



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

[REDACTED]
Tricia B.,¹
Complainant,

v.

Alex M. Azar II,
Secretary,
Department of Health and Human Services
(National Institutes of Health),
Agency.

Appeal No. 2019000539

Agency No. HHSNIHCC14117

DECISION

On September 18, 2018, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's August 30, 2018 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 AFFIRMS the Agency's final decision, in part, and REVERSES, in part.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Diagnostic Radiologic Technologist (Image Analyst), AD-0647-02 in the Diagnostic Radiology Department (ORO), Clinical Image Processing Service (CIPS) at the National Institutes of Health (NIH) located in Bethesda, Maryland. Complainant held this position from March 2002 until her retirement on or about April 30, 2018.

On October 24, 2017, Complainant filed an EEO complaint alleging that the Agency discriminated against her and subjected her to a hostile work environment on the bases of disability (recurrent facial angioedema and asthma) and reprisal (prior protected EEO activity) when:² (1) on October

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.

² Complainant's claim of harassment and retaliation apply to Claims 2-4.

16, 2017, Complainant's supervisor (S2) denied her request for full-time telework regarding her physical disability, and granted only one day of telework per week, which has not been implemented, though other employees in the department are permitted to telework; (2) as of December 4, 2017, the Agency still has not approved Complainant's request for reasonable accommodation of teleworking, initially requested in July 2017; (3) on November 21, 2017, S2 designated Complainant as a Tier III-Non-Emergency/Non-Teleworker, a designation to indicate that employees are not required to report to work when the government is closed due to weather or furlough; but per her supervisor's discretion, Complainant may be requested to execute functions performed onsite during an emergency; (4) on January 3, 2018, S2 informed Complainant via email that she must enter the start time and finish time for each case that she processes at once, which slowed down her productivity and workflow (from 260 cases processed in December 2016 to 252 cases processed in December 2017).

After the EEO investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC Administrative Judge. In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

FACTUAL BACKGROUND³

Complainant asserted that she developed a medical condition (i.e., recurrent facial angioedema and asthma) following exposure to mold in an office that had become flooded in 2011. This condition causes facial swelling,⁴ itchy and runny eyes, and difficulty in breathing when she is around carpeted office space or when people who were previously around carpeted work spaces enter her workspace. She has been prescribed medication that reduces her symptoms to permit her to work in non-carpeted areas but causes light-headedness, weight-gain, and drowsiness. Complainant does not need to take any medications when away from the office. The record shows that in 2015, the Agency moved Complainant to an office without carpeting and excused her from any meetings taking place in carpeted areas. While the medications helped to control Complainant's allergies at work, she could have a reaction (i.e. facial swelling, itchy runny eyes and difficulty in breathing) if people came into her office after having been in a carpeted area.⁵ Complainant states that she has been regularly taking medicine in order to report to work since 2015.

³ The facts set forth below are undisputed unless otherwise stated.

⁴ The record indicates that at times Complainant's eyes were almost completely shut from the swelling.

⁵ S2 admitted that he sometimes had to leave Complainant's office so that she would not have an allergic reaction. Complainant's coworker (C1) recalled that Complainant had to leave the workplace at times due to her condition and used lots of medications. Additionally, the record shows that on October 18, 2017, a co-worker entered Complainant's office from a carpeted area. Less than two minutes later, Complainant began having asthmatic symptoms and facial swelling.

Additionally, Complainant stated that when someone entered into her workspace, she needed to take more medicine, including a rescue inhaler because she cannot breathe which she occurred about three times a week. After she takes the additional medication Complainant becomes extremely tired and drained. Complainant also carries an epinephrine auto-injector (Epi Pen), in case she has an anaphylactic reaction. On one occasion Complainant had to go to the hospital because of a severe allergic reaction at work. Complainant stated that as she walked down a hallway at work her face began to swell. A supervisor grabbed Complainant's arm and took her to the Occupational Medical Service (OMS) and then sent her to the hospital.

