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

[redacted]
Jovan S.,[1]
Complainant,

v.

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

Appeal No. 2023004810

Hearing No. 480-2021-00628X

Agency No. HS-TSA-02144-2020

DECISION

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 July 25, 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

The issues presented are whether the Administrative Judge erred or abused his discretion when he denied the parties' second motion for an extension of the discovery period; and issued a decision without a hearing finding that Complainant did not establish discrimination as alleged.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Deputy Assistant Federal Security Director at the Agency's Kahului Airport in Kahului, Hawaii. Complainant's duties included serving as the deputy and principal advisor to an Assistant Federal Security Director. Report of Investigation (ROI) at 115. The Assistant Federal Security Director served as Complainant's first-line supervisor ("Supervisor"). ROI at 82.

On November 10, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (Asian/Caucasian), sex (female), disability (association), and age (YOB: 1944), and in reprisal for prior protected EEO activity when on August 17, 2020, the Supervisor terminated Complainant's telework agreement.

The EEO investigation revealed that Complainant was granted Weather and Safety Leave (W&SL), as a Non-Telework Eligible employee, due to the COVID-19 pandemic starting in April 2020. She disclosed that she was a higher-risk employee due to her age, and her spouse was also over the age of 65 with a serious medical condition. Complainant began teleworking fulltime on May 26, 2020. On June 25, 2020, the Supervisor informed Complainant that the Agency would be eliminating W&SL, and that the Agency was in recovery mode. The Supervisor noted that there was a sharp increase in passenger loads and changes were being implemented. There was a need for Complainant to support the operation and staff in observations, on-site meetings, and critical facility management (ex. scheduled installations). The Supervisor began discussing Complainant's return to the office for at least three (3) days per week, and Complainant replied that she was uncomfortable returning due to her spouse's current health issues. ROI at 52, 138-44, 150-1.

On August 13, 2020, the Supervisor emailed Complainant that she was glad that Complainant was returning on Monday.

The Supervisor expressed a need for Complainant to return to the office because her position is highly visible and requires managing internal and external stakeholders as a representative of the leadership team. There were also many major initiatives on and off site that required their attention. On August 17, 2020, the Supervisor followed up with a written directive for Complainant to return fulltime to the Administrative Offices, effective pay period 18 (August 30, 2020), to support operations. ROI at 167-8, 54.

On August 27, 2020, the Supervisor emailed Complainant following a telephone call. She reiterated that Complainant's position requires her presence, and it did not qualify for telework, aside from situational telework. In response to Complainant's concerns about her family's health, the Supervisor was willing to grant two (2) telework days per week. Complainant replied that she would start the retirement process, and she would invoke the Family and Medical Leave Act effective pay period 18, until her retirement package was completed. ROI at 176-7.

In addition to her EEO complaint, Complainant filed a complaint with the Agency's Anti-Harassment Program Office alleging harassment and retaliation, including the denial of telework, by the Supervisor. The appointed Fact Finder issued a report on October 26, 2020. In her interview, the Supervisor reported that she was working up to twelve (12) hours per day and needed Complainant's support. The Supervisor asked that Complainant return to the office with situational telework. The Supervisor also noted that staff complained about not receiving a training from Complainant, which ended up being a conference call, and stakeholders provided feedback that the Agency was not a support for the community. The Supervisor was unable to reach Complainant about a certain task on July 30th; and she asked Complainant to attend meetings and post notes, but the Supervisor has not seen any notes and is unsure if Complainant participated in the meetings. ROI at 199-201. The Deputy Federal Security Director reviewed the report and concluded that no evidence supported Complainant's allegations. ROI at 275.

Complainant retired on October 24, 2020.[2] ROI at 118.

[2] The Agency processed a separate mixed-case complaint for Complainant's retirement claim. ROI at 40, 44. Complainant filed an appeal before the Merit Systems Protection Board (MSPB), which found that she failed to non-frivolously allege that she was forced to resign in Docket Number SF-0752-22-0157-I-1. The Agency noted that Complainant did not appeal the MSPB's decision. Agency's Motion for Summary Judgment at footnote 1.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the ROI and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). Complainant timely requested a hearing.

On March 2, 2023, Complainant and the Agency filed the Parties' Second Joint Motion to Extend Deadlines. The AJ granted their first motion to extend deadlines to initiate discovery, and they claimed good cause for another extension of forty-five (45) days. Complainant's representative had schedule changes in other cases which prevented the scheduling of a needed deposition, and the Agency's counsel would be on leave the first week of March 2023.

