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

[redacted]
Letitia C.,[1]
Complainant,

v.

Janet L. Yellen,
Secretary,
Department of the Treasury
(Internal Revenue Service),
Agency.

Appeal No. 2023005024

Hearing No. 490-2022-00129X

Agency No. IRS-22-0309-F

DECISION

On September 7, 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 September 12, 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.[2] 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.

[2] To the extent that Complainant's appeal may be deemed premature as it was filed prior to the Agency's issuance of its final order, we find that any defect in Complainant's premature filing of her appeal was cured when the Agency issued its final order. We therefore exercise our discretion in finding that this

ISSUES PRESENTED

Whether the AJ correctly issued summary judgment in the Agency's favor finding that Complainant did not establish that she was subjected to discriminated based on her race and disability as alleged.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Tax Examining Clerk at the Agency's Memphis Campus in Memphis, Tennessee.

On April 14, 2022, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (Caucasian) and disability (eczema) when:

1. On January 31, 2022, her then front-line manager and Supervisor (Supervisor 1) issued her a written memorandum for her drop file after she failed to attend scheduled training, and threatening discipline for future problems of this type;
2. On February 9, 2022, Complainant received a written memorandum for her drop file issued by Supervisor 1, regarding her conduct and warning her that future incidents of misconduct could result in termination;
3. On March 8, 2022, her new front-line manager and Supervisor (Manager 1) issued a conduct memorandum for her drop file for failure to follow a verbal directive on March 7, 2022, and for unacceptable behavior, warning her that this behavior could result in termination during her probationary period;
4. On March 30, the Agency terminated Complainant during her probationary period;
5. Whether Complainant was subjected to harassment when:
   a. On or about January 20, 2022, Supervisor 1 made a comment about her disability, referring to her skin condition as having "cooties,"

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case is ripe for adjudication. See Stella K. v. Dep't of Agric., EEOC Appeal No. 2022003915 (Aug. 19, 2024).

b. On February 8, 2022, Supervisor 1 came to her cubicle and rudely ordered her to "get off the phone" when she was in the middle of a training session;
c. On February 10, 2022, after being voluntarily transferred to a different team, her new front-line manager (Manager 1) argued with her for being an hour late to work, and criticized her for refusing to use annual leave for her absence; and
d. On February 10, 2022, Manager 1 criticized her for changing a filing system without pre-approval and ordered her to re-do the system, despite her protestations that she had organized the filing system in a more efficient manner.[3]

Complainant began working at the Agency on September 27, 2021, subject to a one-year probationary period due to end on September 26, 2022. She stated that she suffers from the skin condition called eczema that is visible to anyone who sees her, although she acknowledged that she does not suffer from any limitations due to her condition and did not submit any documentation. See Report of Investigation (ROI) at 92-93. She asserted that on January 27, 2022, Supervisor 1 sent her an email telling her that Supervisor 1 would inform Complainant about who would be training Complainant on the following Monday but that Supervisor 1 never contacted her again about any training. See ROI at 94-95. The memorandum dated January 31, 2022, stated that it was being issued due to Complainant's stating that she did not want to be trained by the Clerical Manager and then on January 31, 2022, instead of starting the training as required, Complainant emailed the Clerical Manager and requested to begin the training the next day instead as Complainant was still finishing up the refiles and another training, which had not been approved by Supervisor 1. See ROI at 405. Complainant disputed the contents of the memorandum as being an inaccurate statement of events and also took issue with the fact that she was not given an investigative interview or any opportunity to respond to it before it was placed in her file. See ROI at 95. She asserted that she believed this incident was due to her disability because on January 20, Supervisor 1 made a comment referring to Complainant's skin condition as "cooties." See ROI at 97.

[3] Although Complainant did not include reprisal as a basis in her formal complaint, she repeatedly insisted in her affidavit and in her motion for summary judgment that she was subjected to retaliation. Complainant also raised age as a basis for the first time in her motion for summary judgment.

The Supervisor denied having any knowledge of Complainant's medical condition and that she did not recall any incident of referring to Complainant's condition as "cooties." See ROI at 286; 290. She explained that she was trying to get Complainant the training to do her clerical duties but that when she set up the training, Complainant would either go to the Clerical Manager and try to reschedule the training or Complainant would simply not show up. See ROI at 286-87. The record includes contemporaneous emails between Complainant and Supervisor 1 about the training in which the Trainer emailed Complainant about the training and instructing Complainant to contact the Trainer in the morning when she was ready to begin the training, to which Complainant responded that she was not available for training because of having other duties to complete, even though Supervisor 1 had told Complainant that the training was required. See ROI at 178-90.