Complainant claimed that she requested to telework in 2015 and in Summer 2017.⁶ S2 stated that in 2015 he tried to give Complainant ad hoc telework to be approved on a case-by-case basis as needed. He stated he signed the telework form and submitted it for signature by his supervisor. However, the Administrative Officer (AO) called S2 to tell him that Complainant's telework request was denied. In 2017, Complainant sent an email to the Acting Chief (AC) asking for telework as an accommodation because she had to increase her medications while at work. AC referred the request to S2. S2 requested medical information which Complainant provided. Specifically, Complainant's physician (P1) submitted records showing that extensive testing was performed to clarify the reasons Complainant experienced facial swelling at work. P1 documented that Complainant is allergic to dust mites and reacts to products used to treat or clean carpeting. However, P1 could not pinpoint the substance that caused Complainant's face to swell at work. P1 recommended that Complainant be permitted to work from home on a permanent basis.⁷ The OMS Medical Director (MD) reviewed P1's report. Thereafter, on August 4, 2017, MD submitted his own report to S2 which disagreed with P1's recommendations regarding telework.

Complainant also asserted that after being notified that she had filed an informal EEO complaint, S2 decided not to approve telework although he said he had been previously inclined to do so. Complainant claimed that S2's explanation for denying telework is a pretext for discrimination and retaliation.⁸

On or about October 16, 2017, S2 notified Complainant that he would give her one day of telework per week. Complainant claimed that she was not sure if S2 was offering one day of telework in settlement of her EEO complaint and stated to S2 that she wanted full-time telework, that she was filing a formal complaint, and that he needed to talk to her attorney. Complainant asserted that she did not refuse to accept the one day of telework offered. Complainant claimed that she heard nothing further from S2 regarding the one day of telework.

⁶ Complainant claimed that her 2015 telework request was ignored. Complainant did not produce medical documentation at that time.

⁷ P1 further recommended that Complainant permanently avoid working in an excessively dusty environment and carpeted spaces at work.

⁸ S2 claimed that he made the decision to deny telework because he "came to agree with the idea of [his] previous supervisor that the non-research CIPS staff, being clinical workers, should be on-site."

S2 stated that he did not follow through with the one day of telework per week because after informing the Executive Officer (XO) that Complainant had filed a formal EEO complaint, she (XO) did not provide him with further instructions on what to do about the telework. AC stated that she did not know who told S2 not to proceed with the telework but that it was her understanding that “it was too late, and they wouldn't be able to simply resolve the concern, it had gone too far in the timeline to resolve it as required in the EEO process.” XO stated that “there was no one telling us what we should or shouldn't do at that point.”

On or about November 21, 2017, S2 notified Complainant that he may request that she report to the office during an emergency even though she was a Tier III-Non-Emergency/Non-Teleworker. Complainant asserted that since she is not involved in direct patient care, there was no reason for her to report to work during an emergency. On or about January 2, 2018, AC emailed S2 that it would take a while to resolve Complainant's EEO matter and in the meantime, XO had suggested moving forward with the one day of telework. On or about January 3, 2018, S2 notified Complainant by email that she must enter the start time and finish time for each case that she processes at once. Complainant began teleworking one day a week in early February 2018.

The record shows that Complainant's job consisted of performing tumor measurements and she did not need to be physically present to perform her job duties as they are performed on a computer. Although some co-workers came to her office if they had a question about measurements or to pick up a hard copy of an image, those requests could have been, and often were, handled through email.

ANALYSIS AND FINDINGS

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”).

Claims 1 and 2 - Failure to Accommodate

The events in this case arose after January 1, 2009, the effective date of the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), which expanded the definition of disability under the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Under EEOC regulations implementing the ADAAA, 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

record of such an impairment; or (3) is regarded as having such an impairment. 29 C.F.R. § 1630.2(g).⁹

Under the Commission's regulations, an agency is required to make reasonable accommodation to the known physical and mental limitations of an otherwise qualified individual with a disability unless the agency can show that accommodation would cause an undue hardship. 29 C.F.R. § 1630.9. In this case, the record reveals that Complainant has recurrent facial angioedema and asthma which substantially limits Complainant's major life activity of breathing. Additionally, the record reveals that Complainant successfully performed the essential functions of her position during the relevant time-period. The Agency found that Complainant is a qualified individual with a disability, and we concur with this conclusion.

