



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

[REDACTED]
Tyrone D.,¹
Complainant,

v.

Chad F. Wolf,
Acting Secretary,
Department of Homeland Security
(Transportation Security Administration),
Agency.

Appeal No. 2019002906
Hearing No. 480-2017-00538X
Agency No. TSA-00276-2017

DECISION

Following the Agency's final order dated April 17, 2019, the Agency and Complainant filed appeals to the Equal Employment Opportunity Commission (EEOC or Commission) pursuant to 29 C.F.R. § 1614.403(a). On appeal, the Agency requests that the Commission affirm its rejection of an EEOC Administrative Judge's (AJ) finding of discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. Complainant requests this Commission affirm the finding of discrimination but increase the nonpecuniary, compensatory damages awarded. For the following reasons, the Commission REVERSES the Agency's final order.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Transportation Security Officer (TSO), E Band, at the Agency's Screening Department in Terminal 6 of the Los Angeles International Airport facility in Los Angeles, California. Complainant's first-level supervisor (hereafter S1), Supervisory Transportation Security Officer (STSO), G Band, served as Complainant's rating official for his performance evaluation for Fiscal Year (FY) 2016. Complainant's second-level supervisor (hereafter S2), Transportation Security Manager (TSM), H Band, served as Complainant's reviewing official for his performance evaluation for FY 2016.

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

Complainant's third-level supervisor (hereafter S3), Lead TSM, I Band, and his fourth-level supervisor (hereafter S4), Deputy Assistant Federal Security Director, are responsible for supervising staff and the screening operations at the facility, including Terminal 6.

Throughout FY 2016, Complainant stated he continually sought input from S1 regarding his performance in order to achieve a high-performance rating. S1 and S2 both stated Complainant's performance warranted an "Achieved Excellence" rating in the Agency's performance evaluation system. In the initial score sheet for Complainant, S1 rated and S2 approved Complainant's rating for "Competencies" in all categories as 5, except Complainant earned a 4 in "Critical Thinking." Ultimately, Complainant's score was lowered on his End of Year Transportation Officer Performance System (TOPS) score sheet so that his overall rating was "Exceeds Expectations" for FY 2016. His final score sheet reflected "Competencies" ratings of 4 in both "Critical Thinking" and "Conscientiousness." S3 denied instructing S1 or S2 to lower Complainant's score or having any involvement in his performance rating. S2 stated S3 had no authority to instruct that Complainant's score be changed as S3 was not rating or reviewing official. S2 stated the score was changed because her superior gave her an instruction and she did not want to be disciplined for failure to follow instructions. S2 stated in her affidavit she believed the reduction in Complainant's rating was based on his race and color because S3 did not require the scores of non-Asian who were of brown complexion to be lowered.

On January 3, 2017, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (Asian), sex (male), and color (brown) when on or about October 3, 2016², management rated him a 4.416 under TOPS.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing and the AJ held a hearing on February 14, 2019. Complainant, S1, S2, S3, and S4 all testified at the hearing.

S1 testified that S3 lowered the ratings of three employees, Complainant, Coworker One (C1), and Coworker Two (C2), whom she supervised and served as rating official for FY 2016. During the hearing, the parties agreed C1 was not a comparable as C1 was a Lead TSO and different pay band from Complainant and C2. S1 testified she and S2 believed Complainant's performance review supported an overall rating of "Achieved Excellence" even after S3 instructed the score be lowered. S1 stated most of the TOPS ratings were rushed at that time because S2 was on leave and pending retirement. S2 testified no reason was given by S3 for the reduction in rating, other than a broad statement that the rating was not justified. Upon inquiry, S1 testified Complainant may have had issues with tardiness but these issues were not a factor in Complainant's end of year TOPS evaluation.

² The record and Complainant's complaint reveal the date Complainant learned of his TOPS rating for FY 2016 and the alleged discrimination was October 3, 2016. The record sometimes incorrectly refers to the year 2015.

S1 and S2 conferred to review the TOPS standards and documentation for Complainant's evaluation. S2 testified that she agreed with S1 that Complainant should be rated at an "Achieved Excellence." Thereafter, S2 stated she sat down with S3 and showed S3 the documentation for Complainant. S2 stated that S3, without really reviewing the documentation, stated the rating was too high and needed to be fixed. S2 testified S3 did not agree with the rating of "Achieved Excellence", S3 stated Complainant has an attendance problem, and S3 stated that Complainant's score needed to be fixed. S2 stated that she was instructed by S3 to talk to S1 and fix Complainant's rating. S2 testified she did not argue with S3 or correct S3's suggestion that attendance was a factor for the TOPS rating. S2 stated TOPS rated performance, but that attendance was conduct, not performance.

S3 denied telling S2 or anyone else to lower Complainant's rating. S3 could not recall if she even reviewed Complainant's performance rating packet. S3 testified she would have reviewed his packet if S2 rated him "Achieved Excellence" per the instructions from her supervisor, S4. S3 stated her job as Lead TSM was to make sure her employees' scores were supported by adequate justification and documentation, even though she was not the reviewing official. S3 testified if she recommended additional documentation and the reviewing or rating official choose not to add more documentation and instead lowered the score, those scores never come back to S3 for review. S3 testified she did not even recall Complainant having attendance issues.

S4 testified S2 was on leave periodically in September and October 2016, before retiring from the Agency on October 30, 2016. Due to S2's pending retirement, performance evaluations were under time constraints to be completed and reviewed prior to her retirement. S4 denied being involved in Complainant's rating but stated general instructions were given to all management at the facility prior to FY 2016 evaluations that "Achieved Excellence" scores should be reviewed for adequate justification as a large number of individuals received that rating at the facility the prior year. S4 stated S3 did not have the authority to change Complainant's score as she was not the rating or reviewing official.

