



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

[REDACTED]
Velva B.,¹
Complainant,

v.

Gina M. Raimondo,
Secretary,
Department of Commerce
(National Institute of Standards and Technology),
Agency.

Appeal No. 2023005115

Hearing No. 531-2022-00270

Agency No. 57-2022-00056

DECISION

On September 14, 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 18, 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. For the following reasons, the Commission AFFIRMS the Agency's final order.

ISSUES PRESENTED

- 1) Whether the EEOC Administrative Judge's grant of summary judgment in favor of the Agency was appropriate, or whether genuine disputes of material fact exist that require a hearing.

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) Whether the Agency's final order properly found that Complainant was not subjected to discrimination as alleged.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked at the Agency as a Supervisory Logistics Manager, ZA-0346-IV, in the Facilities Services Division (FSD), Offices of Facilities and Plant Management (OFPM), National Institutes of Standards and Technology (NIST). Division Chief (Chief), FSD, has been Complainant's first level supervisor since April 2019. Deputy Director, OFPM, has been Complainant's second level supervisor since April 2019. Director was Complainant's third level supervisor.

Previously Complainant filed two EEO complaints which were consolidated and resolved pursuant to a settlement agreement in June 2019. Complainant stated she named Director and a retired manager as responsible management officials in her first two complaints. According to the settlement agreement, Complainant was reinstated to the position of Supervisory Logistics Manager but did not have any supervisory responsibilities.

Complainant stated she filed a third EEO complaint naming Chief as a responsible management official. Complainant stated the third complaint was pending.

According to her position description, as a Supervisory Logistics Manager, Complainant's role "[s]upports the Facilities Services Division Chief in areas of policy research, determination and implementation, special project management, facilitating, benchmarking, process and program analysis research and improvement, employee development and diversity" and also "[l]iaisons with external activities across a range of functional areas at the direction of the Division Chief, for the purpose of information gathering, divisional representation and specific program analysis." ROI at 153. The position description specified that Complainant did not have supervisory responsibilities.

Rating

NIST operated under the Alternative Personnel Management System (APMS). For each of the critical elements, the employees were given a rating based on the NIST Benchmark Performance Standards as follows: **E**xceeds Expectations (E), **F**ully **S**uccessful (S), **M**inimally Meets Expectations (M),

and **Unsatisfactory (U)**. A weight of 1, 2, 3, or 4 was assigned to each critical element, with 1 being the least weighted. After the ratings for the critical elements were tabulated, each employee was given a Summary Performance Rating based on the critical element ratings. The Summary Performance Ratings ranged from Exceptional Contributor, Superior Contributor, Meritorious Contributor, Significant Contributor, Contributor, Marginal Contributor, and Unsatisfactory.

The Fiscal Year (FY) 2021 rating period ran from October 1, 2020, until September 30, 2021. During the rating period Complainant was rated on five elements: 1. Business Results; 2. Customer Service; 3. Safety; 4. Security; and 5. Responsiveness, Collaboration and Communication. In April 2021, Complainant received her midyear review in which her performance was marked as being at the Contributor level or higher.

On November 29, 2021, Complainant's FY 2021 rating was finalized.² Complainant received a rating of "S" or "Fully Successful" for four out of the five critical elements, and a rating of "E" or "Exceeds Expectations" for Element 4. Security, which had a weight of 1. ROI at 230. Complainant received a summary rating of Significant Contributor and a bonus amount of \$1,500.00.

Complainant claimed her performance rating dropped due to her prior EEO complaints. She stated she should have been rated Exceptional in Business Results because she executed all tasks Chief asked her to do exceptionally. She stated she should have been rated Exceptional in Customer Service because she demonstrates professionalism in her job. She stated she did not know how Chief could have rated her Fully Successful for Safety because Complainant works from home and Chief has no idea how her work area was set up. Complainant stated she should have been rated Exceptional in Responsiveness, Collaboration, and Communication because anytime she was asked something, she explained in detail and was very responsive. Based on this, she stated she should have received a rating of Exceptional or Superior Contributor for FY 2021.