Complainant alleges that she was denied a reasonable accommodation when management did not approve full-time telework from Summer 2017 to April 30, 2018. The record shows that Complainant requested full-time telework in or about July 2017. The Agency engaged in the interactive process and requested medical documentation in support of Complainant's request. On August 4, 2017, after reviewing the medical documentation provided by Complainant, MD submitted a summary of the medical documentation to S2. On August 28, 2017, S2 notified Complainant of MD's review and noted that MD determined that Complainant should not work in any carpeted workspace. S2 did not address Complainant's request for telework other than noting that Complainant's physician has recommended "permanent telework." S2 seemingly ignored Complainant's request for telework until October 16, 2017, when S2 advised Complainant that the Agency would agree to one day of telework per week. However, the record shows that the one day of telework was not implemented until February 2018.

We note that S2 claims he was not aware that Complainant requested full-time telework. However, we find that Complainant's physician clearly requested "permanent telework" which is the same as full-time telework. Also, the undisputed record establishes that Complainant verbally notified S2 on October 16, 2017 that she was seeking "full-time telework."

⁹ The primary purpose of the ADAAA is to make it easier for people with disabilities to obtain protection under the ADA. Consistent with this, the definition of disability shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA. 29 C.F.R. § 1630.1(c)(4). "Substantially limits" is not meant to be a demanding standard. 29 C.F.R. § 1630.2(j)(i). An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity to be considered substantially limiting. 29 C.F.R. § 1630.2(j)(ii). In addition, the non-ameliorative effects of mitigating measures, such as negative side effects of medication or burdens associated with following a particular treatment regimen, may be considered when determining whether an individual's impairment substantially limits a major life activity. 29 C.F.R. § 1630.2(j)(4)(ii). An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. 29 C.F.R. § 1630.2(j)(vii).

While the agency may choose among reasonable accommodations, the accommodations chosen must be effective in meeting the needs of the individual. EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC No. 915.002 (Oct. 17, 2002) (Reasonable Accommodation Guidance), General Principles. The record establishes that Complainant is diagnosed with recurrent facial angioedema and asthma which causes itchy and runny eyes and difficulty in breathing when she walks into any carpeted room at her worksite, as well as when people come from any carpeted area into her workspace. The record also supports the conclusion that the accommodations provided by the Agency (i.e., moving Complainant to a workspace without carpets and permitting Complainant to attend meetings that take place in carpeted areas via teleconference from her office) were not effective. The record shows that despite the accommodations provided by the Agency, Complainant continued to experience allergic reactions approximately three times per week. Accordingly, we find full-time telework to be the only appropriate accommodation in this case. See Retha W. v. Dep't of Agric., EEOC Appeal No. 0120161254 (June 21, 2018); Dino B. v. Equal Emp. Opp. Comm., EEOC Appeal No. 0720150039 (June 5, 2017).¹⁰

The record establishes that the Agency possessed medical documentation to support her need for full-time telework as of August 4, 2017 (i.e., the date MD provided a summary of Complainant's medical documentation to S2). We also find that the Agency failed to establish that providing full-time telework would create an undue hardship. The Agency's broad rejection does not reflect the specificity required of an individualized assessment, nor a consideration of the factors comprising an undue hardship. See Petitioner v. Dep't of Homeland Sec., EEOC Petition No. 0320110053 (July 10, 2014); Wilmer M. v. Dep't of State, EEOC Appeal No. 0120160352 (Feb. 22, 2018). Accordingly, we find that Complainant was denied a reasonable accommodation between August 4, 2017 and April 30, 2018 (i.e., the date of Complainant's retirement).¹¹

Claims 3 and 4 – Hostile Work Environment

Harassment of an employee that would not occur but for the employee's race, color, sex, national origin, age, disability, or religion is unlawful, if it is sufficiently severe or pervasive. To establish a claim of harassment a complainant must show that: (1) he or she belongs to a statutorily protected class; (2) he or she was subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on their statutorily protected class; (4) the harassment affected a term or condition of employment and/or

¹⁰ Commission Guidance states that an employer must modify its telework policy if such a change is needed as a reasonable accommodation, as long as this accommodation would be effective and would not cause an undue hardship. Reasonable Accommodation Guidance, EEOC Notice No. 915.002 (as revised, Oct. 17, 2002). The Commission has held that an employer should not deny telework as a reasonable accommodation "solely because a job involves some contact and coordination with other employees. Frequently, meetings can be conducted effectively by telephone and information can be exchanged quickly through email." Becki P. v. Dep't of the Navy, EEOC Appeal No. Appeal No. 0120152848 (Mar. 6, 2018). We note that there is no reason to believe that only one-day of telework per week would eliminate Complainant's symptoms.

