



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

[REDACTED]
Alycia R.,¹
Complainant,

v.

Martin J. O'Malley,
Commissioner,
Social Security Administration,
Agency.

Appeal No. 2023005379

Hearing No. 410-2022-00207X

Agency No. ATL-21-0404-SSA

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 August 29, 2023, final order concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission AFFIRMS the Agency's final order.

ISSUES PRESENTED

The issues presented are whether Complainant's appeal is timely; and whether the Administrative Judge properly found attorney-client privilege for

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.

redacted documents and issued a decision without a hearing on the appropriate claims finding no discrimination or harassment as alleged.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Systems Coordinator at the Agency's Field Office in Durham, North Carolina. On or about May 13, 2021, Complainant settled an EEO complaint (ATL-21-0298-SSA), and the Agency agreed to reassign her to a Claims Technical Expert position. Report of Investigation (ROI) at 531-6.

On August 16, 2021, Complainant filed a new EEO complaint alleging that the Agency discriminated against her on the bases of sex (female) and disability (physical and mental), and in reprisal for prior protected EEO activity, when:

1. on or about June 10, 2021, Complainant's first-line supervisor ("Supervisor") issued a Performance Assessment and Communication System (PACS) appraisal to Complainant that was inaccurate; and
2. the Agency subjected Complainant to harassment for the incident in claim 1 and when:
 - a. from May 14-21, 2021, Complainant was expected to complete Systems Coordinator assignments; Area Director Office (ADO) assignments; and automation assignments, which constituted an overly burdensome amount of work;
 - b. on or about May 21, 2021, the Supervisor issued a midyear PACS discussion that did not accurately assess Complainant's work performance;
 - c. on or about May 21, 2021, the Supervisor directed Complainant to refrain from contacting any of the offices she worked with to inform them that she would be unavailable for systems requests starting on May 24, 2021; and
 - d. the formal notification from the Area Director to employees regarding Complainant's reassignment stated only that she was unavailable starting May 24, 2021, and it did not identify her new position or thank her for her service to the area.

The EEO investigation revealed that Complainant had various physical and medical conditions, such as carpal tunnel; peripheral neuropathy; and insomnia. She cannot type or click a mouse and utilizes a talk-to-text program called Dragon. Complainant stated that Dragon is very slow, and she requires additional time to complete tasks. ROI at 241-2.

The Supervisor held a Performance Discussion with Complainant on May 21, 2021, and she issued Complainant a PACS appraisal of Successful Contribution on June 10, 2021. In both, the Supervisor noted that they held numerous discussions regarding Complainant's oral communication to field office managers and the ADO leadership team, and her tone was "quarrelsome, aggressive, and [Complainant] often interrupts others while they are speaking." Complainant responded that she did not feel that this was an appropriate assessment of her interpersonal skills. ROI at 555-60.

Complainant alleged harassment for the performance feedback and other incidents. She averred that she was expected to complete a workload that could not be completed by a single, able-bodied employee; directed not to contact any offices to explain that she would be unavailable for systems requests starting May 24th because it was not her responsibility; and the ADO's formal notification to area employees of Complainant's reassignment did not thank her for her service. ROI at 246-52.

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.

During the hearing process, Complainant filed a motion to compel because portions of "memory joggers" documents were redacted. On March 31, 2023, the AJ found that the Agency was not required to produce redacted portions of these documents because notes memorializing communications with an attorney are protected by attorney-client privilege.

Both parties filed motions for summary judgment. Over Complainant's objections, the AJ denied Complainant's motion and granted the Agency's motion in a decision without a hearing on August 24, 2023. In footnote 1, the AJ observed that neither party filed an objection to the statement of claims from the Order on Initial Conference, Deadlines, and Record Completion issued on September 12, 2022. To the extent that any party contended that there were other claims at issue in this case, such contention lacked merit.

