



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Sunday S,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Appeal No. 2024003571

Hearing No. 530-2023-00173X

Agency No. 4B-190-0218-22

DECISION

On May 16, 2024, Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's April 30, 2024 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, we AFFIRM the Agency's final order adopting the EEOC Administrative Judge's (AJ) decision finding no discrimination.

¹ This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

ISSUES PRESENTED

The issue is whether the Agency's final order erred in adopting the EEOC AJ's decision by summary judgment concluding that Complainant did not establish that the Agency subjected her to disparate treatment or harassment based on her age, disability, race, religion, sex or in reprisal for protected EEO activity.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a PSE Sales & Services Distribution Associate at the Agency's Post Office in Rehoboth Beach, Delaware.

On November 22, 2022, Complainant filed a formal complaint alleging that the Agency subjected her to hostile workplace discrimination on the bases of race (African-American), sex (female), religion (Muslim), disability (Anxiety, Depression), age, and reprisal for prior protected EEO activity. In support of this claim, Complainant raised the following allegations:

- 1) On August 31, 2021, Complainant was taken off the work schedule;
- 2) On dates to be specified, Complainant was forced to work 12-hour days;
- 3) On or around October 30, 2022, and other dates to be specified, Complainant's schedule was changed;
- 4) On or around October 30, 2022, and other possible dates to be specified, Complainant's leave request was denied;
- 5) On October 18, 2022, and other possible dates to be specified, management would not accommodate her schedule for an out-patient mental health program;
- 6) On an unspecified date, management *purportedly* threatened Complainant, questioned her therapist, made derogatory comments to her, singled her out, recorded her, approached her aggressively, sent her harassing text messages and made her perform more work than her co-workers;

7) On an unspecified, Complainant was made to take two lunch breaks;

8) On an unspecified date, Complainant was placed on the "deems desirable" list which meant she had to supply documentation for each absence; and,

9) On an unspecified date, management did not post available full-time positions to *purportedly* keep her from being promoted to full time.

The Agency accepted the claims and conducted an investigation which produced the following evidence.

Complainant stated her protected activity is that she was denied leave from work for a mental health assessment. She further stated the dates were the following: October 5, 18, 22-25 and 30, 2021. Complainant also stated her medical condition is anxiety and depression. She declared she made the Supervisor of Customer Services ("Services Supervisor"; White, Christian Male) and the Postmaster aware on October 18, 2021. Complainant noted that she provided medical documentation to Services Supervisor, the Postmaster and another supervisor. Complainant stated that she is able to perform her work-related duties and has no work restrictions, but she can only work 5 days per week and "is permitted to not return to work after her mental health program."

The record (Complainant's Affidavit) reflects that when asked when she was diagnosed with anxiety and depression by a physician, Complainant did not respond. While there is some/scant documentation purporting that Complainant received medical attention, the record does not establish that Complainant suffers from a recognized disability.

Additionally, Complainant has not clearly established that she has prior EEO activity. Specifically, Complainant mainly referred to being denied leave as prior EEO activity. The Agency maintains that leave denial, in and of itself, would not constitute prior EEO activity in this matter. However, because Complainant has alleged being harassed following a mediation during the relevant timeframe, the Agency acknowledges that Complainant may have established prior EEO activity.

The Postmaster (Black Female) stated she is aware Complainant is Bi-Polar as Complainant informed her; however, she is not sure when she was told.

The Postmaster also stated she did not receive any medical documentation from Complainant. She noted the specific duties Complainant is required to perform are sorting parcels and flats, distributing mail and working UBBM daily. The Postmaster further noted that she is not aware if Complainant has any work limitations. The Postmaster maintained that Complainant's medical condition did not affect her ability to work; however, she did not work well with others and caused a hostile work environment.

Claim 1: On August 31, 2021, Complainant was taken off the work schedule.

Services Supervisor declared that the circumstances which led to the above-described incident was that Complainant came up to him on the work room floor and openly informed him that she tested positive for COVID-19. He stated the documentation received did not appear to prove Complainant's claim of a positive result, so it was challenged by management for the safety of everyone. Services Supervisor noted that Complainant was informed the documentation received did not appear to prove her claims of a positive result. He averred Complainant stated the doctor wanted her to stay out for a week; however, she asked if she could return sooner.

The Postmaster stated she was not the management official responsible; however, Complainant was removed from the schedule due to being undependable. She declared Services Supervisor was the responsible management official. She asserted that as the postmaster, all actions are reported to her. The Postmaster further asserted that the detail of the circumstances for the action was that Complainant was inconsistent with her attendance. She declared Complainant would come in and then leave almost immediately after arriving and would call out.

Claim 2: On dates to be specified, Complainant was forced to work 12-hour days.

