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

[redacted]
Rosamaria F.,[1]
Complainant,

v.

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

Appeal No. 2023004384

Hearing No. 531-2022-00139X

Agency No. 4K-210-0115-20

DECISION

On July 28, 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 28, 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. 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 order.

ISSUES PRESENTED

Whether the AJ correctly concluded that Complainant did not establish that she was subjected to discrimination based on her sex, disability, and/or 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier at the Agency's Brooklyn Curtis Bay Branch facility in Baltimore, Maryland.

On October 24, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of sex (female), disability (knee, shoulder, and back), and reprisal for prior protected EEO activity when:

1. On February 20, 2020, May 20, 2020, and other unnamed dates, management discussed Complainant's medical information and other restrictions with others on the workroom floor;
2. On March 13, 2020, July 16, 2020, and other unnamed dates, management threatened, cursed at, and made rude comments to Complainant;
3. On March 26, 2020, Complainant was issued discipline;
4. On May 20, 2020, and May 27, 2020, management called Complainant a liar and disrespected her in front of coworkers;
5. On June 10, 2020, management told Complainant that she was "useless" and a "waste of time";
6. On June 16, 2020, Complainant was charged with eight hours of Absent Without Leave (AWOL);
7. On July 6, 2020, and other unnamed dates, management allowed other coworkers to bully Complainant and did not take appropriate action;
8. On an ongoing basis, when giving out daily assignments to everyone else, management skipped over Complainant;
9. On unnamed dates, Complainant was asked to go home early and to leave before her tours were to end;
10. On unnamed dates, management inputted the incorrect leave for Complainant's absence;
11. On unnamed dates, Complainant was told to call the 1-800 number when calling in for unscheduled absences, while other coworkers could call the office or their supervisor directly; and

12. On an unnamed date, Complainant's manager showed threatening behavior when he chased Complainant around the building.[2]

Complainant stated that her medical condition includes a knee injury and back and shoulder pain, and as a result of her condition, she has been on limited duty since 2020 and therefore only delivers a portion of her route. See Joint Exhibit 1 at 6-8; Joint Ex. 2. Complainant previously filed an EEO complaint in May 2018 which was closed in June 2018. Complainant also alleged that she has been involved in union activity as the union representative and has been a whistleblower.

Complainant asserted that management has lost her medical documents and also that her medical documentation has been left exposed on her Supervisor's (Supervisor 1) desk in the middle of the workroom numerous times and further that Supervisor 1 has repeatedly had discussions about Complainant's work restrictions and her medical conditions in the middle of the workroom floor. See Joint Ex. 1 at 8-9. She asserted that she was disciplined on March 26, 2020, for not reporting to work on her scheduled off day, March 23, 2020, and that on June 16, 2020, she was reported as AWOL when she had reported to Supervisor 1 about her absence. See Joint Ex. 1 at 10; 54.

[2] The Agency initially dismissed another claim Complainant raised in her complaint alleging that management had reported fraud to the Office of Workers' Compensation (OWCP) denying her continuation of pay as a collateral attack on the proceedings of another forum. See Report of Investigation (ROI) at 229-34. The Agency also dismissed claim 3 as a discrete incident pursuant to 29 C.F.R. §1614.107(a)(2) for untimely counselor contact as Complainant did not contact the EEO counselor until June 28, 2020, well after the 45-day time limit for counselor contact. The Agency accepted the remaining claims as part of Complainant's hostile work environment claim but after the investigation, dismissed the remaining claims pursuant to 29 C.F.R. §1614.107(a)(7) due to Complainant's failure to cooperate with the Agency's request for information. Complainant appealed the Agency's dismissal and on appeal, the Commission affirmed the procedural dismissal of the two claims but reversed the dismissal of the remaining claims for failure to cooperate and remanded the remaining claims to the Agency for a decision on the merits. See Rosamaria F. v. U.S. Postal Serv., EEOC Appeal No. 2021004197 (Jan. 10, 2022).

