



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

[REDACTED]
Lyn H.,¹
Complainant,

v.

Gina M. Raimondo,
Secretary,
Department of Commerce,
Agency.

Appeal No. 2024000181

Hearing No. 530-2021-00371X

Agency No. 63-2020-01067D

DECISION

On October 9, 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission AFFIRMS the Agency's final order.

ISSUE PRESENTED

The issue is whether the EEOC Administrative Judge (AJ) properly issued a decision without a hearing concluding that Complainant was not subjected to

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.

harassment (non-sexual) and discrimination regarding assignment, terms and conditions, and termination based on her race (White), age (54), disability (mental and physical).

BACKGROUND

At the time of events giving rise to this complaint, Complainant was a former Enumerator, AD-0300-00 at the Agency's Salisbury, MD Area Census Office, Philadelphia Regional Census Center. Report of Investigation (ROI) at 2 and 81. Complainant, White, was 54. She stated that she had Dyslexia, Psoriatic Arthritis, Degenerative Disc Disease, among other things. Complainant did not state that she had any limitations or work restrictions based on these conditions or that management was aware of them.

Complainant received the temporary excepted service appointment on July 22, 2020, at the Hanover, MD Area Census Office with a Not-to-Exceed date (NTE) of September 16, 2020. ROI at 11. As an enumerator, Complainant was responsible for performing field enumeration for the Decennial Census, which involves canvassing, listing, and interviewing. ROI at 115-16.

Complainant's first-line supervisor (Supervisor 1 [African-American, 52, no disability]) was a Census Field Supervisor. ROI at 99. Complainant's second-line supervisor (Supervisor 2 [White, 54, no disability]) was a Census Field Manager. ROI at 106. Complainant's supervisors were unaware of her age and disability.

On October 5, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against her and subjected her to a hostile work environment on the bases of race (Caucasian), disability (physical/mental), and age (54) when:

1. On July 27, 2020, Complainant was restricted from accessing online materials needed to conduct fieldwork;
2. On August 12, 2020, Complainant was intentionally given an assignment that set her up to fail;
3. On August 15, 2020, Complainant was accused of being "overwhelmed" as a pretense to termination and cases were removed from her workload;

4. On three occasions between August 25 – September 2, 2020, Complainant was harassed with recruiting calls following her termination, falsely noted she was not interested in employment and then deemed ineligible; and
5. On August 17, 2020, Complainant was terminated.

The Agency conducted an investigation into the complaint. The investigation revealed that following a classroom training on July 22, 2020, Complainant was required to complete additional, online training prior to conducting fieldwork. ROI at 83. Complainant alleged that on July 27, 2020, she was restricted from accessing online materials as part of this online training. According to Supervisor 1, Complainant was unable to complete the online training due to Complainant going into the practice modules instead of the live sessions. ROI at 99. This issue was discovered after multiple telephone calls with Complainant. ROI at 83. After she finished the required training, Complainant was able to conduct fieldwork, same as other Enumerators. ROI at 99.

Complainant was scheduled for an August 12, 2020, field observation to perform an enumeration with Supervisor 1. ROI at 100. During her observation on that date, Complainant used a map on her personal laptop to navigate to the address for the enumeration. Supervisor 1 informed Complainant that her Census-issued iPhone had a GPS map function, but Complainant insisted on using the map on her laptop. ROI at 83 and 100.

Supervisor 1 was following Complainant in her car when they passed a sign that noted the road had restricted access. ROI at 100 and 121. At that point, Supervisor 1 called Complainant and told her to turn around, explaining that this was the wrong location. Complainant told Supervisor 1 that she was going to continue. Complainant then called Supervisor 1 back and told her that her vehicle was stuck in mud, and she could not get out. Supervisor 1 drove down the road to a nearby water treatment plant and was able to secure the assistance of trucks to pull Complainant's vehicle out of the mud. ROI at 100. Complainant failed the observation. ROI at 121. Supervisor 1 subsequently informed Supervisor 2 about the incident at the August 12 observation. ROI at 100.

On August 17, 2020, Complainant enumerated the wrong address. See ROI at 118 and 121. This was documented in a D-282 Form ("Documentation of Conduct and/or Performance Problems"). ROI at 118.

After discussion with an Area Census Office Manager (Office Manager), Supervisor 2 directed Supervisor 1 to terminate Complainant due to her failure to listen to supervisors and for not following her training. ROI at 107. That same day, the Census Bureau terminated Complainant's employment. ROI at 120. Complainant alleged that between August 25, 2020, and September 2, 2020, she received three recruiting calls from the Census Bureau. ROI at 84-5.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) 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 September 8, 2023, in favor of the Agency.

