



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

[REDACTED]
Jona R.,¹
Complainant,

v.

Michael R. Pompeo,
Secretary,
Department of State,
Agency.

Appeal No. 0120182063

Agency No. DOS-0068-14

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of 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 REVERSES the Agency's final decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a GS-12 Administrative Assistant within the Agency's Bureau of Diplomatic Security, Secretary's Protective Detail, in Washington, D.C. In this position, Complainant primarily provides operational planning and coordination for the Secretary's Protective Detail and administrative, logistical, procurement, and financial support for the Detail. On September 13, 2013, a new manager became Complainant's direct supervisor (S1)

Complainant has teleworked since 2009 and last signed a telework agreement on June 28, 2012 that expired on June 29, 2013. The June 2012 to June 2013 agreement allowed Complainant to telework on Mondays, Wednesdays, and Fridays.

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.

Complainant has been diagnosed with Type I Diabetes, Neuropathy, Anxiety, Depression, and Autonomic Neuropathy. Because of these conditions, Complainant sometimes experiences dizziness, fainting, low blood pressure, abnormal perspiration, a lack of bladder/bowel control, vomiting, nausea, and pain in her hands and feet. On October 29, 2013, Complainant verbally asked S1 if she could telework the next morning because she was having “some health issues” and did not think she would be well enough to return to the office the next morning because she would not be able to get a full night’s sleep.

On October 30, 2013, Complainant emailed S1 and copied her second level supervisor (S2) with a request to telework. Also on October 30, 2013, S2 informed Complainant that he could not approve her for telework until she signed a new telework agreement. S2 further stated that there was no reason why Complainant could not telework, and “we need to submit everything to make it happen.” Complainant took sick leave for October 30, 2013.

On November 1, 2013, Complainant submitted a Request for Reasonable Accommodation form on which she indicated she was seeking flexible telework “to allow [her] to decide if [she is] able to drive into the office to work.” Report of Investigation (ROI), Volume 1, p. 141. In an email dated November 6, 2013, S1 stated that he and S2 had informed her on September 25, 2013 that her telework agreement was not approved, and in order for it be approved, Complainant must resubmit it with documentation of her work activities during work hours. S1 further stated that management scheduled meetings about the matter, which were canceled because Complainant took sick leave, and Complainant failed to provide documentation requested via email. S1 stated that Complainant was expected to come in to work during normal duty hours until she provided the requested documentation.

On November 6, 2013, a District and Reasonable Accommodation official (DRAD1) informed Complainant that he had received her request for a reasonable accommodation and asked Complainant to seek another telework agreement through her supervisor. Also on November 6, 2013, S1 told Complainant that her telework agreement had not been approved by the Office of the Chief Technology Officer (DS/EX), and Complainant had to resubmit documentation regarding her work activities during telework hours in order to have it approved. On November 7, 2013, DRAD1 informed Complainant that a new telework agreement for Complainant was not approved because of an “entry error,” and that Complainant should resubmit a telework agreement. On November 12, 2013, DRAD1 informed Complainant that his office was trying to arrange a teleconference with her Bureau for the following day, and that DRAD was seeking a 30-day situational telework agreement with her.

In an email on November 21, 2013, DRAD1 informed Complainant that he believed that her accommodation request would be resolved earlier by resubmitting her telework agreement using the “regular route,” instead of through DRAD. DRAD1 noted that an attempt was made in August 2013 to renew her agreement, and after a second attempt, her supervisor asked her to resubmit the agreement by providing justification for requesting six days of telework per pay period.

DRAD1 further stated that he proposed that Complainant resubmit the agreement requesting “situational telework” based on the reason set forth in the previous agreement. DRAD1 stated that in the meantime, Complainant could use leave when she felt she could not come in to work.

On November 26, 2013, Complainant reiterated her request for situational telework during a meeting with management, and in response, management approved her for telework for a 30-day “trial period.” On December 11, 2013, S1 and the Chief signed an “Addendum to Situational Telework Agreement” for Complainant that stated that she would telework on “a daily basis² unless otherwise specified by the supervisor” for 30 days. In a December 16, 2013 email, Complainant told DRAD1 that the addendum was not what she expected and lacked the flexibility that was essential to complete her work requirements with her condition.

On January 2, 2014, Complainant asked DRAD1 for the reasonable accommodation of fulltime telework because she had recently begun treatment for anxiety and depression, her health had become progressively worse, and the medication made her groggy. Additionally, Complainant maintained that ongoing hostility in the office had a negative impact on her health and exacerbated her symptoms. Complainant also stated that she was not comfortable signing the telework agreement addendum because she needed “a lot of flexibility.”