She stated that after she complained about management discussing her work restrictions in public, the Station Manager made a comment about how he knew how they all "filed EEOs and stuff," and when Complainant asked the Manager to stop referring to her EEO, the Manager said he can do what he wanted, lowered his mask in spite of the pandemic rules and screamed "EEO like I said" in her face, causing her public embarrassment. See Joint Ex. 1 at 10. She further stated that after she filed a grievance about the incident, the Station Manager started talking about her in front of her coworkers saying that if she couldn't carry her route, she should stop complaining about it and that "these damn light duty people [are] a trip." See Joint Ex. 1 at 10. She asserted that she filed another grievance about that incident and the Closing Supervisor (Supervisor 2) said he started picking up her parcel pickups himself and that she was a waste of time and useless because she couldn't lift the large parcels without assistance. See Joint Ex. 1 at 10. She further stated that the Station Manager called her a liar twice on the workroom floor after she reported that her work assignments were always being altered by special request or something that she could do and that if they took stuff away, she would have nothing to do and would be sent home early. See Joint Ex. 1 at 10-11. She alleged that Supervisor 2 allowed one of the other carriers to go on a rant saying that if Complainant didn't like her, she shouldn't come near the other carrier and that when she asked Supervisor 2 why management never said or did anything to people who treated her badly, Supervisor 2 responded with a text message with vulgar language. See Joint Ex. 1 at 11.

Supervisor 1, Supervisor 2, and the Customer Service Manager (Service Manager) all testified at the hearing that contrary to Complainant's assertions, Supervisor 1 did not initiate discussions about Complainant's medical information on the workroom floor but that rather Complainant was the one who frequently initiated such discussions, in spite of Supervisor 1 repeatedly telling Complainant not to discuss her restrictions on the workroom floor. See Hr'g Tr. 1 at 96; Hr'g Tr. 2 at 94-95. Complainant acknowledged at the hearing that management did not discuss her actual medical conditions on the workroom floor but only her work restrictions such as the number of hours Complainant could work on any given task. See Hr'g Tr. 1 at 17-20. Supervisor 1 stated that she kept a secure filing cabinet in a back office for employees' medical information but that often, employees would simply leave such documents on Supervisor 1's desk on the workroom floor when Supervisor 1 was not there, in spite of repeated instructions not to do so. See Hr'g Tr. 1 at 108; Hr'g Tr. 3 at 16.

Complainant stated that the Station Manager was often rude and used vulgar language and told her that she was not his equal. See Joint Ex. 1 at 79. Another Customer Service Manager (Service Manager 2) asserted that Complainant complained to him about the Station Manager making rude comments but that Complainant never mentioned that the comments concerned any protected basis and that he spoke to the Station Manager about it, who denied the allegation, and that Complainant did not make any additional complaints about the Station Manager. See Report of Investigation (ROI) at 378-79. Complainant further asserted that the Station Manager chased her around the building, cursing and screaming and telling her to leave the building, but the named eyewitness stated that she did not recall such an incident occurring. See ROI at 358; 370.

The evidence in the record indicates that on July 16, 2020, Supervisor 2 sent Complainant a text message which she characterized as rude. Joint Ex. 1 at 21. In the text, Supervisor 2 told her not to text his personal cell phone with "this dumb sh**" and to grow up and that Complainant was a self-absorbed perpetual victim but that no one really thought about or "[gave] a f*** about [her]" as much as Complainant thought or wanted them to. See ROI at 170-76. Supervisor 2 explained that the context of the text message was that after an incident at work where Complainant had a conflict with a coworker, he told them both to move on with their work but that later that evening, he started receiving lengthy text messages from Complainant on his personal cell phone which were confusing and he was not having a good day because his mother had just passed so he responded to Complainant in a negative fashion. See Hr'g Tr. 1 at 77; Hr'g Tr. 2 at 188. The evidence indicated this was an isolated incident and other witnesses testified that they never heard Supervisor 2 ever telling Complainant that she was "useless" or a "waste of time," as Complainant alleged.

