



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

[REDACTED]
Celine B.¹
Complainant,

v.

Richard V. Spencer,
Secretary,
Department of the Navy,
Agency.

Appeal No. 2019001961

Agency No. 17-62381-48023

DECISION

On February 2, 2019², 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 January 3, 2019, 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.

For the following reasons, the Commission REVERSES the Agency's final decision.

ISSUES PRESENTED

The issues presented herein are whether Complainant's appeal was timely submitted and whether there is a basis for imputing liability to the Agency for the sexual harassment Complainant experienced.

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 The record contains a fax cover sheet and the accompanying appeal dated February 2, 2019, indicating that Complainant had faxed a copy of her Notice of Appeal to the Commission.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Second Cook assigned to the United States Naval Ship (USNS) Carl Brashear.

On February 13, 2018, Complainant filed an EEO complaint alleging that the Agency subjected her to a hostile work environment and discriminated against her on the basis of sex (female) when, between May 11, 2017 and August 6, 2017, the Supply Officer, Complainant's third-line supervisor (S3) (male) sexually harassed her. Specifically, Complainant alleged that S3 asked Complainant if her breasts were real; told Complainant that he loved her; commented on her behind; cursed at Complainant; commented that her smell made him horny; stated that he masturbated thinking about her; asked her to go somewhere alone with him; commented on her appearance; and told her to go out only with him.³

The investigative record reflects the following pertinent matters relating to the subject claim. Complainant's first-line supervisor was the Chief Cook (S1) (male). Complainant's second-line supervisor was the Chief Steward (S2) (male). The alleged harasser was Complainant's third-line supervisor, the Supply Officer (S3) (male). Complainant's fourth-line supervisor was the Captain (S4) (male). S1 and S2 were subordinates of S3. S4 oversaw the entire ship.

On May 11, 2017, Complainant was in the mess deck when S3 called her to the ward room and asked if her breasts were real. Complainant was surprised and embarrassed. Complainant answered they were and walked away. Complainant noted that no one else heard this interaction. Complainant told S1 and S2 about the interaction.

On June 5, 2017, S3 told Complainant that he was in love with her and said that he liked to enter the galley to look at her from behind. Complainant stated that S1 and S2 overheard these comments. Complainant believed that S3 would give her a hard time, so she walked away. Complainant later reported the comments to S1, S2, and a coworker, the Yeoman Storekeeper (C1) (female). S1 and S2 acknowledged hearing the comment and not reporting it.

On June 7, 2017, S3 again commented that he loved Complainant, and asked her on a date. Complainant noted that they were alone, and she responded that she was too busy, hoping that he would leave her alone. Complainant stated that she did not initially report this or other comments to S4 because she did not want to get S3 in trouble. Complainant hoped that if she did not reciprocate, S3 would eventually leave her alone.

On June 8, 2017, Complainant was working the night shift in the galley and while carrying something, asked S3 to move. Complainant asserted that S3 responded by saying "fuck you." S3 asserted that Complainant asked him to move with attitude but denied saying "fuck you."

³ The Commission has rephrased the claim for clarity.

On July 23, 2017, Complainant was walking towards S3 when S3 told her she smelled good and that she made him horny. That same day, the ship docked, and crew were allowed off. Complainant stated that she was in a car with S3 when he commented that he fantasized about her, wanted to have sex with her, and would masturbate thinking about her. Complainant stated that no one else could understand because S3 made the comments in Tagalog. Complainant stated that she told S3 to stop, and he did. Complainant asserted that she informed S1 and S2, but both informed her to simply stay away from S3.

On July 24, 2017, S3 told Complainant that he masturbated the night before while thinking about her. Complainant informed S1 and S2, but both told her to, again, stay away from S3.

On August 5, 2017, while she was working in the galley, S3 asked Complainant to go out with him. Complainant said no. On August 6, 2017, S3 commented on Complainant's outfit from the day prior, that she was beautiful and sexy, and that he wanted Complainant to go out only with him. S3 denied this and asserted he was merely offering to show Complainant Dubai since he had docked there before.

Complainant noted that S3 often approached her and made sexually harassing comments when they were alone. Complainant repeatedly reported the comments to S1 and S2 but was afraid to initially go to S4 because she was scared that S3 would retaliate. S3 denied all the incidents and stated that he never made any sexually inappropriate comments towards Complainant.