On March 14, 2023, the AJ denied the motion. The AJ highlighted that the parties previously filed a Joint Motion to Extend Deadlines on December 27, 2022, and the AJ extended the deadline for completion of discovery to March 6, 2023. In the second motion, they repeated the same justification that Complainant's representative had schedule changes in other cases that prevented the deposition in mid-January and added that the Agency's counsel would be on leave the first week of March 2023. The AJ noted that the parties were previously granted a 45-day extension to take one deposition and simply changed the dates in the second motion using the same rationale, and there was no indication how the unavailability of the Agency's counsel for one week prevented the parties from taking the deposition in the remaining days. The AJ concluded that discovery was closed.

Complainant's Representative filed a motion for reconsideration, asserting that he intended to travel to Hawaii for the remaining deposition, but he experienced a medical condition. Complainant's Representative averred that this in-person deposition was necessary because the record was not fully developed. The AJ denied the reconsideration motion on April 17, 2023.

The Agency filed a Motion for Summary Judgment and attached an unsigned declaration from the Supervisor. Complainant opposed the Agency's motion and filed a Cross-Motion for Summary Judgment. She complained that the Supervisor's declaration was unsigned and may not be used to support any of the Agency's proffered undisputed facts. The Agency submitted a reply to Complainant's opposition. It explained that submitting an unsigned declaration from the Supervisor was an oversight and attached a copy with the Supervisor's signature.

Over Complainant's objections, the AJ granted the Agency's motion and issued a decision without a hearing on June 29, 2023. The AJ found that, when viewing the evidence in the light most favorable to Complainant, it was insufficient to establish a prima facie case of discrimination on any basis. Even if Complainant could establish a prima facie case of discrimination, she was unable to prove that the Agency's legitimate, nondiscriminatory reasons were pretextual. While Complainant claimed that the passenger loads were low and that she could accomplish her work from home, this was insufficient to establish pretext for discrimination. The AJ concluded by granting the Agency's Motion for Summary Judgment and denying Complainant's Motion for Summary Judgment.

The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

The instant appeal followed.

CONTENTIONS ON APPEAL

Through her attorney, Complainant argues that the AJ abused his discretion when he denied the parties' joint motion for an extension of the discovery deadline. Complainant asserts that her attorney articulated good cause of an emergent medical condition to warrant the extension. As a result of the denial, the record is insufficient, and there are material facts in dispute and issues of credibility that render summary judgment inappropriate. Complainant further contends that the AJ erred in making credibility determinations and issuing a summary judgment decision finding no discrimination based on age and disability when management denied her an accommodation.[3]

The Agency opposes Complainant's appeal. It asserts that Complainant has not set forth evidence to support a finding that she was treated less favorably than other similarly situated employees or that the Supervisor was motivated by discriminatory animus.

[3] Complainant did not raise a failure to accommodate claim in her formal complaint. ROI at 15, 44. However, for the purposes of this decision, we will analyze her claim as a denial of a reasonable accommodation, in addition to disparate treatment.

Further, the Agency provided legitimate, nondiscriminatory reasons for requiring Complainant to return to the workplace a few days per week, and Complainant failed to offer evidence showing pretext for discrimination. The Agency also responds that the AJ did not err or abuse his discretion in finding that Complainant did not establish good cause for another extension of the discovery period. The Agency requests that the Commission affirm its final order.

Complainant filed a reply to the Agency's opposition on November 3, 2023.[4]

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 (EEO MD-110), 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.

[4] The Commission's regulations provide that "[a]ny statement or brief on behalf of a complainant in support of the appeal must be submitted to the Office of Federal Operations within 30 days of filing the notice of appeal." 29 C.F.R. §1614.403(d). Further, the Commission does not generally allow parties to submit multiple briefs. See Joellyn L. v. Dep't of Justice, EEOC Appeal No 0120170274 (Apr. 5, 2019), citing 29 C.F.R. § 1614.403(d). Complainant filed her appeal on August 25, 2023, and we will only consider her initial timely brief submitted on September 25, 2023.

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 EEO MD-110, at Chap. 9, § VI.B. (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

Denial of Extension Request

An AJ has full responsibility for the adjudication of the complaint, including overseeing the development of the record, and has broad discretion in the conduct of hearings. 29 C.F.R. § 1614.109(a), (e). Given the AJ's broad authority to regulate the conduct of a hearing, a party 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 3, 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).