Services Supervisor stated he is unsure if he was the management official responsible for Complainant working a 12-hour shift with a 2-hour break or any details without specific dates so he could verify. The Postmaster stated she is unsure if she was the management official responsible for Complainant working a 12-hour shift with a 2-hour break. She noted Complainant was the most experienced PSE and knew how to do dispatch. She further noted Complainant was the only one given a preference of a schedule. The Postmaster stated this was not an everyday occurrence and was only as needed as were the other PSEs who worked over.

Claim 3: On or around October 30, 2022, and other dates to be specified, Complainant's schedule was changed.

Services Supervisor stated he was the management official responsible for Complainant's schedule being changed from 12:00 PM - 9:00 PM to 3:00 PM - 3:00 AM and working by herself. He also stated removing Complainant from the daily distribution alongside other employees showed a dramatic change in their DUT and overall performance as an office. Services Supervisor noted Complainant was a distraction for some employees at work. He declared there was not always someone scheduled to work with Complainant. He maintained that it is not true that other PSEs were scheduled 8-hour shifts and did not have their schedules changed. Services Supervisor stated that other PSEs were scheduled 12-hour shifts, with a 2-hour lunch. He stated that management has the right to change a PSE schedule regardless of seniority in the best interest of the business. The Postmaster stated she may have been the management official responsible; however, it was possibly based on the needs of the business. She also stated that the reason Complainant's hours were changed to 3:00 PM - 3:00 AM was that she had trouble working with others and would disrupt the operation. She further stated that Complainant was given a schedule where she had no interaction with the other clerks. The Postmaster noted that she is unsure the reason Complainant needed to have someone with her while at work; however, she was never alone in the building. The Postmaster also noted that someone from management was always in the building. She averred that although Complainant had seniority over the other PSEs, Complainant had no control of her own actions and created a hostile work environment. The Postmaster asserted that Complainant had multiple altercations with other employees to the point where clerks from other stations would not come to work in Rehoboth when Complainant was working.

Claim 4: On or around October 30, 2022, and other possible dates to be specified, Complainant's leave request was denied.

Services Supervisor stated that Complainant's leave request for September 23 - 29, 2022 was not denied. He also stated Complainant was able to attend her appointment and was approved for the requested time off. The Postmaster stated she was not the management official responsible for Complainant's leave request for September 23 - 29, 2022 being denied and is not aware of what occurred. She also stated Complainant was given all the leave requested or she did not show up for work.

Claim 5: On October 18, 2022, and other possible dates to be specified, management would not accommodate her schedule for an out-patient mental health program.

Services Supervisor stated he does not recall this incident. He also stated all employees (varied crafts, Rehoboth Beach) have had leave requests that were denied, approved and accommodated around the needs of the business. The Postmaster stated Complainant was given more than enough accommodation, as she was given a four-hour window for her appointments that she states lasted three hours. She declared the reason provided to Complainant for the action was that her services were needed. The Postmaster noted that Complainant did not want to come back to work after the appointment ended.

Claim 6: On an unspecified date, management threatened Complainant, questioned her therapist, made derogatory comments to her, singled her out, recorded her, approached her aggressively, sent her harassing text messages and made her perform more work than her co-workers.

Services Supervisor stated the incidents as described by Complainant did occur in part. He also stated that on August 31, 2022, Complainant was informed of a Pre-Disciplinary Interview (PDI) but was not threatened.

Complainant stated the Postmaster questioned her therapist on October 24, 2022. She contended she became aware of this when the Postmaster responded to an e-mail Complainant had forwarded to her from Complainant's therapist. Complainant further contended that the Postmaster wanted to clarify what kind of rest Complainant needed after group. The Postmaster stated she did request clarification from Complainant's therapist after receiving a note from Complainant on October 24, 2022, indicating that she needed rest. The Postmaster also stated that Complainant was given a 4-hour window to attend her appointment and return to work. She averred she needed to know if Complainant needed an additional hour, an additional day or something else. The Postmaster maintained that this was especially relevant, since Complainant's appointments were at home by Zoom.

Claim 7: On an unspecified, Complainant was made to take two lunch breaks.

Services Supervisor stated he does not recall if he was the management official responsible for Complainant being made to take two lunch breaks. The Postmaster stated that she is unaware of this incident.

Claim 8: On an unspecified date, Complainant was placed on the "deems desirable" list which meant she had to supply documentation for each absence.

The Postmaster stated she was the management official responsible for Complainant being placed on the "Deems Desirable" list on November 6, 2022, and no other management officials were involved. She also stated Complainant was placed on this list due to her attendance. Specifically, it was brought to her attention that Complainant was calling out and going to Atlantic City and other places with a co-worker. Additionally, she declared that Complainant would report that she had therapy when she did not, and the co-worker was at her home. The Postmaster stated she was informed that Complainant's sessions were conducted by Zoom, so there was no travel involved. The Postmaster maintained that the reason provided to Complainant was based on her attendance.

