



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

████████████████████
Patricia B.,¹
Complainant,

v.

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

Appeal No. 2023004717

Agency No. 200P-668-2022-145361

DECISION

On August 20, 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 August 11, 2023 final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. For the following reasons, the Commission AFFIRMS the Agency's final decision.

ISSUES PRESENTED

Whether the Agency's final decision properly found Complainant proved she was subjected to per se reprisal.

Whether the Agency's final decision properly found that Complainant failed to demonstrate she was subjected to discrimination and a hostile work environment.

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 Registered Nurse 2, Step 7, at the Agency's Mann-Grandstaff VA Medical Center in Spokane, Washington.

On July 10, 2022, Complainant filed an EEO complaint alleging that the Agency discriminated against her and subjected her to a hostile work environment on the bases of race (Asian, Hispanic, Caucasian), national origin (Korean, Hispanic, Caucasian), sex (female; sexual orientation, homosexual), and in reprisal for prior protected EEO activity when:

1. on or about January 4, 2022, Complainant informed management of racial comments made by coworkers and appropriate action was not taken;
2. on or about September 5, 2021, a coworker asked Complainant while displaying pictures of women of Asian descent if the women were Complainant's mother, and the coworker asked Complainant if Complainant ate dog;
3. on or about January 24, 2022, a coworker told Complainant to "put it away!" insinuating that Complainant had an erection;
4. on or about February 24, 2022, Complainant informed management of racial comments made by coworkers and appropriate action was not taken;
5. on April 1, 2022, Complainant was subjected to comments about Complainant's preferred pronouns by a coworker and the coworker said that he wanted his pronouns to be car, microwave, and TV, and then a second coworker subjected Complainant to comments about the unfairness of transgender athletes in sports, or words to that effect; and
6. from an unspecified date to April 5, 2022, Complainant informed management of her hostile work environment concerns, and management took over three months to respond.

Alleged Harassing Incidents (Claims 2, 3, 5)

In Claim 2, Complainant averred that a male coworker (CW1) saw a website depicting a woman of Asian descent owning a cattle farm and asked if the woman was Complainant's mother. Complainant said the question was racist and that CW1 was aware Complainant's mother had worked for the federal government. Complainant added that CW1 "still insisted to interrupt me while I was working to ask if the Asian women he saw on websites he was surfing were my mother." Complainant also alleged that CW1 asked if Complainant ate dogs, which Complainant said was a racist stereotype against Koreans. Complainant also suggested that CW1 discriminated against two other nurses on the unit, who have similar names, by referring to one as "the Russian one" and the other as "the non-Russian one."

CW1 denied Complainant's allegation and averred that he and Complainant were discussing humane sources of bacon and began browsing the internet for local humane farms. On one website, CW1 claimed that Complainant said the farm owner looked like her mother.

A coworker (CW2) confirmed Complainant's allegation and said that CW1 "looked at me, pointed to a picture of a woman of Asian descent from a beef farm from a website he pulled up and said, that's [Complainant's] mom."

Claim 3 refers to another incident between Complainant and CW1. In this incident, Complainant said that she was not using corrective lens at the time and noticed that a person was approaching from down the hall. Complainant "could make out that the person was female" but could not identify the person and asked CW1 who it was. In response, CW1 told Complainant to "put it away." Complainant interpreted the statement as an insinuation that she had a penis and an erection and was a reference to the fact she is a lesbian.

CW1 also denied this allegation and claimed that Complainant was attempting to retaliate against him for reporting her work performance as subpar.

Complainant said that Claim 5 involved a "government wide pulse survey regarding the use of pronouns." Complainant was not sure what the survey entailed but noted that the next time she signed onto her computer, the pronouns, "she, her, hers" appeared. Complainant was discussing the matter with a female coworker (CW3), when another coworker (CW4) interrupted and said that he wanted his pronouns to be "car, microwave, TV." Complainant said she "was offended and ignored his comment."

However, when CW4 began talking with a fourth coworker (CW5) about transgender people in sports, Complainant believed CW4's tone to be condescending and told him to stop talking about the issue at work. According to Complainant, she told CW4 that "his homophobic comments belittling pronoun usage were inappropriate."

CW3 averred that she was sitting next to Complainant and noticed that her pronouns were displayed on the computer after she updated them. As a relatively new feature, Complainant was not aware of it, and CW3 helped Complainant enable her pronouns. CW3 confirmed that CW4 said he would like his pronouns to be "car, microwave, etc." but disclaimed hearing any discussion about transgender athletes. CW3 believed the comments to be disrespectful and rude but did not recall that Complainant expressed to CW3 that she was being subjected to a hostile work environment.

