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

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

v.

Kristi L. Noem,
Secretary,
Department of Homeland Security
(Transportation Security Administration),
Agency.

Appeal No. 2023004356

Hearing No. 520-2022-00230X

Agency No. HSA-TSA-00094-2019

DECISION

On July 27, 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 27, 2023, final order 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 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 order.

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

ISSUES PRESENTED

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

Whether the Agency discriminated against Complainant on the bases of race, sex, disability, age, and in reprisal for prior protected EEO activity.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Program Assistant (PA) at the Agency's Newark Field Office, located in West Orange, New Jersey. On February 22, 2019, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (Black), sex (female), disability (Post Traumatic Stress Disorder and Major Depression), age (54), and reprisal (prior protected EEO activity) when, on October 16, 2018, she was forced to apply to the Reasonable Accommodation Program (RAP), denied telework, and forced to apply for disability retirement.

Until she went out on disability retirement in 2019, Complainant worked as a PA in the Newark Field Office of the Federal Air Marshal Service (FAMS). Complainant was a FAMS civilian employee whose job was sedentary in nature. Her duties included basic office administration such as payroll, timekeeping, workers' compensation claims, and reviewing and processing travel vouchers for Federal Air Marshals (FAM). She was also the alternate travel card point of contact. Unlike FAMs, Complainant was not a law enforcement employee.

On July 24, 2018, Complainant and a co-worker (Coworker) had a verbal altercation in the office at the end of a workday. Coworker approached Complainant in an angry and loud manner, waving a FedEx envelope. As a result, Complainant filed an Office of Workers' Compensation Program (OWCP) claim. Complainant claimed that she suffered a trauma stress disorder in July 2018, followed by post-traumatic stress disorder (PTSD) and Major Depression in October 2018. Her symptoms included poor concentration, fear, lack of sleep, avoidance, anxiety, "crying spells and bad moods." Complainant took leave and applied for OWCP benefits. An Administrative Supervisory FAM (Complainant's former supervisor) was copied on the email regarding Complainant's filing of OWCP Form CA-1. Complainant's request for OWCP benefits was not approved.

A new Administrative Supervisory FAM (Supervisor1) (male, Hispanic, 44 years old) became Administrative Supervisory FAM for the Newark Field Office and Complainant's supervisor in September 2018. As Complainant's leave was running out, she contacted her supervisor to advise him that she would be requesting to telework or work at the union building, as suggested by her therapist. Complainant planned a return to work on September 17, 2018 "with restrictions." Complainant advised Supervisor1 that her medical professionals recommended that she either transfer to another building to work or be allowed to telework from home as long as Coworker was still in the office and the matter was unresolved. On September 6, 2018, she forwarded an OWCP form with these restrictions to Supervisor1. According to Complainant, either location was acceptable as long as she was not working out of the West Orange Field Office.

On September 11, 2018, Supervisor1 consulted an Employee Relations Specialist (ER Specialist) at Agency Headquarters. ER Specialist suggested that Supervisor1 contact the Reasonable Accommodation Program (RAP) office, which executes the RAP written policy for advice on Complainant's request. The RAP Manager is the deciding official for all reasonable accommodation requests. On September 11, 2018, RAP Manager discussed Complainant's situation with Supervisor1. RAP Manager emailed a reasonable accommodation request form to Supervisor1 for Complainant to complete and return. RAP Manager noted that with the short time frame (a scheduled return on September 17, 2018), the RAP office would be unable to address the request, and she recommended that Complainant be allowed to work at a different location from Coworker.

On September 12, 2018, Complainant requested telework via a memorandum dated September 9, 2018, as a backup plan if other arrangements were not made by September 14, 2018. On September 13, 2018, Supervisor1 asked Complainant to complete a form to start the reasonable accommodation process. Supervisor1 advised Complainant that she had permission to work temporarily at the union office while she went through the reasonable accommodation process, as recommended by the RAP office and the Employee Relations Office. The union office was closer to where Complainant lived than the West Orange office. Complainant told Supervisor1 that she was not going to apply to the RAP office "because I wasn't seeking employment elsewhere in the agency nor in any other federal agency (transfer or another position) which is what RAP assists employees with."

Complainant began to work at the union building on September 17, 2018. On October 11, 2018, Complainant showed the RAP Policy to Supervisor1, arguing that the RAP office did not apply to her. She did not submit the application as requested at that time although she resumed work, at the union office instead of her regular West Orange office. Complainant told Supervisor1 that she was "not filling out the form because I know the program doesn't make administrative decisions to allow me to work at the union building and I wasn't looking for a position elsewhere." Complainant concluded that none of the "three categories of reasonable accommodations" applied to her situation.