On January 10, 2014, DRAD1 met with Complainant to discuss her accommodation request. On January 12, 2014, Complainant proposed that the agreement be changed to reflect core work hours of 6:30 a.m. to 3:15 p.m. with a 45-minute lunch and the ability to report to work by 6:30 a.m. unless medical problems made it to telework, in which case the supervisor would be notified by 7:30 a.m.

On or about January 28, 2014, Complainant submitted medical documentation from her physician (Dr1) that indicated that she had Type I Diabetes and Neuropathy that caused her to experience variable glucose levels, palpitations, nausea, and dizziness. Additionally, Dr1 stated that Diabetic Neuropathy is difficult to control and is a daily event impacted by ambulation. Complainant also reported that she requested fulltime telework because she experienced complications caused by her diabetes, including dizziness, fainting, extremes in glucose levels, nausea, and vomiting. Complainant also stated that it was dangerous for her to drive with erratic blood sugar; it was preferable to vomit at home instead of in work restrooms; and the office environment had a lot of noise, chaos, and heavy customer traffic that made it difficult to focus on the complex, detail-oriented work she performed.

On January 30, 2014, Complainant met with DRAD1 and management to discuss her pending accommodation request, job duties, performance, and leave situation. On April 23, 2014, Complainant met again with DRAD1 to discuss her accommodation request.

² Although the addendum uses the term “daily basis,” other evidence indicates that the addendum contemplated granting Complainant only three days of telework per week on Mondays, Wednesdays, and Fridays, which is consistent with the main telework agreement.

On May 6, 2014, the Agency informed Complainant that she was approved for three days of teleworking per week, or on Mondays, Wednesdays, and Fridays. The Agency also sent Complainant a copy of the addendum to the telework agreement that reflected that her core work hours would be 6:30 a.m. to 3:15 p.m., that she would have to report her duty station to her supervisor by 6:30 a.m., and she would have until 7:30 a.m. to report to her supervisor if medical issues made it necessary to telework. Complainant rejected the Agency's offer and did not report to work after April 11, 2014.

On February 7, 2014, Complainant filed an EEO complaint in which she alleged that, from October 29, 2013, the Agency failed to provide her with a reasonable accommodation for her disability.³

After the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing but subsequently withdrew her request.

Consequently, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). In its final decision, the Agency found that Complainant was a qualified individual with a disability. Nevertheless, the Agency concluded that Complainant did not prove she was denied a reasonable accommodation for her disability. Specifically, the Agency determined that Complainant did not submit any documentation to support her October 29, 2013 request for situational telework. Regarding Complainant's January 2, 2014 request for fulltime telework, the Agency determined that it provided Complainant with an effective reasonable accommodation by offering her the ability to telework three times per week.

The Agency concluded that Complainant's medical documentation did not support her request for fulltime telework, and she would have been best accommodated through a combination of telework and sick leave. Additionally, the Agency concluded that fulltime telework would have imposed an undue hardship on the Agency because: her position required training and periodic meetings in the office; trip planners were not able to follow all information given via telephone calls; Complainant's workload had increased by 135 percent; and Complainant had demonstrated an inability to follow proper procedures for reporting her duty station and work status while teleworking.

CONTENTIONS ON APPEAL

On appeal, Complainant reiterates her assertion that the Agency failed to provide her with a reasonable accommodation.

³ We note that this complaint also contained the allegation that Complainant was subjected to a hostile work environment. However, Complainant withdrew the hostile work environment claim on February 27, 2018.

Complainant contends that she needed flexibility in teleworking, but the Agency only offered her the ineffective accommodation of three core days⁴ of telework per week, which required her to identify her telework days in advance. Complainant contends that she initially requested situational telework as a reasonable accommodation because it would have allowed her to perform her job duties without commuting on days when she had diabetic symptoms such as vomiting, nausea, and unstable blood glucose levels. Complainant contends that she rejected the Agency's December 2013 telework offer because it did not provide her with flexibility if she woke up ill and could not report to the office. Complainant further contends that she requested fulltime telework in January 2014 because her health became progressively worse and going into the office exacerbated her symptoms. She maintains that she rejected the Agency's May 2014 offer of three days a week of telework (Mondays, Wednesdays, and Fridays) because such "core telework hours would not make it possible for her to do her job."

STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), 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").

ANALYSIS AND FINDINGS

Denial of Reasonable Accommodation

Under the Commission's regulations, a federal agency may not discriminate against a qualified individual on the basis of disability and is required to provide reasonable accommodations to the known physical and mental limitations of an otherwise qualified individual with a disability unless the Agency can show that reasonable accommodation would cause an undue hardship. See 29 C.F.R. § 1630.2(o), (p). 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 a "qualified" individual with a disability pursuant to 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide her with a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC Notice No. 915.002 (Oct. 17, 2002) (Enforcement Guidance on Reasonable Accommodation).