CW4 admitted making the statement but explained that he was posing a hypothetical because the survey only provided specific options and "would not allow a free text option." CW4 said he was wondering "what if someone had pronouns other than the ones listed, such as car, microwave, or TV . . . I am aware of person that have pronouns that are inanimate objects." CW4 thought the survey should have been open to any and all pronouns.

CW4 also admitted that he began to discuss transgender athletes with another coworker, but they stopped once Complainant said that it was an inappropriate topic. CW5 did not remember any discussions about pronouns but recalled that he and CW4 stopped talking about transgender athletes when Complainant said that they might offend someone.

Complaints of Harassment (Claims 1, 4, 6)

As to Claim 1, Complainant said that when her supervisor (S1) issued her a proposed letter of reprimand, she responded that she was being harassed by CW1. Complainant told S1 that CW1 was trying to ostracize her. However, S1 did not ask Complainant to elaborate or otherwise help her file a formal complaint. Complainant believed S1 dismissed her complaint out of hand and required her to continue working with CW1. Complainant alleged that CW1 sexually and racially harassed her.

S1 denied receiving a complaint from Complainant about CW1 or CW4.

Complainant said that she elevated her concerns to the Medical Center Director (Director) on February 24, 2022, as alleged in Claim 4.

Complainant said she met with the Director because she had been issued a proposed removal for “the charge of unprofessional conduct unrelated to my EEO complaint.” In that meeting, Complainant “formally revealed to [the Director] in writing the specific racial, sexual, and homophobic harassment” she endured, and believed that CW1 was lodging false claims against her. However, the Director ignored her concerns and upheld the proposed removal.

The Director acknowledged receiving an email rebuttal from Complainant on February 21, 2022, in which Complainant referenced CW1’s “inappropriate jokes about her sexuality and ethnicity but that she had not reported this. She indicated that she would report immediately if it happened again.” The Director said that Complainant did not verbally raise the issue in a meeting with the Director and Labor Relations on February 28, 2022, to address her removal.

In Claim 6, Complainant said that she received an email from the Associate Chief Nurse Executive (Associate Chief) on April 5, 2022, seeking specifics regarding her claim of harassment, and to provide supporting documentation. The Associate Chief is S1’s supervisor. There is no indication in the record that Complainant responded to the Associate Chief, but Complainant emailed the Director on April 14, 2022. Complainant devoted the majority of the email to addressing the allegations lodged in her proposed removal but said she experienced racist and homophobic harassment and unfair treatment. Complainant described CW1’s comments about her mother, about pronoun usage, and the “put it away” remark. Complainant also described CW3’s statements on pronoun usage and transgender athletes and noted CW1’s reference to the Russian and non-Russian women.

The Associate Chief said he was not aware of any racial comments until Complainant’s email to the Director in response to her proposed removal. The Associate Chief said that Complainant’s proposed removal was rescinded so that her allegations could be investigated. The Director said Complainant’s allegations were referred to Human Resources and a factfinder for investigation.

Subsequently, an investigation took place and Complainant moved from the night shift to the day shift. After the investigation closed without a finding of harassment, Complainant said that S1 insisted she needed to move back to the night shift, but she did not feel safe doing so.

Complainant provided a copy of S1’s email. Therein, on June 1, 2022, S1 said that the investigation determined:

That it is appropriate for you to return to night shift, but you stated you do not feel safe doing so. I want you to feel safe at work, so I am keeping you on day shift for the time being. If there is a patient care or management need such that you need to return to night shift, you will be given proper notice. If you feel you are experiencing any form of retaliation or have specific instances that have not been investigated and have made you feel unsafe, please report these incidences to me immediately.

The record contains a summary of the fact finding report that was submitted to the Associate Chief. Complainant and the above-identified co-workers were interviewed, along with several other nurses and a respiratory technician. As a result of those interviews, the fact finder determined that the evidence did not substantiate a hostile work environment by either CW1 or CW4.

Complainant averred that the hostile work environment became worse after she lodged a formal complaint on April 7, 2022. Complainant responded to S1's email on June 12, 2022, and argued that the Associate Chief was retaliating against her when he reissued the proposed removal to Complainant on June 6, 2022. Complainant expressed her concern that her removal would be reported to the state licensing agency.