Complainant was issued a second memorandum on February 8, 2022 which she again insisted was based on false information and made false accusations. See ROI at 98. She took issue with Supervisor 1 ordering her to stop attending a training which Supervisor 1 had previously told her was mandatory. See ROI at 98. The memorandum titled "Conduct - Warning and/or Documentation After Warning" stated that it was being issued because Supervisor 1 had given her a verbal instruction to get off the training Complainant was attending because it was the wrong training and had been sent to Complainant by mistake and Complainant got upset and followed Supervisor 1 to her office and loudly stated that Complainant did not want Supervisor 1 to forward her any emails or come to her desk for anything and that Complainant had started screaming and pointing her finger at Supervisor 1's face. See ROI at 406. Complainant insisted that she had not yelled or pointed her finger at Supervisor 1 and that she was only treated so poorly because she was white while all the managers were black. See ROI at 100. The record includes contemporaneous emails concerning the training which indicate that Complainant was assigned the training but that it was by mistake and when Supervisor 1 told Complainant about the error and instructed Complainant to get off the training, Complainant accused Supervisor 1 of speaking to her "rudely" and lying. See ROI at 153-168. Following this incident, Complainant sent an email to the District Manager, her second-line supervisor, complaining about Supervisor 1's treatment of her, calling it unprofessional and rude, and requesting to be transferred to a different division and/or supervisor and the Operations Manager agreed to transfer Complainant to the Recon division. See ROI at 359-60.

Complainant stated that on March 7, 2022, although she arrived at work on time, because she had traded cars over the weekend, she did not have a parking permit to park in her usual parking lot and so she had to go to Security to get a temporary parking permit to allow her to park in her usual lot. See ROI at 101. Manager 1, Complainant's new first-line supervisor, issued Complainant a Memorandum entitled "Conduct – Warning and/or Documentation After Warning" which stated that it was being issued because Complainant had not entered her workspace until 8:45 a.m. on March 7, even though her scheduled start time was 7:30 a.m. and that Complainant had then told Manager 1 that she would be leaving the Campus in order to retrieve a copy of her insurance card which she had left at home and persisted, even after Manager 1 told her that Complainant was required to take leave if she would be absent from work for longer than the allotted half-hour for lunch. See ROI at 407. The memorandum further stated that Complainant insisted that the District Manager had allowed her to leave work to get her insurance card without taking leave but that even though Manager 1 reiterated to Complainant that she could not leave, Complainant then left the Campus and was gone for more than three hours. See ROI at 407. The memorandum also stated that it was being issued for Complainant's failure to follow instructions in changing the filing system without instruction. See ROI at 407.

Manager 1 stated that Complainant told her of her skin condition when telling Manager 1 about needing to schedule a doctor's appointment. See ROI at 296. She explained that on March 7, Complainant came up to her and told her that Complainant would not be completing an assignment because she was not a clerk and that Manager 1 should allow Complainant to learn the job before giving her work, before Complainant told Manager 1 to get away from her. See ROI at 297. Manager 1 stated that Complainant was so loud that another employee came up to her afterwards and asked if Manager 1 was okay because they had heard Complainant "going off." See ROI at 297. Manager 1 explained that with respect to changing the filing system, she explained to Complainant that they organized correspondence because of the way work was performed so that employees knew which correspondence needed to be handled first but that Complainant's unilateral change to the filing system slowed down workload processing because other examiners did not know how to find correspondence. See ROI at 306-308. The District Manager denied ever telling Complainant that she would not need to take leave if she left work to get her insurance card. See ROI at 317. He stated that he only referred Complainant to Supervisor 1 as her then-first-line supervisor. See ROI at 317.

The District Manager explained that Complainant would be required to get permission before making any changes to a process that had been discussed and implemented, such as the filing system, but that Complainant became combative when told that she should not have changed the filing system. See ROI at 326.