Chief was Complainant's rating official for her performance evaluation. Deputy Director was the reviewing official. Chief stated based on Complainant receiving Fully Successful in four elements and Exceeds Expectations in one element, she was rated Significant Contributor.

² The record reveals Chief, as Rating Official, signed the evaluation on November 9, 2021.

Chief noted she initially rated Complainant Exceptional in the element Responsiveness, Collaboration, and Communication, which would have enabled her to receive a Summary Performance Rating of Meritorious. However, Chief stated Deputy Director did not agree with the rating and asked Complainant for some back up and her write-up of Accomplishments was submitted. Chief stated based on her discussion with Deputy Director and comparing Complainant's accomplishments with the Benchmark Performance Standards, Chief agreed that the rating for Responsiveness, Collaboration, and Communication should be Fully Successful. Chief noted that, "Complainant wants to be given her assignments and does not take the initiative as a level IV (GS-14 equivalent) of performing the actions on her PA [performance appraisal] and following through with all necessary actions." ROI at 00107.

Deputy Director reviewed the write-up from Chief for Complainant's rating and discussed it with Chief prior to release. He noted Chief had Complainant's Summary Performance rating as Meritorious. Deputy Director stated he was unable to match up the definition of Exceeds Expectations for the element Business Results based on the information provided by Chief and Complainant. Deputy Director asked for additional input from Chief and she could not provide any. Thus, Deputy Director stated the rating for Business Results was changed from Exceeds Expectations to Fully Successful, which changed Complainant's rating from Meritorious to Significant Contributor. Deputy Director stated Complainant provided some input for Business Results and it was reviewed but it was inadequate. Deputy Director agreed with the other ratings assigned Complainant.

Treatment

During the relevant time Complainant stated she was marginalized, overlooked, and excluded from FSD mission emails and meetings, other than the monthly Tuesday staff meetings. She stated she was excluded from weekly Wednesday COVID-19 meetings that occurred with other FSD supervisors. As of February 23, 2022, she stated she has since started attending the once identified COVID-19 meeting, which she stated are now monthly FSD updates. She noted that during the February 23, 2022 meeting, Chief announced her and Person A (Supervisory Property Disposal Specialist) as two newcomers to the meeting, which she stated made her uncomfortable as it singled out Complainant.

In her rebuttal affidavit, Complainant acknowledged she did not supervise any employees. However, she stated due to an underlying health condition the more information she received during COVID-19, the better off she was. Additionally, she stated that as a senior employee in FSD, she should have been allowed to participate in any mission meetings.

Complainant also stated she was supposed to serve as the Program Manager for the Radio Frequency Information Data (RFID) project, but that to date Chief had not explained her responsibilities. Complainant stated it was only written on paper with no defined role. Complainant noted that Chief failed to email her to attend a March 17, 2022 meeting. As a result at the March 23, 2022 meeting, Deputy Director asked Complainant a question and Complainant could not respond as she had not attended the prior meeting. Complainant stated this made her "look like an idiot in front of [Deputy Director]" and the other staff present. ROI at 00096.

Chief noted Complainant agreed to an EEO settlement and new position description which restored her former title of Supervisor of Logistical Services with "no supervisory responsibilities." Chief noted as a result Complainant did not supervise any personnel or programs. Chief stated Complainant's participation was not required during the weekly FSD Responsibilities for Campus Reopening meetings from March 2020 - December 2021, during the height of COVID-19. As COVID-19 lessened, beginning in January 2022, Complainant and the Property/Recycling Supervisors began participating in the then monthly meetings. Chief stated at that time Complainant was the Program Manager and Lead for the RFID implementation project and her participation was required at the monthly meeting.

Regarding Complainant's attendance at the March 17, 2022 meeting, in which the RFID project was discussed, Chief stated Complainant's name was omitted from the list of attendees for the meeting by the Information Technology (IT) Department. Chief stated she contacted Complainant on March 25, 2022, and advised her an error was made in not including her in the March 17, 2022 meeting and Chief told her she thought Complainant had been invited; however, moving forward Complainant would be invited to all future meetings.