On October 15, 2018, Complainant submitted an OWCP form to Supervisor1 containing the additional restriction of not working as the alternate travel card point of contact/performing travel card duties because that might require her to have contact with Coworker. Complainant's form specifically indicated that she could no longer work with the Travel Card program as it might exacerbate her psychological symptoms if she were to communicate with Coworker, who was the primary Point of Contact for the travel card program. Complainant recalled that it was on that date that the supervisor stated it "appears to be a request for reasonable accommodation."

On October 16, 2018, Supervisor1 consulted Employee Relations, which advised that because Complainant's OWCP claim was denied, her request was more appropriate for the reasonable accommodation process. Employee Relations recommended that Complainant be asked to apply for reasonable accommodation. On October 16, 2018, Supervisor1 informed Complainant, based on his consultation with the RAP office and Employee Relations, that Complainant appeared to have requested reasonable accommodation, and he again sent her the reasonable accommodation form. Thereafter, Complainant initiated EEO counseling.

From September 17, 2018, until mid-December 2018, Complainant worked full-time in the union building and as of October 2018, was not required to perform alternate travel card duties. In 2018 Complainant was permitted to telework for 71 out of 80 hours in pay period 11 (May 28, 2018 to June 9, 2018), 63 out of 80 hours in pay period 23 (November 11, 2018 to November 24, 2018), and 19.5 hours in pay period 24 (November 25, 2018 to December 8, 2018). Complainant alleged that a Supervisory Agent in Charge (SAC1) called her multiple times which she felt was harassing. Complainant informed SAC1 that, RAP could not accommodate her and asserted that she emailed him the RAP Policy that clearly states the program does not apply to her situation.

On November 29, 2018, Complainant applied for reasonable accommodation at the persistence and alleged harassment from management and "out of frustration." She requested to continue working at the union office. Complainant believes that SAC1 allowed her to work at the union office while the RAP specialist looked for a position elsewhere for her. Complainant "feared termination" if she did not accept a position located by the RAP office.

The Agency held a mediation on Complainant's EEO claims on December 12, 2018, which Complainant, SAC1, and Supervisor1 attended. After becoming upset, Complainant left the mediation and went to her psychiatrist. Complainant's psychiatrist opined that she should not return to the Agency because it was a "toxic environment" and placed her on "total and permanent" disability. A pain management doctor also placed Complainant on "total and permanent" disability for stenosis and lumbar disc herniation purportedly exacerbated by work stress, for which she took pain killers and had steroid injections. However, there is no indication that a job search was contemplated until Complainant walked out of the mediation. At that point Complainant asked for a search for a full-time telework position while her disability retirement was in process.

Complainant filed a disability retirement application on December 17, 2018, which she revised and resubmitted on December 31, 2018. In the application Complainant claimed that she could not work under the influence of psychiatric medicine for exacerbated PTSD symptoms and opioids for increased chronic leg and back pain. The RAP office processed her reasonable accommodation request until Complainant informed the RAP office that her doctors stated that she could not work at all. Her case was closed in March 2019. Complainant's disability retirement application was granted effective August 3, 2019.

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 EEOC AJ. Complainant timely requested a hearing. The AJ issued a summary judgment decision in favor of the Agency.

In the decision, the AJ determined that Complainant failed to establish a prima facie case of discrimination and reprisal. The AJ found that Complainant could show her membership in the protected classes present in her claims; however, she failed to present evidence or circumstances that create an inference of adverse employment actions by the Agency, and that the Agency treated Complainant differently than similarly situated employees outside her protected classes. The AJ found that the Agency provided Complainant with all of the changes she requested.

Specifically, Complainant notified the Agency that she would return to work on September 17, 2018, with specific work restrictions that were developed between Complainant and her medical provider. The Agency granted her request, on a temporary basis, which allowed Complainant to work in a location away from the person with whom she had an altercation. Even though OWCP denied Complainant's workers' compensation claim, Complainant continued to submit OWCP-related documentation to support her request related to her role and work location. Complainant refused to comply with Agency management's instructions to cooperate and go through the reasonable accommodation process. Nonetheless, the Agency granted Complainant's requests to work at another location and to remove her of the alternate travel card point of contact duties. Further, the AJ found that Complainant failed to show that anyone similarly situated outside of her protected classes was treated more favorably. Additionally, the AJ determined that Complainant failed to demonstrate a nexus between the alleged adverse treatment and her protected EEO activity.

Finally, the AJ determined that Complainant was not subjected to a constructive discharge as the Agency's conduct and her workplace were not objectively intolerable. As a result, the AJ found that Complainant was not subjected to discrimination, reprisal, or a hostile work environment as alleged.

The Agency subsequently issued a final order fully adopting the AJ's decision.

CONTENTIONS ON APPEAL

Complainant generally asserts that the record was not adequately developed, the AJ handled the case improperly, and cited the procedural background incorrectly.