⁴ In this case, witnesses use the term "core telework" to mean telework in which employees telework on a regularly-scheduled basis at least one day a week.

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

An individual with a disability is “qualified” if he or she satisfies the requisite skill, experience, education, and other job-related requirements of the employment position that the 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). “Essential functions” are the fundamental duties of a job, that is, the outcomes that must be achieved by someone in that position. Gwendolyn G. v. U.S. Postal Serv., EEOC Appeal No. 0120080613 (Dec. 23, 2013).

In this case, Complainant has been diagnosed with Diabetes, Neuropathy, Anxiety, Depression, and Autonomic Neuropathy, and the Agency concedes that Complainant is a qualified individual with a disability. Because of her medical conditions, Complainant sometimes experiences symptoms commonly associated with her conditions, including dizziness, fainting, fluctuating glucose levels, nausea, vomiting, and difficulties with bladder/bowel control. We note that Commission regulations explicitly state diabetes substantially limits endocrine function, a major life activity. 29 C.F.R. § 1630.2(j)(3)(iii); see Irina T. v. Dep’t of Veterans Affairs, EEOC Appeal No. 0120180568 (Apr. 3, 2019). Moreover, the Agency acknowledges that Complainant is a qualified individual with a disability. As such, we likewise find that Complainant is a qualified individual with a disability.

The record reveals that Complainant initially requested reasonable accommodation on or about November 1, 2013, when she submitted a Reasonable Accommodation Request form that stated that, because of her Diabetes and Autonomic Neuropathy, she needed to be able to determine each morning if it was “appropriate to go into work or work from home depending upon [her] symptoms.” Additionally, Complainant requested telework flexibility that would allow her to decide if she was too ill to drive into the office to work on a particular day when she was experiencing symptoms. In January 2014, Complainant requested fulltime telework because her health had become “progressively worse” and the office environment had noise, chaos, and customer traffic that made it difficult for her to focus on her work. Complainant also reported she needed fulltime telework because it had become dangerous for her to drive when she experienced erratic blood sugar levels, and it was preferable to vomit at home instead of at work.

Upon review, we find that Complainant demonstrated that she needed the reasonable accommodation of situational telework by showing that she had a medical condition that sometimes caused her to experience symptoms that negatively impacted her ability to commute or work in the office. However, we do not find that Complainant proved that she needed fulltime telework because of her medical conditions.

In so finding, we note that Complainant did not provide any medical documentation that established the frequency of her symptoms, and Complainant's bare assertion that she was unable to come into the office at any time because of her conditions does not establish her need for the broader accommodation of fulltime telework.

The Agency concluded that it provided Complainant with an effective reasonable accommodation when it offered her telework three times per week. However, as Complainant points out, the Agency only offered to allow Complainant to telework on Mondays, Wednesdays, and Fridays, which is essentially the same telework schedule Complainant had before she requested reasonable accommodation. However, Complainant disclosed she needed to telework when she experienced symptoms related to her condition that impacted her ability to commute and work in the office. These symptoms often occurred without significant notice and were not restricted to Mondays, Wednesdays, and Fridays. Therefore, if Complainant experienced symptoms that impacted her ability to commute or work in the office on Tuesdays or Thursdays, the telework agreement would not have provided her with a reasonable accommodation for her medical conditions. The Agency's offer of telework on Mondays, Wednesdays, and Fridays was not an effective accommodation because it did not meet Complainant's need for flexible, situational telework as needed.

The Agency's final decision asserted that fulltime or situational telework would have imposed an undue hardship because: Complainant's position required training and periodic meetings in the office; trip planners were not able to follow all information on telephone calls; Complainant's workload had increased by 135 percent and Complainant had new work commitments; and Complainant had demonstrated an inability to follow proper procedures for reporting her duty station and work status while teleworking. However, S2 stated that "training and periodic meetings" for Complainant only occurred "intermittent[ly]." ROI, Volume 3, p. 912. As such, we are not persuaded that Complainant had to train and attend meetings so often as to preclude her from teleworking situationally. The Agency further maintained that Complainant could not telework situationally because her workload had increased by 135 percent. However, an increase in workload does not necessarily make situational telework implausible, and the Agency did not prove that it was the case here. At any rate, S2 greatly undermined the Agency's assertion by stating that "the actual core duties of the [C]omplainant, as written, may be performed remotely." Id.

