



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Davina W.,¹
Petitioner,

v.

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

Petition No. 2025000309

MSPB No. PH-0752-22-0202-I-1

DECISION

Petitioner filed a petition with the Equal Employment Opportunity Commission (EEOC or Commission) seeking review of a Final Order issued by the Merit Systems Protection Board (MSPB or Board) concerning her claims of 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 CONCURS with the MSPB's finding of no discrimination.

ISSUE PRESENTED

Whether the MSPB was correct in finding that Petitioner did not establish that the Agency discriminated against or harassed her on the bases of disability, sex, or in reprisal for prior protected equal employment opportunity (EEO) activity when it removed her from federal service.

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

BACKGROUND

At the time of events giving rise to this petition, Petitioner worked as a part-time Social Insurance Specialist, GS-12, at the Agency's Office of Quality Review in Philadelphia, Pennsylvania.

Beginning in May 2019, Branch Chief became Petitioner's first-level supervisor (S1). At the time, Petitioner worked 24 hours per week (two four-hour days and two eight-hour days). In November 2019, Petitioner requested approval to go on leave without pay (LWOP) from February 1 through March 20, 2020, citing as her reasons that she was a single mother of two children and had recently purchased an investment property without anticipating the financial burden it would cause. The Agency denied her LWOP request, but S1 later suggested to Petitioner that she should consider leave under the Family and Medical Leave Act (FMLA) after Petitioner had mentioned to S1 that Petitioner's son had medical issues. In January 2020, Petitioner formally requested FMLA leave with supporting documentation from her son's medical provider. Petitioner also requested to reduce her schedule to 16 hours per week (two eight-hour days) with a tour of duty from 5:00 AM to 1:30 PM. The Agency approved both requests, and Petitioner went on FMLA leave from February 18 through March 20, 2020. In March 2020, due to the COVID-19 pandemic, the Agency then went on maximum telework.

About a year later, in March 2021, S1 saw a segment on local news about Petitioner running a small business called The Herb Shop & Tea Lounge. The segment discussed how Petitioner had started her business soon before the pandemic (a soft open occurred on February 16, 2020, and a grand opening on March 1, 2020) and how Petitioner continued to run it during the pandemic. Because S1 realized that the opening of Petitioner's business was around the same time she had requested FMLA leave, the Agency initiated a review of Petitioner's government equipment, namely her laptop. The review showed that Petitioner had used her laptop to send approximately 100 emails and to generate documents related to the establishment of her personal business.

On February 22, 2022, S1 proposed Petitioner's removal, charging her with: (1) misuse of her government equipment; and (2) lack of candor and/or failure to cooperate during an administrative investigation. For the first charge, the Agency listed 32 specifications dated from July 2, 2019, to February 23, 2021.

All specifications involved Petitioner using her Agency-issued laptop and Agency email address to send and receive emails and generate documents regarding the set-up of The Herb Shop & Tea Lounge. The emails included communications with various local government officials in her municipality (regarding permits, inspections, etc.), glass and plumbing companies, insurance specialists, and architectural and engineering design firms. Petitioner also sent various emails between her personal email address and her government email and generated several Word documents related to the business on her Agency laptop. The notice of proposed removal found that Petitioner's conduct had violated various government and Agency-specific policies on ethical conduct, which prohibited using federal property for unauthorized activities or for using such equipment to maintain a personal business or other for-profit activities.

For the second charge (lack of candor and/or failure to cooperate during an administrative investigation), the notice of proposed removal listed five specifications, which were all based on a Weingarten interview management conducted with Petitioner on October 25, 2021. During the interview, Petitioner was asked if she had ever used her government computer for her personal business, and she responded to the effect of, "Not that I recall." MSPB File Pt. 1 at 13. Petitioner was then shown an email she had sent at 6:22 AM on December 23, 2019, from her Agency laptop, with the subject line "FW_Hello_from Potential Future Business Owner." Id. Petitioner responded that the email was sent before her business had opened and that it was sent during lunch. When it was pointed out that the email had been sent at 6:22 AM, Petitioner stated it was during her break, though her morning break was officially scheduled between 9:45 and 10:30 AM.