On June 13, 2022, S1 responded and said that "re-proposing an adverse action or reporting to a licensing board are not retaliatory acts, they are within management rights." S1 described retaliation as "colleagues or managers treating you differently because of your allegations."

Complainant ultimately resigned her employment as of June 24, 2022. Complainant did not raise the proposed removal or her resignation as claims in her formal complaint.

In rebuttal, Complainant contended that management was not being forthcoming in their testimony and insisted that she lodged her allegations with the Director at least as early as February 21, 2022, but "acknowledge[d] that I told him I would report any other incidents if they reoccurred." Complainant suggested that the Director had a responsibility to investigate her allegations.

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). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b).

In the decision, the Agency concluded that Complainant failed to demonstrate she was subjected to a discriminatory or retaliatory hostile work environment. The Agency found Complainant established she was a member of a protected class and arguably was subjected to unwelcome verbal conduct. The Agency concluded that the record contained sufficient corroboration for CW1's statement about Complainant's mother, and CW4's statement about pronoun usage. However, the Agency found that the conduct was insufficiently severe or pervasive to establish a hostile work environment.

Further, the Agency concluded that the record did not contain any evidence tending to demonstrate that management failed to appropriately respond to Complainant's allegations. Complainant's February 2022, complaint did not contain information that was specific enough for management to act, and when Complainant provided detailed information in April 2022, the Agency undertook an investigation.

Although Complainant did not specifically raise the claim, the Agency addressed S1's June 13, 2022 email and found that S1's advice as to what constituted retaliation could have deterred Complainant from pursuing EEO activity. Therefore, the Agency found S1 engaged in per se reprisal. The Agency directed Complainant to submit evidence supporting a claim of compensatory damages, ordered S1 to complete two hours of EEO training regarding per se reprisal, and required the Mann-Grandstaff VA Medical Center to post a notice regarding the incident.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant disagreed with the Agency's conclusion. Complainant maintained that she had been subjected to racist and homophobic comments from coworkers for six months and that her complaints were not taken seriously. Complainant discusses her termination in detail and "find[s] it suspicious" that the Agency's decision did not mention her termination.

Complainant suggested that it constituted evidence of the Agency purposely trying to hurt her career.

In response, the Agency maintained that Complainant failed to show she was subjected to a discriminatorily hostile work environment and argued that Complainant's separation from the Agency was not considered because Complainant did not raise the matter as a claim.

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

As a preliminary matter, Complainant does not appeal the Agency's finding of per se reprisal or its ordered remedies and we find no error therein. Accordingly, we will not disturb that portion of the Agency's final decision.

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 (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 race, national origin, sex, sexual orientation, or prior protected EEO activity. Only if Complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself.

Complainant's claim of a hostile work environment is premised on three incidents. First, Complainant alleged that CW1 asked if the owner of beef farms, as depicted on a website, was Complainant's mother, and asked if she ate dog. CW1's question about Complainant's mother was corroborated by CW2, but the question about the dog was not. While Complainant argued that CW1 posed the question multiple times, CW2 corroborated only one incident. Complainant alleged this was harassment based on her race and national origin.

Second, Complainant alleged that CW1 told Complainant to "put it away" when she asked who was walking down the hall toward them. Complainant argued this was harassment based on sexual orientation since she is a lesbian, it was a woman walking down the hall, and CW1 was implying she was sexually aroused. This incident was not corroborated by any other person, and CW1 denied making the statement.

Third, Complainant said that CW4 interrupted a conversation between her and CW3 and said that he wanted his pronouns to be car, microwave, and TV. CW3 confirmed that CW4 made the comment but nothing more. CW4 said he was posing a hypothetical based on the limited options given by the workplace survey. CW4 also confirmed that he began talking about transgender athletes with CW5, but stopped as soon as Complainant objected. Complainant argued that CW4 was subjecting her to harassment based on her sexual orientation.

We find that Complainant has articulated that she was a member of several protected classes, that the conduct was unwelcome conduct related to her protected classes, and that it was based on her national origin and sexual orientation.

However, we do not find that the conduct was either severe or pervasive. Complainant noted that she was subjected to harassing conduct over the span of six months, but identified only three events over that span. We do not find that to be pervasive. We also do not find, based on a preponderance of the evidence, that CW1's comments were sufficiently severe to create a hostile work environment, especially given conflicting accounts of the events. Nor do we find that CW4's comments were objectively severe. 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); Mattson v. Dep't of Homeland S., EEOC Appeal No. 0120052563 (July 3, 2007) (stating that a hostile work environment is established by an objective standard and not a complainant's subjective perceptions).