The Agency also contends that Complainant cannot situationally telework because she stopped sending daily status reports and providing work product since April 14, 2014. However, the record reflects that Complainant sought long term leave for this period because she believed that the Agency's failure to provide her with the effective reasonable accommodation of situational telework was exacerbating her medical conditions. As such, we reject the Agency's claim that Complainant's difficulty in reporting her work status or providing work product during this period indicates that situational telework would impose an undue hardship on the Agency.

The Agency also maintains that it accommodated Complainant by permitting her to take leave when she experienced medical symptoms that made it difficult for her to commute or work in the office.

While an employer may choose between effective accommodations, forcing an employee to take leave when another accommodation would permit an employee to continue working is not an effective accommodation. See Denese v. Dep't of the Treasury, EEOC Appeal No. 0120141118 (Dec. 29, 2016). In this case, the Agency failed to provide Complainant with the effective accommodation that would have allowed her to continue working.

Hence, we find that the Agency failed to provide Complainant with a reasonable accommodation for her disability when it did not approve her for situational telework. See Jody L. v. Dep't of the Air Force, EEOC Appeal No. 0120151351 (Jan. 17, 2018) (agency violated the Rehabilitation Act when it denied Complainant with Paralysis the option of working from home on days when the temperature is below negative twenty degrees.). In so finding, we remind the Agency that the federal government is charged with the goal of being a “model employer” of individuals with disabilities, which may require it to consider innovation, fresh approaches, and technology as effective methods of providing reasonable accommodations. Rowlette v. Social Security Administration, EEOC Appeal No. 01A10816 (Aug. 1, 2003); 29 C.F.R. §1614.203(a). We believe that providing Complainant with this reasonable accommodation furthers this goal.

An agency is not liable for compensatory damages under the Rehabilitation Act where it has consulted with complainant and engaged in good faith efforts to provide a reasonable accommodation but has fallen short of what is legally required. See Teshima v. U.S. Postal Serv., EEOC Appeal No. 01961997 (May 5, 1998). In this case, the Agency was aware that Complainant needed situational telework because of her medical conditions, and the Agency did not show providing Complainant with telework as needed would have imposed an undue hardship. Moreover, Complainant made the Agency aware that its offer of telework on an inflexible, rigid basis did not meet her medical needs. Consequently, we find that the Agency is liable for Complainant's compensatory damages because it has not shown it acted in good faith in accommodating Complainant.

CONCLUSION

The Commission REVERSES the Agency's final decision finding no discrimination. We REMAND this matter to the Agency to provide remedial relief consistent with this decision and the Order herein.

ORDER

To the extent it has not already done so, the Agency is ordered to undertake the following remedial actions:

1. Within 60 days of the date this decision is issued, the Agency shall provide (if Complainant is still employed in the same position) Complainant with the reasonable accommodation of a flexible telework schedule in which she is able to situationally telework when she experiences symptoms related to her medical condition that make it difficult for her to commute or work in the office. Complainant shall cooperate with the Agency to determine when and how she will

provide her supervisor with notice of her need to telework on work days. Also, within 60 days of the date this decision is issued, the Agency shall provide Complainant with a telework agreement granting her situational telework.

2. Within 120 days after this decision is issued, the Agency shall restore any leave or pay lost (if any) by Complainant because of its failure to timely provide her with a reasonable accommodation.
3. Within 90 days of the date this decision is issued, the Agency shall provide 8 hours of in-person or interactive EEO training for S1, S2, and DRAD1 on the Rehabilitation Act. The training shall emphasize the Rehabilitation Act's requirements with respect to an Agency's duties to provide reasonable accommodations to individuals with disabilities.
4. Within 60 days of the date this decision is issued, the Agency shall consider taking appropriate disciplinary action against S1, S2, and DRAD1. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If any of the responsible management officials have left the Agency's employment, then the Agency shall furnish documentation of their departure date(s).
5. Within 90 days of the date this decision is issued, the Agency shall conduct a supplemental investigation with respect to Complainant's claim of compensatory damages. The Agency shall allow Complainant to present evidence in support of her compensatory damages claim. See Carle v. Dep't of the Navy, EEOC No. 01922369 (Jan. 5, 1993). Complainant shall cooperate with the Agency in this regard. The Agency shall issue a final decision addressing the issues of compensatory damages within 30 days after the completion of the investigation.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation showing that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Harry S. Truman Building in Washington, D.C. facility copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted.

The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

ATTORNEY'S FEES (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she/he is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of receipt of this decision. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 CFR § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which 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 to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in 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). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your 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(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. 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 his or her 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. **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

January 23, 2020

Date