Complainant argues that there was an abuse of discretion when the AJ denied the parties' Second Joint Motion to Extend Deadlines. Complainant's Representative claims that he articulated good cause of an emergent medical condition to warrant the extension because he was unable to fly to Hawaii to attend an in-person deposition. Complainant's Representative did not raise any medical issue until the reconsideration motion. In his supporting affidavit, Complainant's Representative identified himself as "Co-Counsel," and disclosed that he is in Maryland.

However, Complainant's Representative offered no justification for why any deposition required his attendance. Complainant's filings were consistently signed by other attorneys located in Hawaii. Notably, the motion denied by the AJ was not signed by Complainant's Representative, but rather, an attorney in Honolulu, which indicates that Complainant had suitable representation in the state. Complainant's Representative further noted that other attorneys and staff may provide representation during the litigation of this matter in his Notice of Appearance, submitted on September 26, 2022.

As such, we find that Complainant has not met her burden to prove an abuse of AJ discretion for the denial of the requested extension of the discovery period.

Decision Without a Hearing

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 animus.

On appeal, Complainant argues that there are disputed material facts and a credibility dispute regarding the Supervisor's articulated reasons. Complainant largely contends that the facts are supported by an unsigned declaration from the Supervisor, and therefore, cannot be used for an undisputed material fact for the Agency. However, the Agency explained that the initial submission of the unsigned version was an oversight and supplied the signed copy. Complainant's repeated arguments that this document is unsigned is disingenuous because the signed declaration is in the record. Further, in the Findings of Fact,[5] the AJ cited only to the ROI and not this declaration. AJ Decision at 2-5.

Complainant claims that she and the Supervisor need to testify to allow the AJ to make credibility determinations. For example, Complainant disputes that her physical presence was required at the airport and that the Agency did not provide a legitimate reason that she must be physically present on site. However, the record contains additional evidence that supports the Supervisor's explanation that Complainant's presence at the office was needed to perform her duties. Specifically, an Assistant Federal Security Director in Honolulu testified that Complainant was the lead person for all screening operations, and some work has to be done at the airport; for example, to respond if there is a breach. In addition, Complainant oversaw approximately 200 people at the Maui airport. ROI at 110.

Complainant disputes the fact that all other Maui employees complied with the Supervisor's request and only Complainant continued to work from home exclusively.

[5] Complainant appears to challenge the facts listed in the Agency's Motion for Summary Judgment, and not those contained in the AJ's decision.

The Supervisor attested that when the Agency moved into recovery mode in July 2020, she requested that the administration staff, the Transportation Security Managers, and Complainant to return to the operation at least twice per week. The managers were allowed to telework one (1) day per week, but they chose not to do so. ROI 84. Complainant presented no evidence to support her position, and mere allegations, speculations, and conclusory statements, without more, are insufficient to create a genuine issue of material fact. See Lee v. Dep't of Homeland Security, EEOC Appeal No 0520110581 (Jan. 12, 2012), citing to Baker v. U.S. Postal Serv., EEOC Appeal No. 01981962 (June 26, 2001), request for recon. denied, EEOC Request No. 05A10914 (Oct. 1, 2001). Further, whether other Maui managers reported back to the office is not material because Complainant did not contend that any were similarly situated to her in being the deputy and principal advisor to the Supervisor.

To the extent that Complainant argues that the AJ erroneously made credibility determinations, a review of the decision shows that is not accurate, and that the AJ made no credibility assessments and viewed the evidence in the light most favorable to Complainant. We find that Complainant failed to establish a dispute of a material fact, and a review of the record does not reveal any genuine disputes of material facts. Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable factfinder could not find in Complainant's favor. Therefore, the AJ's issuance of a decision without a hearing was appropriate.

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), (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 a "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, EEOC Notice No. 915.002 (Oct. 17, 2002) (Enforcement Guidance).

Here, Complainant testified that she did not have a disability, but that she was associated with her husband who has ongoing health concerns. ROI at 61.

However, the Commission has found that individuals with a relationship or association with a person with a disability are not entitled to receive reasonable accommodations. See Lazer v. Dep't of Transp., EEOC Appeal No. 01A24474 (Jan. 22, 2003) (citing Enforcement Guidance at n. 5). As such, we find no violation of the Rehabilitation Act for Complainant's claim of a failure to provide a reasonable accommodation.

Disparate Treatment

Generally, claims of disparate treatment are examined under the analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Hochstadt v. Worcester Found. for Experimental Biology, Inc., 425 F. Supp. 318, 324 (D. Mass.), aff'd, 545 F.2d 222 (1st Cir. 1976). For Complainant to prevail, she must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978); McDonnell Douglas, 411 U.S. at 802 n.13. Once Complainant has established a prima facie case, the burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). If the Agency is successful, the burden reverts back to Complainant to demonstrate by a preponderance of the evidence that the Agency's reason(s) for its action was a pretext for discrimination. At all times, Complainant retains the burden of persuasion, and it is her obligation to show by a preponderance of the evidence that the Agency acted on the basis of a prohibited reason. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993); U.S. Postal Service v. Aikens, 460 U.S. 711, 715-716 (1983).