Notably, the AJ stated that the Agency failed to complete its investigation within the statutory period, and the Commission ordered the Agency to submit its investigation by April 22, 2022. On that date, the Commission ordered the same in a Notice of Intent to Sanction. The Agency submitted its response on April 23, 2023, one day after it was due. The parties engaged in discovery.

The AJ found that the record had been adequately developed, and that no finding of credibility needed to be made to issue a decision in this case. Having considered all material documentary evidence in the record, which included the ROI and the parties' submissions, the AJ determined that there were no genuine issues of material fact in dispute; that Complainant could not meet her burden of persuasion to show that the Agency's actions were due to race-based, disability-based, or age-based animus as alleged; and that Complainant failed to present evidence that would warrant a hearing on her discrimination and harassment claims.

The AJ adopted the Agency's Statement of Undisputed Material Facts. See Agency's motion at 2-5. Regarding harassment, the AJ noted the Agency's argument that Complainant could not establish even a prima facie case of hostile work environment because the conduct at issue was not sufficiently severe or pervasive and because Complainant had failed to establish a nexus between her protected classes and the alleged management conduct. Agency's motion at 14-5. The AJ concluded that Complainant was not subject to a hostile work environment.

The AJ observed that though Complainant was a member of protected classes, she offered no evidence to show that the alleged harassing acts were related to her protected classes. Further, the AJ noted, the conduct at issue was neither severe or pervasive. Rather, the incidents challenged by Complainant reflect common workplace interactions that relate to disagreements with managerial decisions and processes, including those relating to assignments. Citing to applicable Commission precedent, the AJ asserted that without evidence of an unlawful animus, similar disputes do not amount to unlawful harassment.

Looking at the allegations in totality and in a light most favorable to Complainant, the AJ determined that the alleged incidents were not sufficiently severe or pervasive to alter the conditions of Complainant's employment. Therefore, the AJ found that Complainant failed to prove that she was subject to harassment.

Regarding disparate treatment, the AJ noted the Agency's argument that Complainant had failed to establish her prima facie case because no inference of discrimination could be drawn in this case and Complainant had offered no comparative evidence that similarly situated employees were treated more favorably than her. The AJ observed that the Agency had proffered legitimate nondiscriminatory reasons for Complainant's termination. According to the AJ, the Agency claimed that Complainant was terminated for her poor performance, which is a legitimate, nondiscriminatory reason for her termination. Citing to applicable Commission precedent, the AJ stated that it is well established that poor performance is a legitimate, non-discriminatory reason for an adverse employment action.

The AJ agreed, asserting that Complainant had failed to establish any discriminatory reason for the Agency's termination decision. According to the AJ, Complainant offered no evidence to establish an inference of discrimination based upon her protected classes, nor had she offered any comparative evidence. Without more, observed the AJ, Complainant failed to meet her burden of persuasion. She offered no evidence to show that the Agency's reasons were pretextual or based on discriminatory animus. Therefore, the AJ determined that Complainant was unable to succeed on her termination claim.

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.

CONTENTIONS ON APPEAL

On appeal, among other things, Complainant contests the AJ's decision, raising the same previous arguments that the AJ already reviewed and considered. Complainant's questions the validity of the AJ's decision, asserting that it was unsigned and contained errors, which Complainant itemizes.

In response, the Agency expresses agreement with the AJ's decision which it states was fully supported by the evidence and follows appropriate case law precedent. The Agency requests that the AJ's decision and its final order be sustained.

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.

For example, on appeal, Complainant asserts that the AJ's decision contained errors. However, the itemized errors involve inaccuracies such as dates of Agency submissions and Complainant's EEO contact that do not affect the outcome of the complaint. Even Complainant's assertion that the AJ's decision was unsigned is inconsequential in this era of electronic signatures. At worst, the unsigned AJ's decision only proves possibility of procedural irregularities that fall within a range that is consistent with human error. See Waterbury v. Agriculture, EEOC App. No. 01A12182 (Jun. 19, 2002). Moreover, the Agency did issue a final order in this case.

The other arguments raised by Complainant on appeal, including that she was not afforded an opportunity for discovery, are unsupported by the record. In fact, both the AJ's decision and the Agency's motion reflect that discovery occurred. The AJ also reviewed and considered all of Complainant's previously raised arguments before issuing a decision in this case. We also note record evidence reflecting that Complainant's motion for a decision without a hearing was denied by the AJ because of her failure to submit a Statement of Undisputed Material Facts, and citations to the record in support of her motion pursuant to the Commission's regulations at 29 C.F.R. § 11614.109. Moreover, the AJ observed that Complainant's motion made allegations that were outside the scope of the accepted claims.