There was no evidence in the record indicating that Complainant was, in fact, issued discipline on March 26, 2020, or that she was marked AWOL on March 26, 2020 or on June 16, 2020. See Joint Exs. 5, 7. Complainant acknowledged that she was not at work on June 16, 2020 while Service Manager 2 testified that the proper procedure for requesting leave was to call the 1-800 number but that Complainant often did not use the proper procedures for requesting leave and instead texted Supervisor 1 but Supervisor 1 stated she often did not respond because Complainant's texts were "pages and pages long" and "did not make sense." Hr'g Tr. 2 at 70; 97.

Complainant also acknowledged that she was not marked AWOL on June 16, 2020, but rather was given sick Leave and further admitted that she did not follow the proper procedure for requesting leave by calling the 1-800 number but called Supervisor 1 directly. See Joint Ex. 1 at 54-55.

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). Complainant timely requested a hearing, and the AJ held a hearing on April 19, 20, and May 19, 2023, and issued a decision on June 15, 2023. The AJ found that Complainant was not a credible witness as her testimony at the hearing did not match her affidavit at several points and Complainant then retracted what she had said. The AJ noted that Complainant did not establish a prima facie case based on sex for any of her claims because she identified two female coworkers as being treated more favorably. The AJ concluded that the evidence did not establish that management ever discussed Complainant's medical restrictions inappropriately as the record indicated that they only mentioned Complainant's work restrictions such as the hours she could work, which were not necessarily linked to any medical condition. The AJ further found that the evidence indicated that it was Complainant who negligently left her medical documents unsecured on top of Supervisor 1's desk in the middle of the workroom floor in spite of being told not to do so.

The AJ concluded that the evidence did not establish that any of the management officials threatened, cursed at, or allowed her coworkers to bully Complainant based on any of her protected bases. The AJ therefore found that Complainant did not establish that she was subjected to discrimination or unlawful harassment as alleged. The Agency subsequently issued a final order adopting the AJ's finding.

Complainant appealed.

CONTENTIONS ON APPEAL

On appeal, Complainant took issue with the AJ's credibility findings, insisting that she was not "fairly identified and described," and further that her claims about the physical and mental effects she suffered due to her treatment were not properly acknowledged.

She further took issue with the AJ's decision to allow an additional witness to testify on the Agency's behalf at the hearing but insisted the additional witness was biased as the witness disliked Complainant.[3]

In response, the Agency contended that the AJ's findings were proper and supported by the record and should be affirmed.

STANDARD OF REVIEW

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held.

An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony, or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See EEOC Management Directive 110, Chapter 9, at § VI.B. (Aug. 5, 2015).

[3] To the extent Complainant challenges the AJ's decision to permit the additional witness to testify, we reject Complainant's argument as the only reason is her assertion that the witness was biased against her. However, it is well-established that an AJ has broad discretion to conduct hearings and any claiming that the AJ abused his or her discretion faces a very high bar. Trina C. v. U.S. Postal Serv., EEOC Appeal No. 0120142617 (Sept. 13, 2016), citing Kenyatta S. v. Dep't of Justice, EEOC Appeal No. 0720150016, n.3 (June 2, 2016) (responsibility for adjudicating complaints pursuant to 29 C.F.R. § 1614.109(e) gives AJs wide latitude in directing terms, conduct, and course of administrative hearings before EEOC). The mere fact that Complainant disagrees with the AJ's decision to permit the additional witness testimony is not sufficient to establish any abuse of discretion. See Angelica P. v. Dep't of the Interior, EEOC Appeal No. 2021001505 (July 11, 2022).

ANALYSIS

Disclosure of Confidential Medical Information

The Commission's regulations implementing the Rehabilitation Act provide for the confidentiality of medical information. Specifically, 29 C.F.R. § 1630.14(c)(1) provides, in pertinent part, that: "Information obtained... regarding the medical condition or history of any employee shall . . . be treated as a confidential medical record, except that: (i) [s]upervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodation." Although not all medically-related information falls within this provision, documentation or information of an individual's diagnosis is without question medical information that must be treated as confidential except in those circumstances described in 29 C.F.R. Part 1630.