During the interview, Petitioner stated that she had not used government equipment in support of a personal business but for a secure email address. She also claimed that she had never used her work email "again after that period" in connection with her business, though the evidence (as stated in the first charge) indicated that she did use it through February 2021. After Petitioner was then shown a Word document she had created on her laptop in July 2020 reflecting The Herb Shop's work schedule, Petitioner stated she did not wish to change any of her responses and reiterated the claim that any work regarding her business had been done on her own time. The notice of proposed removal found that Petitioner's conduct during the interview violated the Agency's policies regarding the requirement of employees to assist the Agency's investigative officials in their investigations.

Petitioner and her representative submitted written responses to the notice of proposed removal. Petitioner argued that most of the charged misconduct occurred before her business had opened, that she had not made a profit on her business and therefore did not receive personal gain, that the charged misconduct had occurred only on "nonwork" time, and that she used her Agency email address because it was more secure than her personal one. Petitioner also argued that, per the Agency's policy on limited use, employees were authorized limited personal use of government equipment as long as it did not result in loss of productivity, interfere with official duties, and cost only minimal additional expenses; Petitioner claimed that her conduct met those requirements.

On May 4, 2022, the deciding official, Director of the Office of Quality Review, upheld the notice of proposed removal and sustained the charges. Petitioner's removal became effective on May 10, 2022. Petitioner then appealed her removal to the MSPB, alleging, in relevant part, affirmative defenses that the Agency discriminated against her and subjected her to a hostile work environment based on disability (chronic obstructive pulmonary disease, severe asthma, depression/anxiety, familial hypercholesterolemia, and association with her disabled son), sex (female and sexual orientation), and in reprisal for prior protected EEO activity when it removed her from federal service. Petitioner initially requested a hearing before an MSPB Administrative Judge (AJ), but Petitioner later withdrew her hearing request and the MSPB AJ issued an Initial Decision solely on the record.

In the Initial Decision, the MSPB AJ sustained the two charges of misconduct against Petitioner, affirmed the removal action, and found that Petitioner failed to establish her affirmative defenses by a preponderance of the evidence.

Regarding Petitioner's claim of disability discrimination, the MSPB AJ found that Petitioner could not establish that she was disabled within the meaning of the Rehabilitation Act and that, even if she could, she failed to demonstrate how her disability, perceived disability, or her association with her disabled son were related to her misconduct. Petitioner also alleged that S1 failed to provide Petitioner (or request on Petitioner's behalf) a reasonable accommodation to reduce Petitioner's caseload. Petitioner argued that this caused her to cut her hours in January 2021.

The MSPB AJ found, however, that Petitioner never in fact requested an accommodation and that, even if she had, Petitioner did not show she could perform the essential functions of her position with or without a reasonable accommodation, as the Agency was not required to modify or eliminate duties that are essential functions. The MSPB AJ also analyzed whether Petitioner could establish a claim of retaliation under the Rehabilitation Act but found that, because Petitioner did not demonstrate that she had actually requested an accommodation, she had not engaged in protected activity. Finally, the MSPB AJ reasoned that, because the Agency would have disciplined an employee without a disability for the same conduct, Petitioner could not prove disability discrimination.

Regarding Petitioner's allegations of sex and sexual orientation discrimination, the MSPB AJ found that Petitioner offered no evidence to suggest that her removal was motivated by these bases. The MSPB AJ reasoned that, other than asserting her identity as a "single female parent in a part-time work status" or that her partner was male, Petitioner did not demonstrate that the responsible management officials harbored discriminatory animus related to her sex. Initial Decision at 21-22.

The MSPB AJ also found that Petitioner could not show that the Agency retaliated against her for use of FMLA leave or "COVID-19 emergency paid leave pursuant to the American Rescue Plan" that the Agency had offered during the pandemic. Initial Decision at 22. The MSPB AJ reasoned that it was S1 herself who had suggested Petitioner request FMLA leave to care for her son, and the FMLA request was granted. The Agency also agreed to reduce Petitioner's hours at her request. While Petitioner alleged that S1 voiced annoyance with Petitioner's use of COVID leave, the MSPB AJ found that none of the charged misconduct related to Petitioner's use of leave or attendance. The MSPB AJ also found that, even if any retaliatory animus existed on S1's part, there was no evidence the deciding official (who was based in Chicago, while Petitioner and S1 worked in the Philadelphia region) was influenced by S1 or harbored retaliatory animus against Petitioner. The MSPB AJ further found that, given the serious nature of the charges against Petitioner, the Agency would have removed her even if she had not engaged in protected activity.

