



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

[REDACTED]
Bertram K.,¹
Complainant,

v.

Sonny Perdue,
Secretary,
Department of Agriculture
(Food and Nutrition Service),
Agency.

Appeal No. 2019001793

Hearing No. 530-2017-00136X

Agency No. FNCS201600723

DECISION

On November 20, 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 October 18, 2018, final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. 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 MODIFIES the Agency's final decision.

ISSUES PRESENTED

The issue presented is whether Complainant has shown by a preponderance of the evidence that the Agency subjected her to discrimination, retaliation, and an unlawful hostile work environment, and whether the Agency engaged in an unlawful disclosure of medical information.

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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Program Technician, GS-08, at the Agency's Food and Nutrition Service, Supplemental Nutrition Assistance Program (SNAP), Office of the Associate Administrator in Alexandria, Virginia.

On August 1, 2016, Complainant filed an EEO complaint alleging that the Agency subjected her to a hostile work environment and discriminated against her on the bases of race (African-American), disability (Attention Deficit Disorder), and reprisal for prior protected EEO activity when:

1. on April 22, 2016, the Supervisor issued her a Notice of Termination During Trial Period, which became effective on April 26, 2016; and,
2. on several dates, Complainant was subjected to various acts of harassment, including but not limited to:
 - a. during the month of June 2014, the Supervisor disclosed her disability to her colleagues without her consent, by stating she was "functional" since she just had Attention Deficit Disorder (ADD); and,
 - b. during a meeting in October 2014, the Supervisor repeatedly used the word, "nigger", and when Complainant addressed the matter with her, the Supervisor responded by stating, "Well, you people use it."

The Agency accepted the claim for investigation. The investigative record reflects the following pertinent matters relating to the subject claim.

On June 1, 2014, Complainant was hired on a Schedule A, Excepted Appointment position, subject to a two-year trial period. Prior to Complainant's start date, Complainant's first line supervisor (Caucasian, disability status unknown, no prior EEO activity), disclosed Complainant's disability to staff. The Supervisor acknowledged the disclosure and explained that her intent was not meant to single out Complainant. The Supervisor stated that staff was aware that she was conducting a Schedule A Hire and went on to explain "that regardless of the disability, everyone has to be able to perform the functions of their job." The Supervisor stated that her intentions were to create an open and positive discussion on disabilities. Complainant asserted that it was inappropriate for the Supervisor to disclose her medical information without her consent.

During an October 2014 meeting, Complainant and a coworker (CW) confronted the Supervisor, over her use of the word, "nigger". The Supervisor asked what context they had heard this in. CW stated that during a discussion about music, the Supervisor had specifically said that she hated the word "nigger" and the people who use it. The Supervisor realized the referenced event was from a morning check-in 3 to 4 years prior where CW was present. The Supervisor noted that this was prior to Complainant's employment with the Agency.

The Supervisor acknowledged using the term in full during the morning check in and stated that it was in the context of how much she hated it when people used the word. During the October 2014 confrontation, both informed the Supervisor that if she had to use the term, she should say, “the ‘N’ word”, instead of using the term “nigger”. Complainant alleged that in response, the Supervisor stated, “Well, you people use it.” Complainant asserted that the Supervisor became flustered and apologized when she was asked, “who are ‘you people?’”. There is no indication from the record that the Supervisor used the term “nigger” during the October 2014 confrontation between Complainant, CW, and herself. Complainant acknowledged that she had not heard the Supervisor say the term prior.

In June 2015, Complainant filed a grievance against the Supervisor. A Working Agreement was signed by both parties.

On April 22, 2016, Complainant was issued a Notice of Termination (the Notice)² effective April 26, 2016. The Notice states that the action was based on unsatisfactory conduct, and Complainant's distinct lack of professionalism. The Notice goes on to outline the incidents leading to a Charge of Improper Conduct and the various factors considered in deciding the action. Specifically, the Notice detailed an October 2015 incident in which Complainant's failure to follow instructions resulted in the Agency losing \$1,295.00 in government funding; a November 2015 incident in which Complainant failed to consider how her actions impacted her colleagues; several incidents where Complainant failed to abide by leave policies; numerous complaints from staff and management about Complainant's “aggressive, confrontational, and bully-like behavior toward them, as well as inappropriate verbal remarks made by [Complainant] against others in the workplace...”, and several other incidents that factored into the termination decision.