Here, we agree with the AJ that there is no evidence that confidential medical information was improperly disclosed. The AJ found that the management officials testified credibly that it was Complainant herself who initiated discussion regarding her work restrictions on the workroom floor and that the only times when management officials mentioned Complainant's restrictions, it was only to indicate Complainant's work restrictions, such as the hours she was available to work, which does not necessarily imply any medical diagnoses. The AJ further found that the record indicated that Complainant was negligent in leaving her medical documents on Supervisor 1's desk even after being told not to do so. We find that Complainant failed to establish that the Agency unlawfully disclosed her confidential medical information in violation of the Rehabilitation Act.

Disparate Treatment

Applying the McDonnell Douglas burden-shifting standard defined in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), a complainant initially must establish a prima facie case of discrimination by presenting facts which, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. See St. Mary's Honor Center v. Hicks, 509 U.S. 502, 507 (1993); Texas Dep't of Community Affs. v. Burdine, 450 U.S. 248, 252-53 (1981); McDonnell Douglas, 411 U.S. at 802. The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. Burdine, 450 U.S. at 253.

Once the agency has met its burden, the complainant has the responsibility to demonstrate by a preponderance of the evidence that the agency's action was based on prohibited considerations of discrimination, that is, its articulated reason for its action was not its true reason but a sham or pretext for discrimination. See Hicks, 509 U.S. at 511; Burdine, 450 U.S. at 252-5 3; McDonnell Douglas, 411 U.S. at 804.

Complainant may establish a prima facie case of discrimination by providing evidence that: (1) she is a member of a protected class; (2) she suffered an adverse employment action; and (3) either that similarly situated individuals outside her protected class were treated differently, or other circumstances surrounding the adverse employment action give rise to an inference of discrimination. McDonnell Douglas, 411 U.S. at 802 n.13; Reeves v. Sanderson Plumbing, 530 U.S. 133, 142 (2000); Bodett v. CoxCom, Inc., 366 F.3d 736, 743-44 (9th Cir.2004) (internal quotation marks omitted).

Complainant 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). When establishing a prima facie case of retaliation under Title VII, close temporal proximity is sufficient to infer a causal nexus between an employee's protected activity and an adverse action on the part of an employer. See Clark County School Dist. v. Breeden, 532 U.S. 268, 273 (2001) (noting that "cases that accept mere temporal proximity between an employer's knowledge of protected activity and adverse employment action as sufficient evidence of causality to establish a prima facie case uniformly hold that the temporal proximity must be 'very close"').

We find that Complainant did not establish a prima facie case based on her sex, disability, or reprisal. The comparators Complainant mentioned as being treated more favorably were of the same sex as Complainant and there is no evidence in the record concerning their disability status. We further note that there is no evidence in the record supporting Complainant's assertions that any similarly situated individuals not of her protected classes were treated more favorably. Complainant's bare assertions alone are not sufficient to establish a prima facie case. See Sheldon M. v. Dep't of Veterans Affs., EEOC Appeal No. 2023001605 (Aug. 20, 2024).

We further find that Complainant did not establish a prima facie case of reprisal because her prior EEO activity occurred in 2018, two years prior to the incidents in question here, which is too distant in time to establish any nexus between her protected activity and the alleged adverse treatment. See Cline v. Dep't of the Army, EEOC Appeal No. 0120112757 (Aug. 17, 2012) (stating that generally a nexus may be established if events occurred within one year of each other). In addition, to the extent Complainant bases her claim of reprisal on her union activity or on allegedly being a whistleblower, such activities do not constitute protected activity for purposes of an EEO retaliation claim. See Cheryll K. v. U.S. Postal Serv., EEOC Appeal No. 2022000825 (April 20, 2023) (stating that union activity does not constitute protected activity for purposes of a reprisal claim); Johnnie C. v. Dep't of Transp., EEOC Appeal No. 0120172670 (Oct. 4, 2017) (noting that reprisal based on whistleblower activities is outside the purview of the Commission).

In addition, we agree with the AJ that the record does not establish that the discrete incidents occurred as Complainant described. The AJ found that the record does not establish that Complainant was in fact marked AWOL on June 16, 2020, and even Complainant acknowledged that she was not at work on that day and that she was not marked AWOL but rather her leave was marked as Sick Leave/Leave Without Pay. See Joint Ex. 1 at 54-55.