On September 10, 2017, Complainant reported the sexual harassment to the Chief Mate (CM) (male) and her fourth-line supervisor (S4). Complainant told CM and S4 that S1, S2, and C1 were aware of S3's sexually harassing behavior. S4 collected statements from S1, S2, S3, C1, and Complainant. S4 also told S3 to stay out of the galley while Complainant was there, and to not go near her. Complainant noted that she waited until September 2017 to report the incidents because she hoped that S3 would leave her alone, and she was concerned about retaliation.

On November 7, 2017, when the ship docked in the Philippines, Complainant disembarked from the ship.⁴

S1 and S2 both acknowledged that Complainant repeatedly informed them of S3's harassing behavior and comments. S2 stated that Complainant frequently reported S3's harassing behavior and noted that she was "depressed and [in] state of shock demeanor." S2 stated that he had frequently heard S3 make sexually inappropriate comments but thought that he might have been joking with Complainant. S2 previously told Complainant that if she could not take S3's joking around, to tell him to stop, and to file a complaint if that was not acceptable. S2 confirmed that he never reported S3 because S3 was his superior and he was concerned about retaliation.

⁴ It is unclear from the record why Complainant disembarked on this date. Complainant did not include her departure from the USNS Carl Brashear as part of her claims.

S1 stated that on several occasions, Complainant confided in him and was “fearful, stressful, down beat, crying, [and] extremely depressed” about the “unwanted verbal and physical conducts [sic] and gesture[s] of sexual nature, request for sexual favors, and other behavior of [a] sexual nature committed towards her” by S3. S1 stated that Complainant was a “sincere, hardworking, down to earth, and truthful person of character.” S1 also noted that S3 had been accused of similar behavior in the past and on every ship he’s been aboard. S1 stated that he told Complainant to report the comments to S2. S1 acknowledged that he did not report S3 because S3 was his superior and he was worried about retaliation.

C1 stated that S3 had told her that he liked going to the galley to look at Complainant from behind. C1 also stated that S3 had told her that he liked Complainant’s smell, that it made him horny, and that he masturbated thinking of her. C1 noted that S3 was previously reprimanded for unwelcome conduct toward subordinates.

S3 denied sexually harassing Complainant. S3 acknowledged that once, while working in the service line, S1 said that Complainant had a good looking behind, and that he smiled and agreed. But S3 also said that Complainant engaged in the banter and had responded that she was the “most beautiful girl on board the ship.” S1 denied this and asserted that it was S3 that made the comment, and that Complainant never engaged in any flirtatious banter with S3. S3 also asserted that both S1 and S2 had “axes to grind with him” and that their statements could not be believed. S3 noted that S2 was accused of falsifying end-of-year paperwork, and he had limited S2’s overtime hours.

S4 stated that the harassment was reported to him in early September 2017. Under the harassment policy, S4 gathered statements from all relevant individuals and witnesses and forwarded it all to the EEO office. S4 stated that the EEO office would then “deal with it.” S4 stated that the next day he spoke to S3 and told him that he was to leave any space if Complainant walked in and was to remain clear of her until further notice. S4 did not take further actions. S4 noted that, while on vacation in November/December 2017, he was informed that S3 was ordered off ship and relieved of his duty.

CM stated that prior to September 2017, he was unaware of the allegations of sexual harassment by S3. CM stated that he took immediate action and would have acted sooner if he had known. CM stated that he had no first-hand knowledge of the harassment but acknowledged hearing rumors of similar misconduct from people that had been with S3 on other ships.

The Civilian Marine Force Manager (CMFM) (male) is responsible for the civil service marine workforce. CMFM stated that he first learned of the allegations on December 13, 2017. He first checked to see if Complainant was still aboard the USNS Carl Brashear, which she was not. He then checked to see if S3 was still aboard, which he was. At that point, CMFM detached S3 from the ship to prevent any possible future issues, and to allow time to review the situation.

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).

When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision, on January 3, 2019, pursuant to 29 C.F.R. § 1614.110(b). Therein, the Agency determined that Complainant had established a prima facie case of harassment regarding the first four prerequisites of a sexual harassment claim but failed to meet the fifth prerequisite. Specifically, the Agency determined that Complainant failed to demonstrate that there was a basis for imputing liability to the Agency. The Agency acknowledged that it was “unfortunate that S1 and S2 did not report the allegations themselves to CM or S4” but that once CM and S4 were made aware, prompt action was taken. The Agency concluded that, therefore, management had taken prompt and effective corrective action once the allegations of harassment were made aware to CM and S4.