To be clear, our finding here is not intended to suggest that a person's pronoun usage is to be taken lightly. Rather, CW4 provided an explanation that suggests the lack of a discriminatory motive. While CW4's comment may have been inappropriate and unprofessional, the record contains no evidence that it was based on animus toward Complainant's sexual orientation. Certainly, CW4 would have been well advised to seek clarification from a professional trained in anti-discrimination law rather than from coworkers.

With regard to her claims that management ignored her complaints of harassment, the record demonstrates that Complainant did not raise any concerns about harassment until February 2022, with the Director after receiving a proposed removal. That email only referenced inappropriate joking in the workplace, and she stated that she would report it if it occurred again. Because no specific allegations were made, management took no actions at that time. In April 2022, Complainant provided more detail about the incidents involving her co-workers and management initiated an investigation. Ultimately, the investigation found that Complainant's claims of harassment against her co-workers were unfounded while nearly all of her co-workers who were interviewed described Complainant as causing a hostile and stressful work environment. Accordingly, the Commission finds that Agency management properly investigated and addressed Complainant's complaints of harassment and there is no evidence demonstrating that officials acted with discriminatory or retaliatory animus.

As Complainant chose not to request a hearing, the Commission does not have the benefit of an Administrative Judge's credibility determinations after a hearing. Therefore, the Commission can only evaluate the facts based on the weight of the evidence presented.

In this case, we find that the totality of the alleged conduct was not sufficiently severe or pervasive to establish a hostile work environment. Even assuming that the alleged conduct was sufficiently severe or pervasive to create a hostile work environment, the Commission finds that Complainant failed to show that the Agency's actions were based on discriminatory or retaliatory animus. We also note that Complainant did not raise her separation from the Agency, whether as a constructive discharge or discriminatory removal, as a claim. Thus, we will not consider the merits of her removal herein. As a result, the Commission finds that Complainant has not established that she was subjected to discrimination, reprisal, or a hostile work environment as alleged.

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. The Agency is directed to comply with our order for relief as slightly modified below.

ORDER

To the extent it has not already done so, the Agency is ordered to take the following remedial actions:

1. Within sixty (60) calendar days of the date this decision is issued, the Agency shall conduct and complete a supplemental investigation concerning Complainant's entitlement to compensatory damages and determine the amount of compensatory damages due Complainant in a final decision with appeal rights to the Commission. In so doing, the Agency shall issue a notice to Complainant of her right to submit evidence based on our guidance in Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993) and request evidence from Complainant in support of compensatory damages. The Notice shall provide Complainant with thirty (30) calendar days to respond (with an option and instructions to request an extension in the case of extenuating circumstances). Complainant has a duty to cooperate with the Agency's investigation to determine compensatory damages, including responding to agency requests for documentation or completing agency forms. The Agency shall pay this amount to Complainant within sixty (60) calendar days of the date of the determination of the amount of compensatory damages.

2. If there is a dispute regarding the exact amount of compensatory damages, the Agency shall issue a check to Complainant for the undisputed amount. Complainant may petition for enforcement or clarification of the amount in dispute. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."
3. Within ninety (90) calendar days of the date this decision is issued, the Agency shall provide 4 hours of in-person or interactive EEO training on the Agency's obligations to refrain from reprisal under Title VII to the management official identified in this decision as S1. For assistance in obtaining the necessary training, the Agency may contact the Commission's Outreach, Training and Engagement Division via email, at FederalTrainingandOutreach@eeoc.gov. The Agency shall provide the Compliance Officer with proof of attendance, as well as the contents and materials it used for the training. If S1 has left the Agency's employ, the Agency shall furnish documentation of his/her/their departure date.
4. Within one hundred and twenty (120) calendar days of the date this decision is issued, the Agency shall consider disciplining the management official identified as S1. The Commission does not consider training to be disciplinary action. The Agency shall report its decision to the Compliance Officer. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If these individuals have left the Agency's employ, the Agency shall furnish documentation of their departure dates.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation, including evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Mann Grandstaff VA Medical Center in Spokane, Washington copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted both in hard copy and electronic format by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999).

If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated. See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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 (R0124)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court within ninety (90) calendar days from the date that you receive this decision. In the alternative, you may file a civil action after one hundred and eighty (180) calendar days of the date you filed your complaint with the Agency, or filed your appeal with the Commission. 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 his or her 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. **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

July 31, 2024

Date