Complainant believed that the reason for her termination was retaliation for her filing the June 2015 grievance. Complainant stated that prior to receiving the Notice of Termination, she did not receive formal counseling, nor was she ever advised or notified that her conduct/performance was unsatisfactory. Complainant noted that she was provided an opportunity to resign and exercised that option.

At the conclusion of 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 timely requested a hearing but subsequently withdrew her request. Consequently, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The Agency concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

² The Notice mistakenly advised Complainant that she had appeal rights to the Merit Systems Protection Board (MSPB). On May 20, 2016, Complainant filed an appeal to the MSPB. On June 27, 2016, the MSPB dismissed the appeal for lack of jurisdiction noting that it did not have jurisdiction over Complainant's termination as a probationary employee.

CONTENTIONS ON APPEAL

Neither the Agency or Complainant provided an appellate brief.

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

Disparate Treatment

Complainant alleges that she was subjected to disparate treatment. A claim of disparate treatment is examined under the three-part analysis first enunciated in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973). For a complainant to prevail, she must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. McDonnell Douglas, 411 U.S. at 802, n. 13; Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978). The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. Tx. Dep’t of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the agency has met its burden, the complainant bears the ultimate responsibility to persuade the fact finder by a preponderance of the evidence that the agency acted on the basis of a prohibited reason. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993).

This established order of analysis in discrimination cases, in which the first step normally consists of determining the existence of a prima facie case, need not be followed in all cases. Where the agency has articulated a legitimate, nondiscriminatory reason for its actions, the factual inquiry can proceed directly to the third step of the McDonnell Douglas analysis, the ultimate issue of whether complainant has shown by a preponderance of the evidence that the agency’s actions were motivated by discrimination. U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 713-714 (1983).

Unlawful Harassment

Complainant also alleged that she was subjected to unlawful harassment. A harassment claim is examined under the standards set forth in Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993). See also Enforcement Guidance on Harris v. Forklift Systems, Inc., EEOC Notice No. 915.002 (Mar. 8, 1994). To establish this claim, a complainant must show that: (1) she belongs to a statutorily protected class; (2) 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 her statutorily protected class; (4) the harassment affected a term or condition of employment and/or 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.

The Supreme Court in Harris explained that an “objectively hostile or abusive work environment [is created when] a reasonable person would find [it] hostile or abusive” and the complainant subjectively perceives it as such. Harris, 510 U.S. at 21-22. Whether the harassment is sufficiently severe to trigger a violation must be determined by looking at all the circumstances, including “the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.” Id. at 23.

A hostile work environment exists when the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the condition of the complainant's employment. See Harris, *supra*; see also Oncale v. Sundowner Offshore Svcs., Inc., 523 U.S. 75, 78 (1998).

With respect to element (5) of a harassment claim, an agency is subject to vicarious liability for harassment when it is created by a supervisor with immediate (or successively higher) authority over the employee. See Burlington Industries, Inc., v. Ellerth, 524 U.S. 742 (1998); Faragher v. City of Boca Raton, 524 U.S. 775 (1998); Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors, EEOC Notice No. 915.002 (June 18, 1999).

Reprisal

Complainant also alleges that the Agency retaliated against her. In accordance with the burdens set forth in McDonnell Douglas, and Coffman v. Dep't of Veteran Affairs, EEOC Request No. 05960473 (Nov. 20, 1997), a complainant may establish a prima facie case of reprisal by showing that: (1) she engaged in a 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).

Analysis

Claim 1 - Disparate Treatment

With respect to Complainant's disparate treatment claim, we find that Complainant established a prima facie case of discrimination based on her race, disability, and reprisal. The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its action, which here was termination during her Trial Period. The Agency asserted that Complainant's performance was not the reason for her termination, but her behavior in the work place. The Supervisor listed several incidents that collectively demonstrated to management that she was not suitable for federal employment. In each incident listed in the Notice of Termination, the Supervisor explained that she had always spoken to Complainant regarding the specific matter, but that Complainant's behavior often carried on unchanged. Based on the record, we determine that the Agency has met its burden. Complainant bears the ultimate responsibility to demonstrate that the Agency's reason was pretext. Here, Complainant argued that she was never spoken to regarding her performance or behavior, and that the reasons provided were clearly false.

However, we note that in this matter, beyond the Reports of Investigation and Complainant's arguments, Complainant did not present further evidence to support her claims. While Complainant initially requested a hearing before an EEOC AJ, she subsequently withdrew her request, and as a result we do not have the benefit of an AJ's credibility determinations regarding the witnesses. Complainant had to prove, by a preponderance of the evidence, that the alleged discriminatory acts occurred.