Complainants may establish a prima facie case of discrimination by providing evidence that: (1) they are a member of a protected class; (2) they suffered an adverse employment action; and (3) either that similarly situated individuals outside their 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 belongs to protected classes based on her age, disability (association), race, and sex. She claimed that four comparators, two White men and two Black men, were treated more favorably when they were allowed to telework. Complainant specified a Deputy Federal Security Director; a Training Manager; and two Assistant Federal Security Directors, all from Honolulu. ROI at 62. However, Complainant did not show that any were similarly situated. Among other things, to be considered "similarly situated," the comparator must be similar in substantially all aspects, so that it would be expected that they would be treated in the same manner. See Grappone v. Dep't of the Navy, EEOC No. 01A10667 (Sept. 7, 2001), reconsideration denied, EEOC Request No. 05A20020 (Jan. 28, 2002). These named comparators held different positions in Honolulu, not Maui, and there is no evidence that the Supervisor was the responsible management official for their telework.

Complainant did not present any other evidence to give rise to an inference of discrimination, and we find that she did not establish a prima facie case of discrimination based on her age, disability, race, or sex.

Complainants may establish a prima facie case of reprisal by showing that: (1) they engaged in a protected activity; (2) the agency was aware of the protected activity; (3) subsequently, they were 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). In an email sent to the Supervisor on June 25, 2020, Complainant stated that she was being treated differently regarding the request to return to the office, which was "discriminating." ROI at 153. The complained of action occurred in August 2020, approximately two (2) months later. A causal link can be inferred where there is temporal proximity between the protected activity and the adverse treatment. The proximity must be "very close" and a period of more than a few months may be too attenuated. Clark County School District v. Breeden, 532 U.S. 268, 273-4 (2001). We find that there is a close temporal proximity, and that Complainant established a prima facie case of reprisal.

The Supervisor proffered legitimate, nondiscriminatory reasons for the action. She explained that Complainant's telework agreement was not terminated but moved to a situational agreement.

Complainant's position only allowed for situational telework, and the Supervisor offered Complainant up to two (2) telework days per week because it was important to maintain a physical presence due to the high visibility of Complainant's position; for managing initiatives and projects; and engaging with stakeholders as a representative of leadership. The Supervisor noted that both their positions were extremely visible, and each week there are numerous overlapping meetings that require their attention. She highlighted challenges with telework alone due to numerous instances when Complainant's connectivity failed or dropped. The Supervisor also not receive any minutes for the meetings Complainant covered from a virtual platform. ROI at 99, 85.

We find that Complainant has not shown that the proffered reasons were pretexts for discrimination. Pretext can be demonstrated by showing such weaknesses, inconsistencies, or contradictions in the Agency's proffered legitimate reasons for its action that a reasonable fact finder could rationally find them unworthy of credence. See Opare-Addo v. U.S. Postal Serv., EEOC Appeal No. 0120060802 (Nov. 20, 2007) (finding that the agency's explanations were confusing, contradictory, and lacking credibility, which were then successfully rebutted by the complainant), request for recon. denied, EEOC Request No. 0520080211 (May 30, 2008).

Complainant only countered that face-to-face engagement was not required, without evidence to prove that the proffered reasons are not worthy of belief. ROI at 55. In addition, as discussed above, the Assistant Federal Security Director in Honolulu corroborated the need for Complainant's physical presence at the airport for some of her screening operations duties. ROI at 110.

The Commission has long held that an Agency has broad discretion to set policies and carry out personnel decisions, and it should not be second-guessed by the reviewing authority absent evidence of unlawful motivation. See Texas Dep't of Community Affairs v. Burdine, 450 U.S. at 259; Vanek v. Dep't of the Treasury, EEOC Request No. 05940906 (Jan. 16, 1997). In this case, there is no evidence of unlawful motivation for the Agency's action.

Complainant's bare assertions that the Supervisor discriminated against her are insufficient to prove pretext or that the action was discriminatory. Accordingly, we find that Complainant did not establish discrimination based on age, disability, race, or sex, or in reprisal for prior protected EEO activity for her telework agreement.

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 adopting the AJ's decision without a hearing.

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 10, 2025
Date