STANDARD OF REVIEW

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

The Commission's regulations allow an AJ to grant summary judgment when he or she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). An issue of fact is "genuine" if the evidence is such that a reasonable fact finder could find in favor of the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A fact is "material" if it has the potential to affect the outcome of the case. In rendering this appellate decision, we must scrutinize the AJ's legal and factual conclusions, and the Agency's final order adopting them, *de novo*. See 29 C.F.R. § 1614.405(a)(stating that a "decision on an appeal from an Agency's final action shall be based on a *de novo* review…"); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (Aug. 5, 2015) (providing that an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed *de novo*).

ANALYSIS

Adequacy of the Investigation

Investigations of discrimination complaints are governed by 29 C.F.R. § 1614.108 and the instructions contained in the Commission's EEO MD-110. See EEO MD-110, Chap. 6 ("Development of Impartial and Appropriate Factual Records"). An adequate agency investigation is one that is developed impartially and contains an appropriate factual record. 29 C.F.R. § 1614.108(b). "An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred." 29 C.F.R. § 1614.108(b); EEO MD-110, Chap. 6, § § I, IV.B., IV.C. An investigator must be unbiased, objective and thorough. Id. at § V.C. The investigator must obtain all relevant evidence from all sources regardless of how it may affect the outcome. Id. at § V.D.

We find the record is adequately developed. The Report of Investigation consists of 335 pages with affidavits from Complainant and three management officials. The record contains Complainant's 10-page rebuttal affidavit with 20 pages of attachments. The Agency's exhibits in support of its dispositive motion include excerpts of Complainant's deposition and other records. Complainant elected not to conduct discovery. Moreover, Complainant fails to identify any other record evidence she believes was needed to resolve this case. The Commission finds that the record was adequately developed such that we can draw conclusions as to whether discrimination occurred. See Spencer T. v. Dep't of Transp., EEOC Appeal No. 0120180241 (Aug. 2, 2019).

In order to successfully oppose a decision by summary judgment, a complainant must identify, with specificity, facts in dispute either within the record or by producing further supporting evidence and must further establish that such facts are material under applicable law. Such a dispute would indicate that a hearing is necessary to produce evidence to support a finding that the Agency was motivated by discriminatory or retaliatory animus. Here, however, Complainant has failed to establish such a dispute. Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable fact-finder could not find in Complainant's favor.

Denial of Reasonable Accommodation

An agency is required to make reasonable accommodation to the known physical and mental limitations of an individual with a disability unless the agency can show that accommodation would cause an undue hardship. 29 C.F.R. §§ 1630.2(o) and (p). 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 term 'qualified,' with respect to an individual with a disability, means that the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position." 29 C.F.R. § 1630.2(m). The term "position" is not limited to the position held by the employee but may also include positions that the employee could have held as a result of reassignment. Therefore, in determining whether an employee is "qualified," an agency must look beyond the position which the employee presently encumbers. Enforcement Guidance on Reasonable Accommodation.

Reassignment to another position is the accommodation of last resort. Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC Notice No. 915.002 (Oct. 17, 2002) (Enforcement Guidance on Reasonable Accommodation). Reassignment should be considered only where (1) there are no effective accommodations that would enable an employee to perform the essential functions of his position, or (2) accommodating the employee in the current position would

cause an undue hardship. See Anne C. v Dep't of Veterans Affairs, EEOC Appeal No. 0120142826 (Dec. 12, 2016).

We find that Complainant has established that she is an individual with a disability under the Rehabilitation Act. The undisputed record establishes that the Agency accommodated Complainant by allowing her to work at the union office from mid-September 2018 through her departure from the office in December 2018. She was also exempt from performing her travel duties. It is well-settled, however, that a complainant is not entitled to the accommodation of their choice, only an effective accommodation. See Harvey G. v. Dep't of Veterans Affairs, EEOC Appeal No. 2019004914 (Sept. 23, 2020); Lynette B. v. Dep't of Justice, EEOC Appeal No. 0720140010 (Dec. 3, 2015). Moreover, reassignment to another position (as opposed to another work location), an accommodation of last report, was not pursued because she was declared totally disabled by her doctors and seeking a disability retirement which rendered her not qualified to perform the essential functions of any position.[2] Accordingly, the Commission finds that Complainant was not denied reasonable accommodation in violation of the Rehabilitation Act.

Disparate Treatment

To prevail in a disparate treatment claim, Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Complainant must initially establish a prima facie case by demonstrating that she was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Corp. v. Waters, 438 U.S. 567, 576 (1978). Proof of a prima facie case will vary depending on the facts of the particular case. McDonnell Douglas, 411 U.S. at 804 n.14. The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). To ultimately prevail, Complainant must prove, by a preponderance of the evidence, that the Agency's explanation is pretextual. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 120 S. Ct. 2097 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993).