The AJ found that the Agency proffered that the Supervisor issued the PACS appraisal on June 10, 2021, believing that the rating and comments were an accurate assessment of Complainant's work performance. Complainant argued that the reasons were pretextual because she disagreed with the ratings and comments, but an employee's disagreement was not evidence of unlawful motivation. Complainant also argued a temporal nexus, but the AJ found that temporal proximity alone cannot establish a retaliatory motive. Complainant did not identify any other evidence to suggest pretext for discrimination. The AJ also found that Complainant only offered her unsupported allegations and speculation for the alleged acts of harassment, which were insufficient to establish unlawful motive or to create genuine issues of material fact. The AJ concluded by denying Complainant's Motion for Summary Judgment and granting the Agency'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

In her appeal, Complainant asserts that the Agency violated the settlement agreement; shared the settlement agreement with the Supervisor, who was not entitled to the information; and "released" her EEO activity to the District Manager. Complainant also argues that there are credibility issues, and the Supervisor "impeached herself multiple times," and that the Agency was unable to produce evidence that Complainant was ever aggressive, quarrelsome, or unprofessional. Complainant further contends that the AJ failed to consider the facts and ruled that they could not discuss or obtain evidence regarding her reasonable accommodation or non-selections. She also accuses the AJ of failing to ensure that the management notes were unredacted and disputes the attorney-client privilege.

The Agency opposes Complainant's appeal and asserts it should be dismissed as untimely. The Agency notes that it issued the final order to Complainant and her representatives on August 29, 2023, and she filed her appeal thirty-one days later on September 29, 2023. In the alternative, the Agency requests that the Commission affirm its final order because Complainant repeats her unsupported and conclusory arguments, and the AJ correctly issued a decision granting summary judgment for her claims.

Further, the Agency maintains that there was no abuse of discretion when the AJ ruled that the notes memorializing conversations between management officials and an Agency attorney were covered by attorney-client privilege.

Complainant filed a reply to the Agency's opposition brief on December 22, 2023.²

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. 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

² 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). In addition, 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). As such, we will not consider Complainant's second untimely brief.

an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed *de novo*).

ANALYSIS

Timeliness of Appeal

As an initial matter, we address the Agency's argument that Complainant's appeal must be dismissed because it was untimely. The Agency asserts that Complainant and her representatives all received the Agency's final order via email on August 29, 2023, and her deadline to file her appeal was September 28, 2023. She filed her appeal on September 29, 2023, which was one day late.

Appeals to the Commission must be filed within thirty (30) calendar days after a complainant receives notice of the Agency's final action. 29 C.F.R. § 1614.402(a). Where, as here, there is an issue of timeliness, "[a]n agency always bears the burden of obtaining sufficient information to support a reasoned determination as to timeliness." Guy v. Dep't of Energy, EEOC Request No. 05930703 (Jan. 4, 1994) quoting Williams v. Dep't of Defense, EEOC Request No. 05920506 (Aug. 25, 1992). It is undisputed that Complainant's appeal was filed on September 29, 2023. However, the Agency offered no evidence to prove when Complainant received the Agency's final order, such as a read receipt or a response email confirming her receipt. Since the Agency has not met its burden, we will consider Complainant's appeal to be timely.

Claims

Complainant raises additional claims on appeal, such as a settlement breach;³ improper disclosure of her settlement agreement and EEO activity; and various non-selections. However, these claims were not accepted as part of this complaint. The AJ noted in the decision that Complainant did not challenge the claims as they were listed in the Order on Initial Conference, Deadlines, and Record Completion, and any contention that there were other claims in this complaint lacked merit.

³ Complainant previously alleged a breach of the May 13, 2021, settlement agreement, and the Commission affirmed the Agency's determination that there was no breach. Neta P. v. Social Security Admin., EEOC Appeal No. 2022001283 (Apr. 11, 2022); req. for recon. denied, EEOC Request No. 2022003068 (Sept. 29, 2022).