¹¹ We note that Complainant does not allege constructive discharge.

had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982). Further, the incidents must have been “sufficiently severe or pervasive to alter the conditions of [complainant's] employment and create an abusive working environment.” Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993).

Here, Complainant asserted that based on her protected EEO activity, management officials subjected her to a hostile work environment. Complainant alleged several incidents of what she believed to be retaliatory harassment. We find that Complainant has not shown that she was subjected to conduct sufficiently severe or pervasive to create a hostile work environment.

Moreover, even assuming that the alleged conduct was sufficiently severe or pervasive to create a hostile work environment, Complainant failed to show that the Agency’s actions were based on retaliatory animus. The record demonstrates that the Agency articulated legitimate, non-retaliatory reasons for the matters at issue. For example, regarding Claim 3, S2 asserts that as far as he knew, Complainant was always a Tier III employee. We note that the Agency provided documentation that Complainant was designated as a Tier III employee since at least October 2016, with the same work condition in place. Therefore, this was not a new designation or action related to Complainant's EEO activity, as alleged. Moreover, S2 states that Complainant never told him she felt harassed by this, and he was just a manager trying to do his job. Regarding Claim 4, the record shows that during the spring 2017, senior management placed extra scrutiny on CIPS to document how its personnel were spending their time. S2 states he contemplated ways of implementing this for a while, but that management did not follow up. S2 decided that instead of implementing a complex project management system he would instead have staff input their start and finish times. The record shows that S2 implemented this requirement with respect to both Complainant and her co-worker (C1).

The Commission finds that Complainant has not shown that she was subjected to a retaliatory hostile work environment. Moreover, to the extent Complainant claimed that she was subjected to disparate treatment, the Commission finds that, as discussed above, Complainant has not demonstrated that the Agency's explanation for its actions was pretext for reprisal. As a result, the Commission finds that Complainant was not subjected to reprisal or a hostile work environment as alleged.¹²

¹² We note that Complainant asserts that S2 implemented the same input requirement with respect to C1 to make his decision appear unbiased. However, the record is devoid of evidence to corroborate Complainant’s assertions.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE, in part and AFFIRM, in part the Agency's final decision.

ORDER

The Agency is ordered to undertake the following remedial actions:

1. Within 90 calendar days after this decision is issued, the Agency shall reimburse any annual leave or non-paid leave (if any) taken by Complainant because of its failure to provide her with a reasonable accommodation, from August 4, 2017 until her retirement on April 30, 2018.
2. Within 90 days of the date this decision is issued, the Agency shall conduct a supplemental investigation with respect to Complainant's entitlement to compensatory damages, including providing Complainant an opportunity to submit evidence of pecuniary and non-pecuniary damages. For guidance on what evidence is necessary to prove pecuniary and non-pecuniary damages, the parties are directed to EEOC Enforcement Guidance: Compensatory and Punitive Damages Available Under § 102 of the Civil Rights Act of 1991 (July 14, 1992) (available at eeoc.gov). Complainant shall cooperate with the Agency in this regard. The Agency shall issue a final decision addressing the issue of compensatory damages no later than 30 days after the completion of the investigation.
3. Within 60 calendar days after this decision is issued, the Agency shall consider taking disciplinary action against S2. The Agency shall report its decision on discipline to the Compliance Officer. 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 or reasons for its decision not to impose discipline.
4. Within 90 calendar days after this decision is issued, the Agency shall provide eight hours of in-person EEO training to the S2, AO, AC, XO, and MD, as well as all persons charged with processing and responding to reasonable accommodation requests for the ORO. The training shall emphasize the Agency's obligation to provide reasonable accommodations for disabilities.
5. The Agency shall post a notice in accordance with the paragraph below.

The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision."

POSTING ORDER (G0617)

The Agency is ordered to post at its Diagnostic Radiology Department, Bethesda Maryland 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 C.F.R. § 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 (T0610)

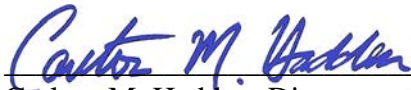
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the

Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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. 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

January 22, 2020

Date