Complainant was issued a Memorandum terminating her employment effective March 30, 2022, which stated that it was being issued due to Complainant's conduct on February 8, 2022 and for sending unprofessional emails to the union president, which accused the union president of "abuse of power, harassment, hostile work environment, waste of Government time and money." See ROI at 334-36. The Operations Manager stated that she decided to issue the termination because Complainant had more than once created a disturbance resulting in an adverse effect on morale, production, and maintenance of proper discipline. See ROI at 355. She stated that Complainant was told several times to do her own work and stop getting involved in other people's personal affairs but that Complainant continued to send numerous emails to multiple levels of managers making accusations and threatening to file charges and that she would get combative and argumentative whenever she was given feedback. See ROI at 355. The District Manager explained that Complainant was terminated by the Department and Operations Managers after Complainant was issued several memorandums for unprofessional behavior and for starting a feud with the union president and persisting in it even after being told to cease and desist. See ROI at 319-20. The District Manager further stated that Complainant always wanted to follow her own rules and not those of the Agency and whenever she was held accountable, she had "an outburst." See ROI at 324. The record includes the emails Complainant exchanged with the union president in which she responded to the union president instructing her not to "loiter" outside the union office as it could lead to Complainant learning about confidential union matters by complaining to the union president about excessive noise and accusing the union president of retaliation. See ROI at 343-51. The record indicates that the union president asked Complainant to stop sending so many emails, noting that Complainant had sent him well over 25 emails over the course of a few months complaining about her managers, to which Complainant responded by informing him that she had no respect for either him or the union and accusing the union president of violating her constitutional rights. See ROI at 343-48.

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. After both parties submitted motions for a decision without a hearing, the AJ assigned to the case issued a decision without a hearing on August 7, 2023. The AJ found that there was no evidence in the record beyond Complainant's unsubstantiated beliefs that any of the Agency's actions were due to any of her protected bases. 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.

Complainant appealed.

CONTENTIONS ON APPEAL

On appeal, Complainant insisted that the AJ did not thoroughly consider the facts and accused the AJ of bias.[4]

In response, the Agency contends that the AJ correctly concluded that there was no evidence in the record indicating that any of the Agency's actions were due to any protected basis and the AJ therefore correctly issued judgment in the Agency's favor.

STANDARD OF REVIEW

In rendering this appellate decision we must scrutinize the AJ's legal *and* factual conclusions, and the Agency's final order adopting them, de novo. See 29 C.F.R. § 1614.405(a) (stating that a "decision on an appeal from an Agency's final action shall be based on a de novo review . . ."); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (Aug. 5, 2015) (providing that an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed de novo). This essentially means that we should look at this case with fresh eyes.

[4] To the extent Complainant argues that the AJ was biased, we reject Complainant's argument as the only apparent basis for Complainant's allegation of bias is her disagreement with the AJ's conclusions. However, disagreement with the AJ's rulings is not indication of impropriety or of any bias on the part of the AJ. See Jed T. v. Dep't of Veterans Affs., EEOC Appeal No. 2022000805 (May 18, 2023).

In other words, we are free to accept (if accurate) or reject (if erroneous) the AJ's, and Agency's, factual conclusions and legal analysis – including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. See id. at Chapter 9, § VI.A. (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

Issuance of Summary Judgment

We will first determine whether the AJ appropriately issued the decision without a hearing. The Commission's regulations allow an AJ to issue a decision without a hearing upon finding that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). EEOC's decision without a hearing regulation follows the summary judgment procedure from federal court. Fed. R. Civ. P. 56. The U.S. Supreme Court held summary judgment is appropriate where a judge determines no genuine issue of material fact exists under the legal and evidentiary standards. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a summary judgment motion, the judge is to determine whether there are genuine issues for trial, as opposed to weighing the evidence. Id. at 249. At the summary judgment stage, the judge must believe the non-moving party's evidence and must draw justifiable inferences in the non-moving party's favor. Id. at 255. A "genuine issue of fact" is one that a reasonable judge could find in favor for 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 "material" fact has the potential to affect the outcome of a case.

An AJ may issue a decision without a hearing only after determining that the record has been adequately developed. See Petty v. Dep't of Def., EEOC Appeal No. 01A24206 (July 11, 2003). We carefully reviewed the record and find that it is adequately developed. To successfully oppose a decision without a hearing, Complainant must identify material facts of record that are in dispute or present further material evidence establishing facts in dispute. Here, Complainant herself filed a motion for summary judgment and does not challenge the AJ's issuance of summary judgment.