Deputy Director stated Complainant did not have any supervisory responsibilities and was not overseeing any COVID-19 activities and thus, her participation was not required for the weekly meetings.

He noted since January 2022, Complainant and others started attending monthly operational meetings, which he noted was appropriate as Complainant was the Program Manager for the RFID project.

Deputy Director stated Complainant was inadvertently left off an invitation for a meeting on March 17, 2022. He noted the IT Department failed to include her on the invitation for the meeting. Deputy Director noted at a March 23, 2022 meeting, he asked Complainant a question about the RFID project. He was not aware she was omitted from the March 17 meeting. He stated he did not berate Complainant and someone else answered his question.

Supervisory Program Manager of Storeroom Operations (Person B) stated he attended a meeting on March 23, 2022, when Deputy Director asked Complainant a question about the RFID program. He stated Complainant was not able to answer the question, as she did not attend an earlier meeting on March 17, 2022. It was his impression it was not a big deal, as someone else was able to answer Deputy Director's question.

Person A stated he was aware there were weekly FSD meetings pertaining to COVID-19 in which discussions were held regarding reopening NIST. He stated he was not in attendance and not invited to these meetings. He stated the meetings were now held monthly and that he and Complainant were now attending the meetings. Person A stated he was present at the March 23, 2022 meeting when Deputy Director asked Complainant a question about the RFID project. He noted Complainant told Deputy Director she could not answer his question, as she was not present for the March 17, 2022, meeting. Person A states Deputy Director did not berate Complainant for her inability to answer his question.

Supervisory Program Manager (Person C) stated FSD meetings were held for group leaders due to COVID-19. She explained Complainant would not have any input for these meetings, as she did not supervise anyone. Person C stated the meetings are no longer COVID-19 related but are used to update information about what is going on in FSD, such as property contracts or customer complaints. She stated Complainant was now attending these meetings.

Combined Federal Campaign

On October 21, 2020, Chief assigned Complainant as the Combined Federal Campaign (CFC) Captain for FY 2021.

In an October 27, 2020 email, Chief informed Complainant she confirmed with Deputy Director and Director that Complainant would be the OFPM CFC Captain. In an email the same day, Complainant responded, "Thanks and no problem. I will try to figure out the . . . divisions but if I have a problem I will consult with you and Person X. Again, as you know I will be out for 6 weeks but hopefully [Person Y] will fill in for me." ROI at 00218.

Complainant stated she did not volunteer to be CFC Captain but was assigned to do it by Chief. She stated she has served as the OFPM CFC Captain/Point of Contact from 2017 to 2021.³ She stated Chief was aware she would be on annual leave in a "use or lose" category but still assigned Complainant to serve as Captain. Complainant stated there was a weekly reporting requirement for CFC Captain which she said was required to do while on leave. She argued the assignment was retaliation for her prior EEO activity.

Chief stated she assigned Complainant as the CFC Captain on October 21, 2020. She stated Complainant was assigned the task because she was available, and Chief had no one else to do it. Chief noted Complainant responded, "Ok, please be mindful I will be out of the office for a while on use or leave until January 2, 20[21]." Chief noted Complainant responded in a second email stating she would consult Person X regarding the divisions and further noting she would be out for six weeks but hopefully Person Y would fill in for her. Chief noted Complainant was the Division's CFC Captain in 2019 and 2021. Chief noted it was understood Complainant would contact two OFPM team members and they would do what was required. Chief stated she approved Complainant's leave in October 2020 and if she needed help as CFC Captain she should have taken the initiative to contact her two OFPM team members and request for them to fill in during that timeframe. Chief stated Complainant's leave was in December and she had time to request assistance of the two CFC team members.

³ We note that in the record Complainant's description of her past role in the CFC differs. For example, in her affidavit Complainant states that she was the CFC Captain from 2017 through 2021. ROI at 00097. Elsewhere she states she was the CFC POC (Point of Contact) from 2017 through January 2021. ROI at 00100. Additionally, in an addendum to her complaint she stated she served several years as Co-Captain and Captain from 2017-2021. ROI at 00048. In her Response to the Agency's Motion for summary judgment, she states she served as a Captain for one year and Co-Captain the other four years.