Moreover, the record does not support Complainant's appeal assertion that the AJ did not address her age, race, and disability discrimination claims. Nor does the record support her assertions that the Agency denied her access to "the program that was supposed to provide her protections under Federal EEO laws" so that she was unable to properly develop her complaint. The Agency did conduct an investigation into Complainant's allegations, and the complaint appropriately went through the Commission's EEO and hearing process.

Given that Complainant had access to the ROI concerning her complaint and the opportunity to develop the record significantly during the EEO investigation and discovery before the AJ, we find that summary judgment was appropriate in this case. Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable factfinder could not find in Complainant's favor.

Disparate treatment based on race, disability, and age (Claim 5)

The Commission has adopted the burden-shifting framework for analyzing claims of discrimination outlined in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). To establish a prima facie case of disparate treatment, a complainant must show that: (1) they are a member of a protected class; (2) they were subjected to an adverse employment action concerning a term, condition, or privilege of employment; and (3) they were treated differently than similarly situated employees outside their protected class, or there was some other evidentiary link between membership in the protected class and the adverse employment action. See Nanette T. v. U.S. Postal Serv., EEOC Appeal No. 0120180164 (March 20, 2019); McCreary v. Dep't of Def., EEOC Appeal No. 0120070257 (Apr. 14, 2008); Saenz v. Dep't of the Navy, EEOC Request No. 05950927 (Jan. 9, 1998).

To establish a prima facie case of disparate treatment discrimination based on disability, a complainant 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. 2021004539, (Aug. 17, 2023).

A complainant may establish a prima facie case of age discrimination by showing that he or she is in the protected group (over age 40) and was treated less favorably than someone substantially younger than the complainant. See O'Connor v. Consolidated Coin Caterers Corp., 517 U.S. 308 (1996); Nevin v. Tennessee Valley Authority, EEOC Appeal No. 01992795 (February 14, 2002).

Once Complainant has established a prima facie case, the burden of production 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 is onto 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 Center v. Hicks. 509 U.S. 502 (1993).

For the following reasons, we find that Complainant failed to establish a prima facie case of discrimination based on race, age, and disability.

Complainant is White, and she is over the age of 40. Complainant has established a prima facie case of discrimination based on disability only to the extent that she stated that she has physical and mental disabilities. There is however no evidence that management was aware of these conditions. Complainant did not identify any other similarly situated employees outside of her protected classes, including anyone substantially younger than her, who were treated more favorably. Therefore, Complainant has not established a prima facie case of disparate treatment based on any of her protected classes. The Agency has also provided legitimate nondiscriminatory reasons for Complainant's termination, the challenged management action; and we find no persuasive proof of pretext.

Regarding Claim 5, the record reflects that Complainant was terminated for poor performance. Complainant also failed to follow Supervisor 1's instructions, enumerated and completed a case for the wrong address, and failed an observation. See ROI at 118-21.

According to the Agency, when Complainant turned onto a road that was not in the direction of the enumeration case, Supervisor 1 noticed a sign that specified "Authorized Vehicles Only" as it was a road to a water treatment plant. Supervisor 1 stopped and called Complainant to inform her that she was going in the wrong direction. Complainant disregarded her supervisor's instruction, insisting instead on proceeding down the road, where after finally attempting to turn around, her vehicle became stuck in the mud. Supervisor 1 then contacted personnel at the treatment plant to assist Complainant and free her vehicle. Complainant failed the observation for failing to satisfactorily perform her duties. Based on the failed observation, Supervisor 2 made the decision to terminate Complainant. See ROI at 100 and 106-07.

We next turn to Complainant to show pretext. The Commission has stated that proof of pretext includes discriminatory statements or past personal treatment attributable to the named managers, unequal application of agency policy,

deviations from standard procedures without explanation or justification, or inadequately explained inconsistencies in the evidentiary record. See Ricardo K. v. Dep't of Veterans Affairs, EEOC Appeal No. 2019004809 (date/year) (citing January B. v. Dep't of the Navy, EEOC Appeal No. 0120142872 (Dec. 18, 2015) (Citing Mellissa F. v. U.S. Postal Serv., EEOC Appeal No. 0120141697 (Nov. 12, 2015))).

Here, Complainant raised several arguments in her complaint which she reiterated on appeal. For example, to support her belief that discrimination occurred, Complainant stated that she is White and Supervisor 1 is Black. She also stated that Supervisor 1 is substantially younger than Complainant. Complainant however failed to provide any evidence demonstrating that her termination was motivated by discriminatory animus based on any of her protected bases. While not dispositive, we also note that Supervisor 1, 52, was only two years younger than Complainant. While there is no bright-line test for what constitutes "substantially younger," the term has been applied to age differences in excess of five years. See Hammersmith v. Social Security Administration, EEOC Appeal No. 01A05922 (Mar. 6, 2002).