The AJ previously ordered the parties to file any objection to the claims or motions to amend by September 22, 2022. There is no indication that Complainant moved to amend her complaint to add claims. The Commission has held that it is not appropriate for a complainant to raise new claims for the first time on appeal. See Hubbard v. Dep't of Homeland Security, EEOC Appeal No. 01A40449 (Apr. 22, 2004). Accordingly, the instant decision will only address claims that were previously accepted and investigated. Should she wish to pursue any new claims, Complainant is advised to contact an EEO Counselor to initiate the administrative process.

Attorney-Client Privilege

Complainant challenges the redaction of documents by the Agency due to attorney-client privilege. The record shows that on March 31, 2023, the AJ found that the documents in question were protected by attorney-client privilege because they contained management officials' communications with the Agency's attorney.

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 simply disagrees with the AJ's ruling, but she has not shown an abuse of discretion when the AJ found that attorney-client privilege applied to the redacted portions of the "memory joggers." Accordingly, we find that Complainant has not met her burden regarding the documents covered by attorney-client privilege.

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. Here, however, Complainant has failed to establish such a dispute.

Complainant only offers broad assertions that there are credibility issues and that the Supervisor impeached herself. However, she has not identified any material facts and cited to evidence to prove a genuine dispute. 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).

Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable factfinder could not find in Complainant's favor. A review of the record does not reveal any genuine disputes of material facts. Therefore, the AJ's issuance of a decision without a hearing was appropriate.

Disparate Treatment (Claim 1)

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).

To establish a prima facie case of disparate treatment discrimination based on disability, complainants generally must prove the following elements: (1) they are an individual with a disability as defined in 29 C.F.R. §§ 1614.203(a) and 1630.2(g); (2) they are "qualified" as defined in 29 C.F.R. §§ 1614.203(a) and 1630.2(m); (3) the agency took an adverse action against them; and (4) there was a causal relationship between their

disability and the agency's actions. See Annamarie F. v. Department of the Air Force, EEOC Appeal No. 2021004533 (August 17, 2023).

We find that the evidence supports that Complainant is an individual with a disability. An individual with a disability is one who: (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such impairment; or (3) is regarded as having such an impairment. 29 C.F.R. § 1630.2(g). Major life activities include such functions as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. 29 C.F.R. § 1630.2(i). An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to the ability of most people in the general population. 29 C.F.R. § 1630.2(j)(ii).

Complainant noted that her medical conditions include carpal tunnel; peripheral neuropathy; repetitive stress injuries; and thoracic outlet syndrome, which impact routine tasks, such as her ability to type or use a mouse. Complainant also submitted medical documentation with her diagnoses. ROI at 241-2, 328-37. There is no dispute that Complainant can perform her essential duties with or without an accommodation. ROI at 297, 305. As such, Complainant is an individual with a disability, and she is qualified for her position.

Assuming, for the sake of argument, that the PACS appraisal was an adverse action, Complainant offered no evidence to show a causal relationship to any of her disabilities. As such, Complainant did not establish a prima facie case of discrimination based on disability.

Complainants may establish a prima facie case of sex 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 is female, but she did not claim that a similarly situated male coworker was treated more favorably, and she did not show that the circumstances surrounding her PACS appraisal raised an inference of sex discrimination. We find that Complainant did not establish a prima facie case of sex discrimination.

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). Complainant stated that she initiated an EEO complaint on March 24, 2021, and that management officials were aware of it because they were interviewed during the initial complaint process. ROI at 246. The Supervisor revealed that she learned of Complainant's prior EEO activity in April 2021. ROI at 298.

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). Here, the Supervisor's awareness of Complainant's EEO activity occurred within a couple of months before the June 10th PACS appraisal. As such, we find a temporal nexus between Complainant's EEO activity and the claimed adverse action, and that Complainant established a prima facie case of reprisal.

We now turn to the Agency's articulated legitimate, nondiscriminatory reasons for the action. The Supervisor explained that Complainant received a Successful Contribution rating based on her communication issues. In addition to her tone, the Supervisor stated that Complainant did not communicate with managers to keep them informed when employees were unavailable for production while she worked on systems issues. The Supervisor also requested that Complainant communicate more regarding developing issues before they escalated. ROI at 300.