Furthermore, agencies generally have broad discretion to carry out personnel decisions and exercise business judgment. Shapiro v. Soc. Sec. Admn., EEOC Request No. 05960403 (Dec. 6, 1996). Claim 1 represents the Agency's decision on how it best saw fit to operate. Management agreed with the Supervisor's assessment that Complainant was simply ill fit to work in the federal workforce. For example, the record contains witness statements from a variety of employees noting the relationship between Complainant and the Supervisor. Here, the Employee and Labor Relations Specialist (Specialist) noted that she assisted the Supervisor through the termination process. During the process, the Specialist noted that she obtained several statements regarding Complainant's inappropriate conduct over the course of several different incidents. The Specialist noted that while Complainant never received formal counseling, the Supervisor had numerous informal conversations with Complainant regarding her conduct. The file contains several witness statements which attested to Complainant's unprofessional conduct at work. For example, a coworker, the Administrative Officer (AO), testified that the Supervisor treated everyone equally, was a professional, and a "by the book employee". In contrast, AO testified that Complainant did not like being told if she had done something incorrectly and was "very condescending" towards any help or advice offered by the Supervisor. AO testified that Complainant made the work environment very uncomfortable and was disrespectful towards the Supervisor. Others stated that Complainant was rude, disrespectful, and at times hostile.

In contrast, only one coworker of Complainant's, the Program Analyst (PA) provided that Complainant and the Supervisor had a contentious relationship, and that the wrongdoing was solely that of the Supervisor's. PA testified to her belief that the termination was retaliatory and felt that the Supervisor treated Complainant unfairly. We noted that Complainant sharply disagreed with the Supervisor, and management's assessment of the situation, however, mere assertions or conjecture that an agency's explanation is a pretext for intentional discrimination is insufficient. We note that subjective belief, however genuine, does not constitute evidence of pretext. The focus of a pretext inquiry is whether an agency's actions were motivated by discriminatory animus. Further, at all times the ultimate burden of persuasion remains with Complainant to demonstrate by a preponderance of the evidence that the Agency was motivated by discriminatory or retaliatory animus. Complainant has failed in this regard.

Claim 2(a) – Medical Disclosure

Although Complainant raised this event in support of her claim of harassment, Complainant has alleged, in essence, that the Supervisor's disclosure of her disability constituted a claim of improper medical disclosure in violation of the Rehabilitation Act.

Title I of the Americans with Disabilities Act of 1990 (ADA) requires that all information obtained regarding the medical condition or history of an applicant or employee must be maintained on separate forms and in separate files and must be treated as confidential medical records. 42 U.S.C. §§ 12112(d)(3)(B), (4)(C); 29 C.F.R. § 1630.14. These requirements also extend to medical information that an individual voluntarily discloses to an employer. See EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act (ADA), No. 915.002, at 4 (July 26, 2000) (Guidance I). The confidentiality obligation imposed on an employer by the ADA remains regardless of whether an applicant is eventually hired or the employment relationship ends. See ADA Enforcement Guidance: Pre-employment Disability-Related Questions and Medical Examinations, at 18 (October 10, 1995) (Guidance II). These requirements apply to confidential medical information from any applicant or employee and are not limited to individuals with disabilities. See Higgins v. Dep't of the Air Force, EEOC Appeal No. 01A13571 (May 27, 2003); Hampton v. U.S. Postal Serv., EEOC Appeal No. 01A00132 (Apr. 13, 2000); Bennett v. U.S. Postal Serv., EEOC Appeal No. 0120073097 (Jan. 11, 2011), req. for recon. den'd, EEOC Request No. 0520110302 (Apr. 29, 2011). Improper Agency disclosure of such medical information constitutes a violation of the Rehabilitation Act. Vale v. U.S. Postal Serv., EEOC Request No. 05960585 (Sept. 5, 1997).

The ADA and its implementing regulations list the following limited exceptions to the confidentiality requirement: supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations; first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and government officials investigating compliance with this part shall be provided relevant information on request. 42 U.S.C. §§ 12112(d)(3)(B),(4)(C); 29 C.F.R. § 1630.14; Guidance I, at 4.