Upon our review of the record, we find that the AJ correctly determined that there were no genuine disputes of material fact. Accordingly, we find that the AJ properly issued a decision without a hearing.

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 an 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 with respect to her protected classes of race or disability. Complainant did not identify any similarly-situated individuals of a different protected class who were treated more favorably and the only evidence she offered to support her belief of discriminatory animus is that she was of a different race than the various management officials. However, Complainant's bare assertions alone are not sufficient to establish a prima facie case. See Evelina M. v. U.S. Postal Serv., EEOC Appeal No. 2023002009 (Oct. 2, 2024). We find, however, that Complainant established a prima facie case of reprisal for events occurring after February 8, 2022, when the record indicates that Complainant sent emails to the Operations Manager and the District Manager complaining of Supervisor 1's treatment of her following the memorandum dated February 8, 2022, as creating a hostile work environment and noting that it "is becoming an EEOC matter." See ROI at 196; 198.

We find that the Agency articulated legitimate, nondiscriminatory reasons for all of its actions. The first memorandum dated January 31, 2022, stated that it was being issued due to Complainant's failure to attend a scheduled training. See ROI at 405. The February 8, 2022 memorandum stated that it was being issued because of Complainant's combative response to Supervisor 1 telling Complainant to get off a training as the invitation for the training had been sent to Complainant by mistake. See ROI at 406. The March 8, 2022 memorandum was issued to Complainant for her late arrival in her office and her persistence in leaving the Campus during the work day for several hours as well as her failure to follow instructions in changing the filing system without instruction. See ROI at 407. The District Manager stated that Complainant was terminated for unprofessional behavior and for starting a feud with the union president and persisting in it even after being told to cease and desist. See ROI at 319-20.

We further find that Complainant did not establish that any of the Agency's reasons are a pretext for discrimination.

Complainant's primary contention is that all the memoranda regarding her conduct are false and that the management officials are lying. Contrary to her assertions, however, the evidence in the record in the form of the contemporaneous emails, does not support Complainant's contentions. In addition, it is well established that in a discrimination case involving an adverse action in response to alleged misconduct, the question is not whether the misconduct occurred, but whether the Agency's asserted belief that the misconduct occurred is a pretext for discrimination. See Ezequiel P. v. U.S. Postal Serv., EEOC Appeal No. 2021002377 (March 28, 2022). In this case, there is simply no evidence in the record beyond Complainant's unsupported assertions that the Agency was motivated by any discriminatory or retaliatory animus. 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. See Juliet B. v. U.S. Postal Serv., EEOC Appeal No. 0120182519 (Oct. 8, 2019); Richardson v. Dep't of Agric., 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 disability.

Only if Complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself.

We further find that the AJ correctly found that Complainant did not establish that she was subjected to unlawful harassment. To the extent Complainant argued that Supervisor 1 harassed her by referring to her skin condition as having "cooties," we note that while the comment was unprofessional and inappropriate, Complainant herself acknowledged that it was a single, isolated comment and such isolated comments are generally not sufficient to constitute an unlawful hostile work environment. See Kelley P. v. Dep't of Agric., EEOC Appeal No. 2020000247 (Feb. 20, 2020). Beyond that, the remainder of Complainant's allegations of harassment amount to little more than disagreements with Supervisor 1's and Manager 1's managerial style and tone, accusing them of being unprofessional and rude. However, the Commission has repeatedly stated that personality conflicts and fundamental disagreements over how work should be done and how employees should be supervised do not rise to the level of harassment because they are common workplace occurrences. See Chanelle B. v. Dep't of Defense, EEOC Appeal No. 2022000835 (Jan. 31, 2023); see also Shellie T. v. Dep't of Defense, EEOC Appeal No. 2023001813 (July 20, 2023) (stating that instances of a supervisor questioning an employee with respect to their duties, even if done in a confrontational manner, were not sufficient to state a claim of harassment). Moreover, Title VII is not a civility code and EEO laws do not guarantee a complainant a right to work in a pleasant or stress-free environment. See Rita F. v. U.S. Postal Serv., EEOC Appeal No. 2021002876 (Aug. 16, 2022); Dolly H., v. Dep't of Agric., EEOC Appeal No. 0120150414 (May 3, 2017).

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 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

December 30, 2024
Date