SPE alone, without more, support a conclusion that there was a bias against hiring older Indian males as supervisors.

To support such a conclusion, Complainant must establish that the argument was over whether an older Indian male would make a good supervisor. Instead, the record reflects that the selecting officials were not overtly discussing these protected bases of the candidate at issue but only whether a particular candidate who happened to be an older Indian male, would be a good SPE.

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.

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 14, 2025

Date