On December 27, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against her in reprisal for prior protected EEO activity when:

1. On November 9, 2021, Complainant was not given a fair 2021 performance evaluation.
2. Complainant continues to be marginalized, overlooked and not treated as a valued employee, and she is not kept informed of any changes to protocol or occurrences with COVID-19, as is done with other FSD staff employees.
3. While Agency officials were aware that she would be on extended annual leave in a "use or lose" category during this year's Combined Federal Campaign (CFC), she was assigned and required to be CFC Captain. While on approved annual leave, on December 4, 2021, she required unscheduled emergency eye surgery. Despite the painful challenges associated with her recovery and being on leave, she was required to adhere to a weekly CFC reporting requirement.

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 requested a hearing. The Agency filed its Agency's Motion for Summary Judgment. Complainant filed a Response. Over Complainant's objections, the AJ granted the Agency's motion for a decision without a hearing. The AJ adopted and incorporated the Agency's Statement of Fact. The AJ issued a decision without a hearing on August 9, 2023, finding no evidence that the Agency was motivated by retaliatory animus.

The Agency subsequently issued a final order on August 18, 2023. The Agency's final order fully implemented the AJ's finding that Complainant failed to prove that the Agency subjected her to retaliation as alleged.

CONTENTIONS ON APPEAL

On appeal, Complainant notes although she disputed four of the facts cited in the Agency's motion for summary judgment (facts 7, 12, 19, and 22), the AJ concluded material facts were not in dispute.

Complainant disagrees with the Agency's argument that she failed to show a nexus existed between her protected EEO activity and the adverse actions. She states she received the FY 2021 rating on November 9, 2021, less than three weeks after an EEOC AJ issued an order requiring the parties to attend an Alternative Dispute Resolution (ADR) session on her other complaint. Complainant states the EEOC-ordered mediation, during which Chief was a participant, occurred on November 10, 2021, one day after Chief prepared her rating. She claims the processing of her third complaint (filed against the Chief) coincided with the Chief's refusal to allow her to perform her job duties. Complainant argues the decision to assign her as CFC Captain occurred in early December 2021, less than two weeks after the EEO Counselor notified management of this case. Complainant argues having job duties taken away, being excluded from meetings, and receiving a lower rating were adverse actions.

Complainant states she should have been invited to the weekly meetings because she was the most senior employee under Chief and was still a manager with a supervisory title and supervisory pay. She argues the meetings were policy meetings and not meetings to discuss the supervision of certain employees. She argues there is a question of fact as to why she was repeatedly denied admission to manager meetings.

Regarding her assignment as CFC Captain, she notes the Agency stated she was not required to perform this function while she was on "use or lose" leave, but she states that she was ordered to perform those duties. She argues there is a question of fact as to who was telling the truth.

Finally, she claims pretext is established by the timing of the events. Complainant notes the claims occurred while she was litigating her prior EEO complaints. She notes the Agency insisted she was performing all her job duties, other than her supervisory role. She states if she were a manager, as the Agency alleged in response to her evaluation claim, she argues she should have been able to attend the weekly meetings.

In response to her appeal, the Agency contends there were no material facts in dispute. The Agency notes the AJ incorporated the Agency's Statement of Facts, which included Facts 7, 12, 19, and 22. The Agency noted Fact 7 was directly pulled from Complainant's position description. The Agency notes Complainant's objection before the AJ was that Fact 7 failed to mention her major job duties. The Agency notes, however, Complainant did not contest the validity of the duties the Agency highlighted in its motion. Regarding Fact 12, the Agency notes this was a reference to the Rating Official's role under the Agency's personnel management system in modifying the performance plan as necessary and obtaining the Reviewing Official's and employee's initials on the revised plan. The Agency notes Complainant offered no information as to how this fact is in dispute.