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).

In her appeal, Complainant stated that the Agency did not provide evidence that she was ever aggressive, quarrelsome, or unprofessional.

However, an Agency merely has to articulate legitimate, nondiscriminatory reasons for its actions, and then it is Complainant's burden to prove that the Agency's actions were pretext for discrimination. See Complainant v. Dep't of Homeland Security, EEOC Appeal No. 0120123327 (Apr. 28, 2015); Yoon v. Dep't of the Army, EEOC Request No. 0520110577 (Dec. 16, 2011); O'Loughlin v. Social Security Administration, EEOC Request No. 05980011 (Apr. 26, 2001). The Supervisor testified that her assessment of Complainant's tone as quarrelsome and aggressive was based, in part, on her direct observations and interactions with Complainant. Supervisor Deposition at 11. Complainant did not cite to any record evidence to prove that the proffered reasons are not worthy of belief. However, even crediting Complainant's assertions that she was not aggressive, quarrelsome, or unprofessional, she did not challenge the other stated reasons regarding her lack of communication with management officials when she was working on systems or on developing issues. Complainant's bare assertions that management officials discriminated against her are insufficient to prove pretext, or that their actions were discriminatory.

Further, 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. 248, 259 (1981); 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. Accordingly, we find that Complainant did not establish that the Agency subjected her to discrimination based on her disability or sex, or in reprisal for prior protected EEO activity, for her PACS appraisal issued on June 10, 2021.

Harassment

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 (April 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, sex, or engagement in prior EEO activity. Only if Complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself.

As discussed above, we found that Complainant did not establish a case of discrimination on any of her alleged bases for claim 1. Further, we conclude that a case of harassment is precluded based on our finding that she did not establish that this action taken by the Agency was motivated by her protected bases. See Oakley v. U.S. Postal Serv., EEOC Appeal No. 01982923 (Sept. 21, 2000). Accordingly, we find that Complainant did not show that the Agency subjected her to harassment based on her disability or sex, or in reprisal for prior protected EEO activity, for claim 1.

Regarding the remaining incidents of alleged harassment, Complainant has not shown a connection with her disability, sex, or prior protected EEO activity. For claim 2(b), the Supervisor explained that they had a midterm discussion, and she provided an informational appraisal in May, in response to Complainant's upcoming reassignment. ROI at 300. The information regarding Complainant's interpersonal skills in the May midyear discussion was identical to the June PACS appraisal. ROI at 555-60.

Complainant alleged that her assignments could not be completed by a single, able-bodied employee (claim 2(a)), but the Supervisor responded that her duties were comparable to other North Carolina Systems Coordinators, and Complainant received additional time to complete her assignments. ROI at 246, 299. Complainant did not show that the direction to refrain from contacting other offices (claim 2(c)) or the ADO's message regarding Complainant's reassignment (claim 2(d)) were based on a protected class. ROI at 252.

Further, the Commission has held that routine work assignments, instructions, and admonishments do not rise to the level of harassment because they are common workplace occurrences. See Gray v. U.S. Postal Serv., EEOC Appeal No. 0120091101 (May 13, 2010). Unless it is reasonably established that the common workplace occurrence was somehow abusive or offensive, and that it was taken in order to harass Complainant on the basis of her protected class, we do not find such common workplace occurrences sufficiently severe or pervasive to rise to the level of a hostile work environment or harassment as Complainant alleges. See Complainant v. Dep't of Veterans Affairs, EEOC Appeal No. 0120130465 (Sept. 12, 2014). There is no evidence that these work-related incidents were abusive or offensive, or taken in order to harass Complainant on the basis of a protected class. Accordingly, we find that Complainant did not establish that the Agency subjected her to harassment based on disability or sex, or in reprisal for prior protected EEO activity.

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.

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

November 25, 2024

Date