Claim 9: On an unspecified date, management did not post available full-time positions to keep her from being promoted to full time.

Services Supervisor stated that he does not recall this and was not brought to his attention. The Postmaster stated this did not occur the way Complainant stated, as the position was posted on the clerk board.

Additional Harassment Claims:

Complainant stated she reported harassment to Services Supervisor who she asked to stop harassing her and his response was to tell her to leave the building. Complainant claimed she also reported the harassment to the EEO Counselor and the legal department of the Agency. Complainant declared she reported the harassment on several occasions explaining that she wanted it to stop. Complainant noted the response received was that they would speak to them (her managers). Complainant further noted there was no investigation conducted into her allegations of harassment/hostile work environment.

Services Supervisor stated that there was an occasion during an evening shift (date not recalled), while he was attempting to give Complainant instructions, Complainant made the comment "You better stop harassing me." He asserted his response was to continue to attempt to give her instructions for the evening. Services Supervisor stated he does not recall if Complainant or anyone acting on her behalf brought to his attention any other management official concerns about harassment/hostile work environment. The Postmaster stated Complainant did not tell her that her or anyone else's actions constituted harassment and/or a hostile work environment.

After its investigation into the complaint, the Agency provided Complainant with a copy of the report of investigation and notice of right to request a hearing before an EEOC AJ. Complainant timely requested a hearing. The Agency filed a Motion for Summary Judgment. Complainant did not file a response. On April 26, 2024, the AJ issued a summary decision, fully incorporating the Agency's Motion in favor of the Agency.

The Agency issued its final order adopting the AJ's finding that Complainant failed to prove discrimination as alleged. The instant appeal followed. However, Complainant submits no appeal statement.

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.

Denied Reasonable Accommodation

An agency is required to make reasonable accommodation to the known physical and mental limitations of an individual with a disability unless the agency can show that accommodation would cause an undue hardship. 29 C.F.R. §§ 1630.2(o) and (p). In order to establish that she was denied a reasonable accommodation, Complainant must show that: (1) she is an individual with a disability as defined by 29 C.F.R. § 1630.2(g); (2) she is “qualified” as defined by 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (Enforcement Guidance on Reasonable Accommodation), No. 915.002 (Oct. 17, 2002).

“The term ‘qualified,’ with respect to an individual with a disability, means that the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position.” 29 C.F.R. § 1630.2(m).

The term "position" is not limited to the position held by the employee but may also include positions that the employee could have held as a result of reassignment. Therefore, in determining whether an employee is "qualified," an agency must look beyond the position which the employee presently encumbers. Enforcement Guidance on Reasonable Accommodation.

Here, while the record is not definitive as to whether she suffers from a purported disability (Anxiety/Depression), but was arguably qualified for the position she held, Complainant has not shown that the Agency failed to provide a reasonable accommodation. While management explained that the business needs of the Agency were of paramount importance, the record evidence shows that Complainant was provided ample leave to address her health concerns. Management approved, within reason, Complainant's leave requests, despite having good cause to question whether Complainant was abusing her leave privileges. The record indicates Complainant was not denied a reasonable accommodation. We find the Agency acted responsibly and there is no evidence that the Agency violated the Rehabilitation Act.

Disparate Treatment

A claim of disparate treatment based on indirect evidence is examined under the three-part analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). For Complainant to prevail, he or 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. McDonnell Douglas, 411 U.S. at 802; Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978). The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Tex. Dep't. of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the Agency has met its burden, Complainant bears the ultimate responsibility to persuade the fact finder 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).

To establish a prima facie case of disparate treatment discrimination based on disability, a complainant generally must prove the following elements: (1) she is an individual with a disability as defined in 29 C.F.R. §§ 1614.203(a) and 1630.2(g); (2) she is "qualified" as defined in 29 C.F.R. §§1614.203(a) and 1630.2(m); (3) the agency took an adverse action against her; and (4) there was a causal relationship between her disability and the agency's actions. See Annamarie F. v. Department of the Air Force, EEOC Appeal No.

2021004539 (August 17, 2023). As noted above, Complainant was arguably a qualified individual with a disability, but she fails to establish any causal relationship between her disability and the Agency's actions.

In order to establish a prima facie case of discrimination based on age, race, religion or sex, a complainant may show: (1) that she is a member of a protected group; (2) that she was subjected to an adverse employment action; and (3) that she was treated less favorably than other similarly situated employees outside of her protected group. We note that it is not necessary for a complainant to rely strictly on comparative evidence in order to establish an inference of discriminatory motivation necessary to support a prima facie case. O'Connor v. Consolidated Coin Caterers Corp., 517 U.S. 308, 312 (1996); EEOC Enforcement Guidance on O'Connor v. Consolidated Coin Caterers Corp., EEOC Notice No. 915.002, n. 4 (September 18, 1996).