Complainant believed that her termination was due to her protected bases because the Agency never provided any reason for the termination, because she was never counseled for any performance issues by any supervisor, and because her performance was sufficient to earn a performance award. Yet, the D-283 (applicable agency form) states that Complainant was "counseled repeatedly." The form also cites the August 12, 2020, Field Observation which Complainant failed. ROI at 120-21. The Agency also did provide a reason for Complainant's termination in the D-283 "Documentation of Termination for Conduct and/or Performance Problems." See ROI at 120.

Complainant asserted that Supervisor 1 was aware of her disability before her termination as they met at the local high school to get supplies, and Supervisor 1 followed her to her vehicle which has handicapped license plates. She however presented no evidence to support a conclusion that Supervisor 1, who was unaware of Complainant's disabilities, paid any attention or even noticed Complainant's license plates. ROI at 111. The record is also devoid of any evidence that Complainant informed management of her disabling conditions. Rather, Complainant asserted, without evidence, that Supervisor 1 thought those conditions would impact her ability to do her job, which Complainant stated, they clearly did not.

Even if Supervisor 1 was aware of Complainant's disabling conditions, an employer is not barred from imposing discipline or terminating an employee who, because of a disability, violated a conduct rule that is job-related for the position in question and is consistent with business necessity. See EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, No. 915.002 at Question 36 (Oct. 17, 2002).

Importantly, the record includes Exhibit 14, a list of 179 employees who were terminated by Supervisors 1 and 2 between July 22, 2020, and August 17, 2020. ROI at 123-26. This supports a conclusion that Complainant's termination was based on performance, not on discriminatory animus or any protected bases.

We note Complainant's appeal statement that as of November 8, 2023, she had never received any official notification from the Agency regarding her termination; and that her SF-50 indicated that she resigned and provided no reason for her resignation. In that regard, the Agency noted that a clerical error occurred in Complainant's SF-50 coding as the D-283 Form ("Documentation of Termination for Conduct and/or Performance Problems"), the affidavits of Complainant, and her supervisors indicate that Complainant was terminated. Compare ROI at 118-21 with ROI at 94. Moreover, agencies generally have broad discretion to carry out personnel decisions and exercise business judgment. Pretext is not concerned with bad judgment, impeccability, dislike, or a mistake. See Jeremy H v. Social Security Administration, EEOC Appeal No. 0120181965 (Sept. 20, 2019).

To the extent that Complainant alleged she was subjected to a hostile work environment, that allegation is also precluded by the determination above that the Agency's explanations demonstrate that Complainant's termination (Claim 5) did not involve discriminatory animus. See Oakley v. U.S. Postal Serv., EEOC Appeal No. 01982923 (Sept. 21, 2000).

Harassment/hostile work environment (Claims 1-4)

Complainant alleged harassment and a hostile work environment when she was accused of being "overwhelmed" during an interaction with Supervisor 1; and that she received three recruiting calls in the weeks following her termination. ROI at 84. She also alleged that she was denied training, asserting that she was restricted from accessing online materials needed to conduct fieldwork; and that she was intentionally given an assignment by Supervisor 1 that "set her up to fail." See ROI at 83.

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 Harris v. Forklift Systems Inc., EEOC Notice No. 915.002 (March 8, 1994).

In other words, to prove her hostile work environment claim, Complainant must establish that she was subjected to conduct that was either so severe or so pervasive that a "reasonable person" in Complainant's position would have found the conduct to be hostile or abusive. Complainant must also prove that the conduct was taken because of a protected basis; in this case, her race, age or disability. Only if Complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself.

Complainant belongs to protected classes based on her race, age, and disability, and she was subjected to unwanted conduct. However, Complainant did not show a connection between any protected basis and the alleged harassment.

As for Claim 1, the record contains Supervisor 1's explanation that Complainant had a problem completing the training because she was going into the "practice modules" instead of the "live sessions," which Supervisor 1 determined and addressed after several phone calls with Complainant. See ROI at 99.

The record is also devoid of any evidence that Supervisor 1 knowingly set Complainant up to fail her observation as alleged in Claim 2. Notably, enumeration assignments are randomly determined, and supervisors have no input into the daily assignments or the addresses to which enumerators go. See ROI at 100.

Moreover, it was Supervisor 1 who called Complainant and informed her to turn around, but Complainant insisted she was at the correct address and kept going. Id.

Regarding Claim 3, the interaction between Complainant and Supervisor 1, as described by Complainant, lacks the requisite level of severity or pervasiveness to constitute an abusive work environment.

As for Claim 4, Complainant failed to show how alleged actions that occurred after her employment ended could create an abusive working environment. Moreover, while Complainant may have indeed received recruiting calls, she did not identify any Agency employee who was responsible for making those calls or provide evidence that those employees were sent by her supervisors to contact her.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the AJ's decision and the Agency's final order adopting it.

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