In this matter, the Supervisor acknowledged that she improperly disclosed Complainant's disability to her coworkers prior to her start date. Regardless of her purported positive intentions, the Supervisor nonetheless released confidential medical information. There is no indication that the release of Complainant's medical condition qualifies under the limited exceptions to the confidentiality requirement. As such, we determine that the Agency violated the Rehabilitation Act with respect to this claim.³

Claim 2(b) – Harassment

In claim 2(b), Complainant alleged that she was subjected to a hostile work environment based on her race when the Supervisor used the word “nigger” in a meeting. Complainant acknowledged that she learned of the usage from her coworker, CW. Complainant also acknowledged that she was not present, nor has she directly heard the Supervisor use the term. As an initial matter, Complainant has established parts 1 and 2 of a prima facie case of harassment.

To establish part 3 of her prima facie case of harassment, Complainant argued that the Supervisor clearly held discriminatory bias when she used the sentence, “Well, you people use it”, in reference to Complainant and CW during their confrontation of the Supervisor. We have observed that the use of the words “you people,” while possibly understood as discriminatory, is “ambiguous.” Cruz v. U.S. Postal Serv., EEOC Appeal No. 0120072249 (Aug. 2, 2007); Zoila P. v. U.S. Postal Serv., EEOC Appeal No. 0120170006 (Oct. 12, 2018) (“you people” is a comment that is ambiguous and must be viewed within the context of the particular workplace at issue); Moster-Stein v. Dep’t of Veterans Affairs, EEOC Appeal No. 0120070651 (June 26, 2007) (assuming “you people” remark made by supervisor, no persuasive evidence of race or religious discrimination considering all the evidence).

We now turn to part 4 of the prima facie case of harassment. In claim 2(b) Complainant raised an incident where the Supervisor used the term “nigger” during a discussion regarding the use of the word in music. The incident occurred three to four years prior to Complainant's start date with the Agency. There is no indication in the record that the Supervisor ever used the term again in the workplace. We note that the Supervisor acknowledged saying the term in the past, but that the incident was part of a discussion on its usage in music. CW has acknowledged that the word was used by the Supervisor to describe how much she hated the word. Complainant argued that even a one-time use is sufficient to demonstrate harassment, even if she was not present, particularly since the Supervisor is a managing official. Complainant noted that when she spoke with the Supervisor about her past usage, it was clear that the Supervisor harbored racial bias because despite her apology, the Supervisor alluded that her past usage was allowable as “Well, you people use it.” Analyzing the record as a whole, we do not find sufficient evidence that this incident, in which Complainant and CW confronted the Supervisor over her past one-time use, and then her response, was motivated by discriminatory animus which created a hostile work environment.

³ As we have found that Complainant has established disparate treatment with respect to claim 2(a), we need not address that this matter also constituted harassment because this would not alter our remedies.

CONCLUSION

We find that Complainant established that the Agency committed a violation of the Rehabilitation Act with respect to claim 2(a). However, Complainant failed to show by a preponderance of the evidence that, more likely than not, the Agency subjected her to discrimination or retaliation when she was issued the Notice of Termination in claim 1, and harassment in claim 2(b). Therefore, based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we MODIFY the Agency's final decision and REMAND the matter for further processing accordance with the ORDER below.

ORDER

The Agency is ordered to take the following remedial action regarding claim 2(a):

- I. The Agency shall conduct a supplemental investigation on compensatory damages, including providing Complainant an opportunity to submit evidence of pecuniary and non-pecuniary damages. Thereafter, within **ninety (90) calendar days** of the date this decision is issued, the Agency shall determine the amount of compensatory damages to be awarded. **Within thirty (30) days** of determining the amount of compensatory damages, the Agency shall pay Complainant the compensatory damages.
- II. Within **ninety (90) calendar days** of the date this decision is issued, the Agency shall provide eight hours of in-person or interactive training to the Supervisor regarding her responsibilities with respect to eliminating discrimination in the federal workplace. The training must emphasize the Agency's obligations under Section 501 of the Rehabilitation Act, particularly its duties regarding medical confidentiality.
- III. Within **thirty (30) calendar days** of the date this decision is issued, the Agency shall consider taking appropriate disciplinary action against the Supervisor. The Commission does not consider training to be disciplinary. The Agency shall report its decision 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(s) for its decision not to impose discipline. If any of the responsible management officials have left the Agency's employ, the Agency shall furnish documentation of their departure date(s).
- IV. The Agency shall post a notice in accordance with the paragraph entitled, "Posting Order."

The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation verifying that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Food and Nutrition Service, Supplemental Nutrition Assistance Program (SNAP) 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 (H1016)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she 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 the date this decision was issued. 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)

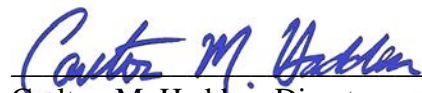
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint.

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

August 19, 2020
Date