Here, Complainant has not established a prima facie case of age, race, religion or sex discrimination. Complainant cannot show that employees outside of her protected classes were treated differently than she was under similar circumstances. Complainant has provided no credible indicator that her age, race, religion or sex served as a factor in management's actions in this matter.

Complainant can establish a prima facie case of reprisal by showing that: (1) Complainant engaged in protected activity; (2) the Agency was aware of the protected activity; (3) subsequently, Complainant was subjected to adverse treatment by the Agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Department of the Air Force, EEOC Appeal No. 01A00340 (September 25, 2000). In general, a complainant can demonstrate a causal connection using temporal proximity when the separation between the employer's knowledge of the protected activity and the adverse action is very close. See Clark County School District v. Breeden, 532 U.S. 268 (2001) (holding that a three-month period was not proximate enough to establish a causal nexus). Complainant can also establish a prima facie case of reprisal by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination. Shapiro v. Social Security Admin., EEOC Request No. 05960403 (Dec. 6, 1996) (citing McDonnell Douglas, 411 U.S. at 802). Here, because Complainant has alleged harassment following a mediation during the relevant timeframe, we find Complainant has arguably established a prima facie case based on reprisal.

Concerning all of Complainant's listed claims, the Agency has provided legitimate, nondiscriminatory reasons (above) for its actions. As earlier noted in detail, both Services Supervisor and the Postmaster took appropriate actions to ensure that Agency assigned work was completed, and Complainant was held accountable as an employee under their supervision. With good reason, management scrutinized Complainant's leave requests. This is because Complainant had exhibited both attendance and conduct issues. Complainant fails to show that the Agency's reasons for its actions are pretext for unlawful discrimination.

Hostile Work Environment

In order to establish a prima facie case of harassment, Complainant must prove, by a preponderance of the evidence, the existence of five elements: (1) that she is a member of a statutorily protected class; (2) that she was subjected to unwelcome conduct related to her protected class; (3) that the harassment complained of was based on her protected class; (4) that the harassment had the purpose or effect of unreasonably interfering with her work performance and/or creating an intimidating, hostile, or offensive work environment; and (5) that there is a basis for imputing liability to the employer. See Celine B. v. Dep't of Navy, EEOC Appeal No. 2019001961 (Sept. 21, 2020); Humphrey v. U.S. Postal Serv., EEOC Appeal No. 01965238 (Oct. 16, 1998). See also Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982), approved in Meritor Savings Bank v. Vinson, 477 U.S. 57, 66-67 (1986); see generally Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (April 29, 2024).; 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 age, disability, race, religion, 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.

While Complainant meets prong (1) concerning her age, disability, race, religion and sex of the prima facie case outlined above, and has prior EEO activity, she cannot meet any of the remaining prongs, (2)-(5). As the Agency noted in its appeal response:

Complainant is a member of protected classes, and she did not welcome the Agency's conduct. But while the actions of the Agency might have been subjectively perceived by her as hostile to Complainant, it is hard to imagine how the Agency's actions could be considered objectively hostile. This is especially true considering the fact that there is ample evidence that Complainant caused the hostile work environments for her co-workers and management, by her conduct. An environment is not objectively hostile just because an employee does not like it. Complainant cannot make out a claim of hostile work environment by citing to a series of disagreements with management.

Here, the AJ correctly concluded that the record does not contain evidentiary support for any alleged harassment of Complainant because of a protected category. Agency actions in this matter do not evince an unlawful motive, and Complainant has not produced evidence to support that any responsible management official was motivated by discriminatory animus. Furthermore, drawing all reasonable inferences in favor of Complainant, and whether analyzed individually or taken collectively, Complainant cannot establish a prima facie case of harassment. Complainant's allegations of harassment are based on either legitimate, nondiscriminatory management decisions, Agency policy, or constitute nothing more than ordinary workplace occurrences. Beyond repeated conjecture, Complainant has not shown that she was subjected to a hostile work environment based upon her claimed bases.

In sum, the preponderance of the evidence does not establish that management was motivated by discriminatory animus. Also, again, the Agency acted responsibly and there is no evidence that the Agency violated the Rehabilitation Act.

CONCLUSION

Upon careful review of the AJ's decision and the evidence of record, as well as the parties' arguments on appeal, we conclude that the AJ correctly determined that the preponderance of the evidence did not establish that Complainant was discriminated or retaliated against by the Agency as alleged.

Accordingly, 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

February 4, 2025
Date