As to Petitioner's claim of a hostile work environment, Petitioner claimed that S1 treated her poorly in connection with her usage of FMLA and COVID leave.

The MSPB AJ found that the evidence, aside from Petitioner's own speculation, did not indicate a hostile work environment, and that an Agency Harassment Prevention Officer conducted a review of Petitioner's harassment allegations and found that the information Petitioner had provided did not demonstrate conduct rising to the level of harassment.

Petitioner sought review of the MSPB AJ's Initial Decision by the full Board. On August 20, 2024, the MSPB issued its Final Order denying the petition for review and affirming the Initial Decision, except to modify the analysis of Petitioner's disability discrimination claim. The Board found that, based on a separate proceeding before the MSPB,² Petitioner was disabled and the Agency was not able to accommodate her condition (including by reassignment). Therefore, the Board found that while Petitioner was disabled, she was not qualified under the Rehabilitation Act, as she could not perform the essential functions of her position with or without a reasonable accommodation. The MSPB therefore concluded that Petitioner could not establish her claim of disability discrimination. Petitioner then filed the instant petition.

CONTENTIONS IN PETITION

Petitioner filed a brief in support of her petition and several other submissions after she had already filed her petition with the Commission. The Agency filed a motion to dismiss the petition as untimely filed, to which Petitioner filed a response claiming various justifications for tolling the time limit.

STANDARD OF REVIEW

EEOC Regulations provide that the Commission has jurisdiction over mixed case appeals on which the MSPB has issued a decision that makes determinations on allegations of discrimination. 29 C.F.R. § 1614.303 et seq. The Commission must determine whether the decision of the MSPB with respect to the allegation of discrimination constitutes a correct interpretation of any applicable law, rule, regulation or policy directive, and is supported by the evidence in the record as a whole. 29 C.F.R. § 1614.305(c).

² In Hager v. Office of Personnel Management, MSPB No. PH-844E-23-0235-I-1 (Aug. 31, 2023), which was issued while the petition for review before the full Board was pending in this case, a different MSPB AJ found that Petitioner was entitled to an award of disability retirement.

ANALYSIS

As an initial matter, we note that the record contains no evidence or admission regarding when Petitioner received the MSPB's Final Order, and we therefore decline to dismiss her petition as untimely filed. We also note that a petitioner is required to file any brief in support of a petition concurrently with the petition. See 29 C.F.R. § 1614.304(b)(3). Petitioner's submissions are therefore untimely and will not be considered herein. Even if we were to consider them, however, it would not alter the outcome in this case.

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, Petitioner 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.

We find that Petitioner was not entitled to a reasonable accommodation, as the record indicates that she was not qualified as defined by the Rehabilitation Act.

The MSPB concluded that Petitioner was unable to perform the essential functions of her position at the time of her removal, especially in light of a separate MSPB proceeding granting Petitioner's request for disability retirement because "she was disabled from rendering useful and efficient service in her position prior to the effective date of her removal, and . . . the agency was unable to accommodate her condition." Final Order at 5; see supra note 2. We agree with the MSPB AJ that the record does not contain Petitioner's alleged requests for reasonable accommodation, but even assuming she had requested accommodations, the record indicates that Petitioner was removed during the interactive process for the misconduct related to her use of government equipment in support of her for-profit business and then lying about it to the Agency, which was unrelated to her disabilities or requested accommodation. We therefore find that the Agency did not fail to provide Petitioner with a reasonable accommodation.

Disparate Treatment

To prevail in a disparate treatment claim, Petitioner must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Petitioner must initially establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination. Shapiro v. Soc. Sec. Admin., EEOC Request No. 05960403 (Dec. 6, 1996) (citing McDonnell Douglas); see Homer B. v. Dep't of Interior, EEOC Appeal No. 2019005980 (Dec. 21, 2020).

To establish a prima facie case of disparate treatment based on disability, Petitioner 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. Dep't of the Air Force, EEOC Appeal No. 2021004539 (Aug. 17, 2023).

To establish a prima facie case of discrimination by association under the Rehabilitation Act, Petitioner must establish: (1) that she was subjected to an adverse employment action; (2) that she was qualified for the job at that time; (3) that her employer knew at that time that she had a relationship with an individual with a disability; and (4) that the adverse employment action occurred under circumstances which raised a reasonable inference that the disability of the individual with whom she had a relationship was a

determining factor in the employer's decision. Sherrie M. v. U.S. Postal Serv., EEOC Appeal No. 0120182523 (July 7, 2020).