We further agree with the AJ that Complainant did not establish that the Agency's reasons are a pretext for discrimination. Complainant's argument on appeal is largely limited to insisting that the AJ erred in finding the management officials credible and in finding her not to be credible. We reject Complainant's argument as the mere fact that Complainant disagrees with the AJ's credibility findings is not sufficient grounds to overturn them. Absent a showing of error, the AJ's credibility findings are to be accorded due deference as a result of the AJ's first-hand knowledge, through personal observation, of the demeanor and conduct of a witness. See Complainant v. Dep't of Defense, EEOC Appeal No. 0120122681 (March 13, 2015). In this case, we find that the AJ's findings are supported by the evidence in the record. We also emphasize that there is absolutely no evidence in the record beyond Complainant's unsubstantiated beliefs of any discriminatory or retaliatory animus on the part of any of the management officials. The Commission has repeatedly stated that mere assertions or conjecture that an agency's explanation is a pretext for intentional discrimination is insufficient because subjective belief, however genuine, does not constitute evidence of pretext. Juliet B. v. U.S. Postal Serv., EEOC Appeal No. 0120182519 (Oct. 8, 2019); Richardson v. Dep't of Agriculture, EEOC Petition No. 03A40016 (Dec. 11, 2003).

Hostile Work Environment

In order to establish a prima facie case of harassment, Complainant must prove, by a preponderance of the evidence, the existence of five elements: (1) that she is a member of a statutorily protected class; (2) that she was subjected to unwelcome conduct related to her protected class; (3) that the harassment complained of was based on her protected class; (4) that the harassment had the purpose or effect of unreasonably interfering with her work performance and/or creating an intimidating, hostile, or offensive work environment; and (5) that there is a basis for imputing liability to the employer. See Celine B. v. Dep't of Navy, EEOC Appeal No. 2019001961 (Sept. 21, 2020); Humphrey v. U.S. Postal Serv., EEOC Appeal No. 01965238 (Oct. 16, 1998). See also Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); Flowers v. Southern Reg'l Physician Serv. Inc., 247 F.3d 229 (5th Cir. 2001). The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the victim's circumstances. Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 at § III.B.3.d (Apr. 29, 2024).

In other words, to prove her hostile work environment claim, Complainant must establish that she was subjected to conduct that was either so severe or so pervasive that a "reasonable person" in Complainant's position would have found the conduct to be hostile or abusive. Complainant must also prove that the conduct was taken because of a protected basis; in this case, her sex, disability, and/or reprisal for her protected activity. Only if Complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself.

The AJ found that Complainant did not establish that any of the alleged incidents of harassment were due to any of her protected bases. We find that the AJ's conclusion that Complainant did not establish that any of the incidents were due to any discriminatory animus and not the result of usual workplace tribulations is reasonable and supported by the evidence in the record. See Shu v. Dep't of the Treasury, EEOC Appeal No. 0120102346 (Jan. 23, 2012). In addition, while the record does indicate that there were some instances when Supervisor 2 and the Station Manager spoke rudely to Complainant and used vulgar language, we agree with the AJ that there is no evidence to indicate that those incidents were due to any protected basis but rather are evidence of personality conflicts and communication problems between Complainant and the management officials. See Carl T. v. Social Security Admin., EEOC Appeal No. 2022000277 (Jan. 5, 2023) (stating Title VII is not a civility code and forbids only behavior so objectively offensive as to alter the

conditions of the victim's employment); Complainant v. Dep't of the Army, EEOC Appeal No. 0120111859 (Nov. 14, 2014) (a supervisor's unprofessional, vulgar, and rude language which included the use of the word "bitches" not sufficiently severe or pervasive to constitute a hostile work environment).

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 order finding that Complainant did not establish that she was subjected to discrimination as alleged.

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

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

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

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

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

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

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

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

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

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

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

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs.

Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:

Carlton M. Hadden, Director
Office of Federal Operations

March 6, 2025
Date