CONTENTIONS ON APPEAL

On February 26, 2019, Complainant’s Counsel contacted the Commission through e-mail and noted that the firm had faxed a Notice of Appeal on February 2, 2019 but had not received any confirmation. Counsel included a transmission verification report indicating that the appeal was sent on February 2, 2019. Counsel provided a similar notice to the Agency via the Public Portal. On March 1, 2019, Counsel provided an appellate statement to the Public Portal.

The Agency requested that Complainant’s appeal be dismissed as procedurally improper and untimely and affirm the FAD. The Agency asserted that Complainant had failed to provide the Agency with an official notification of a designated representative and had failed to provide the Agency with a notice of an appeal, as required. The Agency argued that, even assuming her appeal is timely, Complainant had failed to provide any persuasive arguments on appeal that the Agency was liable for the harassment.

In response to the Agency’s dismissal request, Complainant’s Counsel responded that the appeal was timely and appropriately submitted. Counsel noted that, as much as the Agency was accusing Complainant of procedural indifference, the Agency itself was often delayed in its own filings. Counsel requested the Commission to deny the Agency’s dismissal request.

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

As a preliminary matter, we decline to dismiss Complainant's appeal for timeliness. The record demonstrates that Complainant had submitted a faxed Notice of Appeal to the Commission on February 2, 2019. While Complainant should have also sent a copy of the Notice of Appeal to the Agency, the initial fax to the Commission was within the allotted time frame. As it is the Agency's burden to prove timeliness and it has not shown that Complainant's appeal was untimely filed, we deem Complainant's appeal to be timely. See Guy v. Dep't of Energy, EEOC Request No. 05930703 (Jan. 4, 1994).

However, the Commission hereby advises Complainant that the Commission's regulations and Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), in pertinent part, mandate that a complainant must provide the Agency with a copy of every document she files with the Commission, whether the stage of processing. The Commission further advises Complainant, that by virtue of this decision, she has clearly been put on notice of the requirement to provide the Agency with a copy of all documents she files with the Commission.

Sexual Harassment

It is well-settled that harassment based on an individual's sex is actionable. See Meritor Savings Bank FSB v. Vinson, 477 U.S. 57 (1986). In order to establish a claim of harassment under those bases, the complainant must show that: (1) she belongs to the statutorily protected class; (2) she was subjected to unwelcome conduct related to her membership in that class; (3) the harassment complained of was based on sex; (4) the harassment had the purpose or effect of unreasonably interfering with her work performance and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982). The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the victim's circumstances. Enforcement Guidance on Harris v. Forklift Sys. Inc., EEOC Notice No. 915.002 (March 8, 1994).

Upon review of the record and the Agency's final decision, the Commission determines that the Agency correctly determined that Complainant established that the actions of S3 created a hostile work environment based on her sex. Complainant established that S3's actions were clearly unwelcomed and that the actions occurred because of her sex. In addition, the graphic, sexual comments made by S3 from May 2017 through September 2017, were clearly severe and pervasive enough to create a hostile work environment. Therefore, Complainant clearly demonstrated that by the totality of the circumstances she had been subjected to a hostile work environment based on her sex; in this case, sexual harassment.

Agency's Affirmative Defense

The question remains whether the Agency has established its affirmative defense in order to avoid liability. An employer is subject to vicarious liability for unlawful harassment if the harassment was "created by a supervisor with immediate . . . authority over the [Complainant]." Enforcement

Guidance: Vicarious Liability for Unlawful Harassment by Supervisors, EEOC Notice No. 915.002 (June 18, 1999) (“Vicarious Liability Guidance”), at 4 (citing Burlington Industries, Inc., v. Ellerth, 524 U.S. 742 , 118 S.Ct. 2257, 2270 (1998), and Faragher v. City of Boca Raton, 524 U.S. 775, 118 S.Ct. 2275, 2292-93 (1998)). However, where, as here, the harassment does not result in a tangible employment action being taken against the employee, the Agency can make out an affirmative defense by demonstrating: (a) that it exercised reasonable care to prevent and correct promptly any harassing behavior; and (b) that Complainant unreasonably failed to take advantage of any preventive or corrective opportunities provided by the Agency or to avoid harm otherwise. See Burlington Industries, supra; Faragher, supra; Vicarious Liability Guidance, at 12.

Here, Complainant stated that she repeatedly told her supervisors, S1 and S2, of the sexually harassing behavior by S3. However, S1 and S2 repeatedly failed to act. S1 and S2 acknowledged that Complainant repeatedly informed them of S3’s sexual harassment. S1 and S2 also acknowledged that they were present for some of the harassing incidents and did not act. When Complainant reported the harassment, both informed her to simply stay away from S3. S1 and S2 acknowledged not escalating the report due to fear of retaliation by S3, who was their superior.