To establish a prima facie case of disparate treatment based on sex/sexual orientation, Petitioner must show that: (1) she is a member of a protected class; (2) she was subjected to an adverse employment action concerning a term, condition, or privilege of employment; and (3) she was treated differently than similarly situated employees outside her protected class, or there was some other evidentiary link between membership in the protected class and the adverse employment action. See Nannette T. v. U.S. Postal Serv., EEOC Appeal No. 0120180164 (Mar. 20, 2019); McCreary v. Dep't of Def., EEOC Appeal No. 0120070257 (Apr. 14, 2008), request for recons. denied, EEOC Request No. 0520080545 (June 20, 2008).

For a reprisal claim, Petitioner may establish a prima facie case by showing that: (1) she engaged in protected activity; (2) the Agency was aware of the protected activity; (3) subsequently, she was subjected to adverse treatment by the Agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000); see Carr v. U.S. Postal Serv., EEOC Appeal No. 0120065298 (June 26, 2007); O'Neal v. Ferguson Constr. Co., 237 F.3d 1248, 1252 (10th Cir. 2001); Hochstadt v. Worcester Found. for Experimental Biology, 425 F. Supp. 318, 324 (D. Mass.), aff'd, 545 F.2d 222 (1st Cir. 1976).

Proof of a prima facie case will vary depending on the facts of the particular case. McDonnell Douglas, 411 U.S. at 802 n.13; Saenz v. Dep't of the Navy, EEOC Request No. 05950927 (Jan. 9, 1998). The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Tex. Dep't of Cmty. Affs. v. Burdine, 450 U.S. 248, 253 (1981).

Once the Agency has met its burden, Petitioner bears the ultimate responsibility to persuade the fact finder by a preponderance of the evidence that the Agency's explanation was pretextual. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 143 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 507 (1993). Petitioner can do this by showing that the proffered explanations were unworthy of credence or that a discriminatory reason more likely motivated the Agency. Burdine, 450 U.S. at 256. A showing that the employer's articulated reasons were not credible permits, but does not compel, a finding of discrimination. Hicks, 509 U.S. at 511.

We find that Petitioner failed to establish a prima facie case of discrimination based on disability or by association with a disabled individual because, as we found above, she was not qualified under the Rehabilitation Act. She also has not established by preponderant evidence a causal relationship between her protected bases and the Agency's decision to remove her. Based on this reasoning, we also find that Petitioner failed to establish a prima facie case of discrimination based on her sex or sexual orientation, as she has not shown an evidentiary link between these bases and her removal. Petitioner does not dispute that the conduct (at least with regard to her misuse of government equipment) occurred as described by the Agency in its notice of proposed removal; nor has she specified similarly situated individuals outside of her protected bases who were treated more favorably. Other than her own bare assertions, Petitioner has not established that S1 or the deciding official were motivated by Petitioner's disability, association with her son, sex, or sexual orientation in deciding to remove her.

We find that Petitioner can establish a prima facie case of reprisal. She claimed in her petition for review before the Board to have requested a reasonable accommodation and that her supervisor was aware of this request, she was subsequently removed from her position, and her alleged request for a reasonable accommodation occurred soon before her removal. We therefore find that, at least for purposes of a prima facie case, Petitioner has met her burden.

We find, however, that the Agency articulated legitimate, nondiscriminatory reasons for its actions as stated in the notice of proposed removal and the decision upholding that removal. Petitioner used her government-issued laptop and email address to set up and support The Herb Shop & Tea Lounge, which was a for-profit business. Petitioner sent dozens of emails from her Agency email address to various entities and individuals related to her business and created Word documents in support of the business on her laptop. When the Agency later investigated this activity, Petitioner gave what appeared to be evasive and inaccurate answers. Petitioner's removal was therefore based on her misuse of government equipment and a lack of candor/failure to cooperate in the administrative investigation. The deciding official also noted that Petitioner's conduct "undermined and destroyed [the deciding official's] confidence in [Petitioner's] ability to perform" her work and that her "lack of candor and failure to cooperate during an administrative investigation strikes at the very heart of the employee-employer relationship." MSPB File Pt. 1 at 24.