[2] As of December 12, 2018, Complainant provided medical documentation placing her on "total and permanent" disability, both as to her psychological conditions (PTSD and depression) and as to her physical conditions (stenosis and lumbar disc herniation). She applied for disability retirement, which was granted in August 2019. Between December 2018 and August 2019 Complainant did not work.

To establish a prima facie case of discrimination, a complainant must show that: (1) she is a member of a protected group; (2) she suffered an adverse employment action; and (3) the circumstances give rise to an inference of discrimination. We note that, although a complainant bears the burden of establishing a "prima facie" case, Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 252-53 (1981), the requirements are "minimal," St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 506 (1993), and complainant's burden is "not onerous." Burdine, 450 U.S. at 253.

Complainant may establish a prima facie case of reprisal by showing that: (1) she engaged in 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 nexus may be shown by evidence that the adverse treatment followed the protected activity within such a time and in such manner that a retaliatory motive may be inferred. See Clay v. Dep't of the Treasury, EEOC Appeal No. 01A35231 (Jan. 25, 2005); Dominica H. v. Dep't of Health and Human Ser'v., EEOC No. 0120150971 (Nov. 22, 2017).

The record is devoid of evidence establishing that similarly situated employees outside Complainant's protected classifications were treated better. For individuals to be similarly situated to Complainant, all relevant aspects of Complainant's employment must be nearly identical to those of the comparative employee. Sanjuanita A. v. Dep't of Housing & Urban Dev., EEOC Appeal No. 0120172817 (Aug. 31, 2018). Complainant must show that her alleged comparators reported to the same supervisor and performed the same job duties and functions. See, e.g., Ashely S. v. U.S. Postal Ser'v., EEOC Appeal No. 0120162643 (Feb. 13, 2018). We also find the record devoid of any other evidentiary link between membership in her protected classifications and the employment actions alleged herein.

Once management provides legitimate, nondiscriminatory reasons for its actions, the burden shifts to the complainant to show management's proffered reasons were pretextual. To do this, a complainant must provide evidence tending to prove management's reasons are factually baseless/untrue, were not the actual motivation for its decisions, or were insufficient to motivate its actions. Thomas v. Dep't of the Army, EEOC Appeal No. 0120083780 (Jan. 4, 2011).

The Agency articulated legitimate, nondiscriminatory reasons for requesting that Complainant apply for reasonable accommodation and allowing her to work at the union office instead of her alternate request for full-time telework. Based on Complainant's request to work at a different location for medical reasons and the reasoned advice from human resources subject matters, the Agency asked Complainant to apply for a reasonable accommodation. Complainant resisted based on her own determination that the RAP Policy did not apply to her situation. We also find the record devoid of evidence of discriminatory or retaliatory animus on the part of any responsible management official. Accordingly, when viewing the record in the light most favorable to Complainant, the evidence does not establish discrimination or reprisal.

Hostile Work Environment

To the extent that Complainant is alleging that she was subjected to a hostile environment, we find that Complainant's claim of a hostile work environment must fail. A finding of a hostile work environment is precluded by our determination that Complainant failed to establish that any of the actions taken by the Agency were motivated by discriminatory or retaliatory animus. See Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (April 29, 2024); Micki C. v. Soc. Sec. Admin., EEOC Appeal No. 2022004926 (Aug. 19, 2024) citing Oakley v. U.S. Postal Serv., EEOC Appeal No. 01982923 (Sept. 21, 2000).

Constructive Discharge

Under Commission precedent, Complainant must prove the three elements of a claim of constructive discharge/retirement: (1) a reasonable person in Complainant's position would have found the working conditions intolerable; (2) conduct that constituted discrimination against Complainant created the intolerable working conditions; and (3) Complainant's involuntary resignation resulted from the intolerable working conditions. Hoang v. U.S. Postal Ser'v., EEOC Appeal No. 0120130454 (Apr. 11, 2013). Whether the working conditions are intolerable is assessed by an objective reasonable person standard. Id.

When viewing the record in the light most favorable to Complainant, the elements of a constructive discharge/forced retirement have not been established. A reasonable person would not have found the instruction to apply for a reasonable accommodation in order to obtain official approval for allowing Complainant to work at a different office, to have created an

intolerable work environment. Complainant was permitted to work at another office, which had been her primary request. Moreover, as discussed above, Complainant cannot show that she was discriminated against. Complainant had a subjective response to the situation that simply was not objectively reasonable. See Complainant v. Dep't. of Veterans Affairs, EEOC Appeal No. 0120121920 (June 25, 2014) (observing that "although Complainant's employment situation was extremely difficult and upsetting, we find that a reasonable person under such circumstances would have remained on the job").

CONCLUSION

Accordingly, 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 order implementing the AJ's summary judgment 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

February 12, 2025
Date