The Agency attempts to avoid liability by arguing that as soon as CM and S4 were made aware of the harassment that prompt measures were taken. The record demonstrates that S4 only collected statements and informed S3 to remain clear of Complainant. There is no indication that S4 followed up with Complainant or attempted to ensure separation between Complainant and S3. Additionally, S4 acknowledged taking no further action, claiming that it was the EEO office’s responsibility. The record further demonstrated that it was not until the CMFM learned of the allegations on December 13, 2017, that steps were taken to officially remove S3 from the ship. Based on S1 and S2’s repeated lack of action, and S4’s minimal involvement, we find that the Agency failed to establish its defense, and therefore is liable.

Based on the Commission’s review of the record, we determine that the Agency’s final decision erred and that the Agency has not met its burden of establishing its affirmative defense. Specifically, despite what the Agency asserted, we find that the Agency failed to take prompt and effective action to address Complainant’s claim of sexual harassment. Complainant reported the sexual harassment numerous times to her two immediate supervisors, yet she was repeatedly told simply to stay away from her harasser. Complainant repeatedly stated her fear in going above S3 and therein sought aid from her immediate supervisors to no avail. S1 and S2 both acknowledged the clear distress Complainant was in, acknowledged the behavior and comments were inappropriate, but repeatedly chose not to report the actions. S1 and S2 both reported fear of retaliation by S3, but this is an insufficient argument for failing to take action as supervisors. Accordingly, because the Agency has not satisfied its burden of establishing its affirmative defense, the Commission finds that it is liable for the sexual harassment Complainant experienced.

CONCLUSION

Therefore, based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we **REVERSE** the Agency's final decision and **REMAND** the matter in accordance with the **ORDER** below.

ORDER

The Agency is ordered to take the following remedial action:

1. Within **sixty (60) calendar days** from the date this decision is issued, conduct a supplemental investigation on the issue of Complainant's entitlement to compensatory damages. Complainant will cooperate in the Agency's efforts to compute the amount of compensatory damages and will provide all relevant information requested by the Agency. 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 eoc.gov.) The Agency shall issue a final decision on the issue of compensatory damages within **ninety (90) calendar days** of the date this decision is issued. A copy of the final decision must be submitted to the Compliance Officer as referenced below. Within **fifteen (15) calendar days** of determining the amount of compensatory damages, the Agency shall pay Complainant the compensatory damages.
2. The Agency shall also pay compensation for the adverse tax consequences of receiving back pay as a lump sum. Complainant has the burden of establishing the amount of increased tax liability, if any. Once the Agency has calculated the proper amount of back pay, Complainant shall be given the opportunity to present the Agency with evidence regarding the adverse tax consequences, if any, for which Complainant shall then be compensated.
3. The Agency is directed to conduct training for the following management officials: S1, S2, S3, S4, and CM, regarding recognizing a hostile work environment. The Agency shall address management's responsibilities with respect to eliminating harassment in the workplace. If any of the responsible management officials have left the Agency's employ, the Agency shall furnish documentation of their departure date(s). The Commission does not consider training to constitute disciplinary action.
4. The Agency shall strongly consider issuing disciplinary action against S3, who subjected Complainant to unlawful sexual harassment and who, according to the record, has a history of this unlawful conduct. The Agency shall also consider issuing disciplinary action against S1, S2, and S4 who failed to adequately address Complainant's claims of sexual harassment. If the Agency decides not to issue disciplinary action, it shall set forth the reason(s) for its decision. If any of the responsible management officials have left the Agency's employ, the Agency shall furnish documentation of their departure date(s).

5. 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 US Naval Ship Carl Brashear 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 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 (M0620)

The Commission may, in its discretion, reconsider this appellate decision if the complainant or the agency submits a written request that contains arguments or evidence that tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

Requests for reconsideration must be filed with EEOC’s Office of Federal Operations (OFO) within **thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.** A party shall have **twenty (20) calendar days** from receipt of another party’s request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at

<https://publicportal.eeoc.gov/Portal/Login.aspx>.

Alternatively, complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, complainant’s request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency’s request for reconsideration must be submitted in digital format via the EEOC’s Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party’s request and/or statement or brief in opposition must also include proof of service on the other party, unless complainant files his or her request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted together with the request for reconsideration. **The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).**

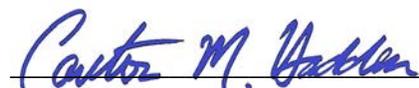
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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

September 21, 2020

Date