Next, we find the record is devoid of any evidence indicating that the Agency's reasons were pretextual. Petitioner's allegation of S1's agitation over Petitioner's FMLA or COVID leave usage does not cast doubt on the Agency's explanation over unrelated misconduct, and Petitioner makes no claim that the deciding official was somehow influenced by S1 in upholding the removal or that the deciding official harbored her own discriminatory animus. Other than Petitioner's own bare assertions and speculation, there is no evidence in the record to indicate that any of the Agency's actions were motivated by discriminatory or retaliatory animus or that the Agency treated other employees outside her protected bases more favorably in similar circumstances.

Hostile Work Environment

In order to establish a prima facie case of harassment based on disability, sex, or sexual orientation, Petitioner 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. S. 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, Petitioner must establish that she was subjected to conduct that was either so severe or so pervasive that a "reasonable person" in Petitioner's position would have found the conduct to be hostile or abusive. Petitioner must also prove that the conduct was taken because of a protected basis. Only if Petitioner establishes both of those elements—hostility and motive—will the question of Agency liability present itself.

As to retaliatory harassment, the Commission has held that reprisal claims are considered with a broad view of coverage and that the threshold for establishing retaliatory harassment is different than for discriminatory harassment. Retaliatory harassing conduct can be found even if it is not severe or pervasive enough to alter the terms and conditions of employment. See Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53 (2006). To prevail on her claim of retaliatory harassment, Petitioner must show that she was subjected to conduct sufficient to dissuade a "reasonable person" from making or supporting a charge of discrimination. See Janeen S. v. Dep't of Com., EEOC Appeal No. 0120160024 (Dec. 20, 2017) (citing Burlington N., 548 U.S. at 57), request for recons. denied, EEOC Request No. 0520180224 (May 31, 2018); EEOC Enforcement Guidance on Retaliation and Related Issues, EEOC Notice No. 915.004, § II(B)(3) & n. 137 (Aug. 25, 2016); Carroll v. Dep't of the Army, EEOC Request No. 05970939 (Apr. 4, 2000)).

We find that Petitioner failed to show that she was subjected to a hostile work environment based on disability, sex, sexual orientation, or in reprisal. We first note that Petitioner's allegations of a hostile work environment are scattered throughout her MSPB filings and are somewhat vague. To the extent Petitioner alleged that the events surrounding her removal constituted harassment, we find that Petitioner fails to establish this harassment claim for any of her alleged bases. Under the standards set forth in Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993), Petitioner's claim of hostile work environment must fail with regard to her removal and the events leading up to it. See Harassment Enforcement Guidance. A finding of a hostile work environment is precluded by our determination that Petitioner failed to establish that the actions taken by the Agency were motivated by discriminatory or retaliatory animus. See Oakley v. U.S. Postal Serv., EEOC Appeal No. 01982923 (Sept. 21, 2000).

Petitioner's other allegations of harassment within her MSPB filings appear to involve S1's interactions with Petitioner regarding her leave use (such as requiring that Petitioner check in while on leave) and Petitioner's workload. See MSPB File Pt. 2 at 497, 501-02. Upon review, we find the record fails to show that S1's treatment of Petitioner was because of her protected bases. We also find that such incidents were more likely the result of routine supervision, personality conflicts, and general workplace disputes and tribulations and are therefore insufficient to establish a hostile work environment.

The record also indicates that S1's interactions with Petitioner were generally courteous and professional. The Commission has held that routine work assignments, instructions, admonishments, and addressing performance deficiencies do not rise to the level of harassment because they are common workplace occurrences. See Complainant v. Dep't of Veterans Affs., EEOC Appeal No. 0120130465 (Sept. 12, 2014); Gray v. U.S. Postal Serv., EEOC Appeal No. 0120091101 (May 13, 2010).

CONCLUSION

Based upon a thorough review of the record, it is the decision of the Commission to CONCUR with the final decision of the MSPB finding no discrimination. The Commission finds that the MSPB's decision constitutes a correct interpretation of the laws, rules, regulations, and policies governing this matter and is supported by the evidence in the record as a whole.

PETITIONER'S RIGHT TO FILE A CIVIL ACTION (W0124)

This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court, based on the decision of the Merit Systems Protection Board, **within thirty (30) calendar days** of 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.

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests.

Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

December 30, 2024

Date