The Agency notes Fact 19 concerns Complainant's FY 2021 rating being finalized in November 2021, listing the rating she received, and noting she received a summary rating of Significant Contributor and an award of \$1,500.00. The Agency notes while Complainant believed she should have received a higher rating; this does not mean the fact that she received the rating is in dispute. Regarding Fact 22, the Agency notes this addresses how Complainant was assigned to be the CFC Captain and that there were two other employees from her office who were assigned to work with her as part of the CFC Team. The Agency notes Complainant admits she was selected as CFC Captain, and it argues she does not dispute any of the statements in Fact 22. The Agency claims the AJ correctly determined there were no material facts in dispute and found there was no discrimination as alleged.

STANDARD OF REVIEW

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

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

ANALYSIS

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. Here, however, Complainant has failed to establish such a dispute. Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable fact-finder could not find in Complainant's favor.

For a complainant to prevail on a claim of disparate treatment, they must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). A complainant must initially establish a *prima facie* case by demonstrating that they were subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Co. v. Waters, 438 U.S. 567, 576 (1978). Proof of a *prima facie* case will vary depending on the facts of the particular case. McDonnell Douglas, 411 U.S. at 804 n. 14.

To establish a *prima facie* case of disparate treatment on the basis of reprisal, a complainant must show 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.

See Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120132503 (Aug. 28, 2014), citing Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000).

The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dep't of Cmty. Aff. v. Burdine, 450 U.S. 248, 253 (1981). A complainant must ultimately prove, by a preponderance of the evidence, that the agency's explanation is pretext for discrimination. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 143 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993); Burdine, 450 U.S. at 256.

At the outset we find the record in the present case was fully developed. We find summary judgment was appropriate as there are not genuine issues of material fact in dispute. We find that the four facts referenced by Complainant on appeal are either not relevant or not in dispute.

The Commission finds that Complainant established a prima facie case of reprisal discrimination, in that she filed three prior EEO complaints, the responsible management officials acknowledge they were aware of this participation, the incidents alleged constituted adverse treatment, and the amount of time between Complainant's protected activity and the issuance of the rating, exclusion from weekly meetings, and being required to adhere to a weekly CFC reporting requirement while on leave, were sufficient to infer a nexus. See Whitmire, EEOC Appeal No. 01A00340 (September 26, 2000) (nexus is apparent because the agency action closely followed complainant's participation in a protected activity by approximately four months). Complainant has failed, however, to present evidence that the Agency's articulated reasons for its actions were a pretext for discrimination. In reaching this conclusion, we note that there is no evidence that the Agency's actions were motivated by retaliatory animus.

Regarding her rating, the Agency states Complainant was rated on each of the elements listed based on her performance and that as a result of those ratings she received an overall rating of Significant Contributor. Complainant presented her subjective assessment of her performance; however, she only provided generalizations about why she felt she should have been rated higher. While Chief initially rated Complainant as Exceeds Expectations on one element, the record reveals after discussion with Deputy Director, both agreed the rating for that element should be Fully Successful.

As for the Safety element, we note that this element includes more than just a safe work environment since it includes, for instance, prevention strategies which Complainant has not asserted she performed at a higher level than which she was rated. Upon review, we find no evidence of retaliatory animus. Further, Complainant presented no evidence to indicate she was treated differently from similarly situated employees outside her protected class.

Regarding the claim she was marginalized, overlooked, and excluded from supervisory meetings, the Agency notes due to the fact that during the time Complainant did not supervise any personnel or programs she was not invited to certain supervisory meetings. The Agency stated Complainant was provided information and invited to meetings based on her assigned duties. Complainant has not presented evidence that this reason was pretextual.

Regarding her assignment as CFC Captain, the Agency states Complainant was assigned as CFC Captain due to her prior experience and availability to perform the task. Regarding her claim that management required her to perform CFC work while she was on "use or lose" leave, we find there is no evidence to support this contention and thus, she has not shown it was a material fact in dispute. Viewing the record in the light most favorable to Complainant, we assume that the Agency did not formally assign two team members from Complainant's office as part of OFPM's CFC team. However, we note that Complainant herself acknowledged in her October 27, 2020 email that Person X and Person Y were available to assist with CFC duties. Complainant has not presented evidence that the Agency's actions were based on retaliatory animus.

CONCLUSION

Accordingly, the Agency's final order finding no discrimination is AFFIRMED.

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 19, 2024
Date