Complainant testified that as a result of his lowered rating and the entire EEO process, he suffered headaches, stomach aches, and insomnia. Complainant stated as a result, his character and professional reputation has been injured. He stated his colleagues look at him differently and he fears in the future his ratings will be lowered again.

The AJ issued a decision on March 13, 2019. The AJ found Complainant established a prima facie case of discrimination and the Agency failed to provide a legitimate, nondiscriminatory reason for reducing Complainant's rating. Specifically, the AJ found S2 stated that S3 instructed her to lower the rating, without explanation. However, S3 disclaims any input in the decision. Moreover, the AJ noted similarly situated employees outside his protected class did not have their ratings reduced. As relief, the AJ awarded Complainant: nonpecuniary, compensatory damages of \$5,000.00; back pay for the period of time Complainant would have received a 1% pay raise for "Achieved Excellence"; any increase in current pay rate had he received the 1% pay raise; \$450 loss in performance award due to the lower rating; \$1,807.55 in costs for deposition transcripts; and Complainant's rating for FY 2016 changed to reflect "Achieved Excellence."

Additionally, the AJ ordered the Agency to consider making appropriate changes to their policies and practices to allow for the documentation of reasons for changing recommended performance ratings, and for the standardization of the materials to be included in performance-rating-review files. The AJ ordered the Agency, within 90 days, to post, in any conspicuous location where employee notices are usually posted at the Los Angeles International Airport and/or Complainant's facility at the time, an appropriate notice of the final judgment against the Agency.

On April 17, 2019, the Agency issued a final order rejecting the AJ's finding that Complainant proved that the Agency subjected him to discrimination as alleged. Simultaneous with the final order, the Agency filed an appeal to this Commission. Complainant also filed an appeal to this Commission of the Agency's final order.

CONTENTIONS ON APPEAL

On appeal, the Agency requests this Commission affirm the final order rejecting the AJ's findings of discrimination. Specifically, the Agency contends the AJ erred when he found that the Agency did not provide a legitimate, nondiscriminatory reason for not rating Complainant at the "Achieved Excellence" level. The Agency argues the evidence of record established that there was a miscommunication between S3 and S4 (the managers responsible for approving the performance ratings for Complainant) and S1 and S2 (the supervisor and LSM who initially rated Complainant and two others as having "Achieved Excellence"). The Agency contends the substantial evidence does not support the finding of discrimination because the AJ made an erroneous finding of fact when he found that TSA treated valid comparators more favorably than it treated Complainant. The Agency only challenged the finding of discrimination. The Agency's brief and final order did not address the relief awarded by the AJ.

In his appeal, Complainant requests this Commission reverse the Agency's final order, adopt the AJ's finding of discrimination, and increase the AJ's award of nonpecuniary, compensatory damages to \$10,000.00. Complainant asserts that the award of \$5,000.00 is inadequate and does not take into account the nature of the discriminatory action or the severity of the harm suffered by Complainant.

ANALYSIS AND FINDINGS

Standard of Review

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held.

An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony, or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See EEOC Management Directive 110, Chap. 9, at § VI.B. (Aug. 5, 2015). In this case, we note that the AJ made credibility determinations. For example, the AJ found that although S2 directed the S1 to lower the rating, S2 did not take responsibility for the decision. Instead, S2 pointed to S3 as the deciding official. Evidence was produced regarding S3's previous charges for lack of candor. The AJ noted S3 denied any role in the rating. The AJ found S1's tone and demeanor at the hearing to be confirmation that she was not the deciding official and S1 convincingly testified that she was angry that the score was lowered. Thus, the AJ found no management official took responsibility for the decision—much less provide a reason for the decision to lower the score. On appeal, the Agency challenges the AJ's credibility determination and argues that management officials' testimony was not inconsistent but rather, a miscommunication. We find that any inconsistency in S2 and S3's testimony is material because it speaks to their credibility. As such, we find that the Agency has failed to show that we should not accept the AJ's credibility determinations.

Disparate Treatment

Generally, claims of disparate treatment are examined under the analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Hochstadt v. Worcester Found. for Experimental Biology, Inc., 425 F. Supp. 318, 324 (D. Mass.), aff'd, 545 F.2d 222 (1st Cir. 1976). For 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. Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978); McDonnell Douglas, 411 U.S. at 802 n.13. Once Complainant has established a prima facie case, the burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). If the Agency is successful, the burden reverts back to Complainant to demonstrate by a preponderance of the evidence that the Agency's reason(s) for its action was a pretext for discrimination. At all times, Complainant retains the burden of persuasion, and it is her obligation to show 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); U.S. Postal Service v. Aikens, 460 U.S. 711, 715-716 (1983).

Complainant established a prima facie case of discrimination that he is a brown Asian male, he received a smaller bonus and pay increase when management lowered his performance rating, and management did not lower the ratings of others outside his protected categories. S3 testified for FY 2016, between 35 to 39 TSOs in Terminal 6 received "Achieved Excellence" ratings. These individuals did not have their ratings reduced to "Exceeds Expectations" like Complainant did. The Agency argues C1 and C2 both had their ratings reduced due to this "miscommunication" between management officials. C1 is a different job title and pay band than Complainant so we do not find she is a comparable in this case.

With regard to C2, while he is a different race and color than Complainant, the hearing testimony and record evidence repeatedly pointed to C2's attendance issues and him being "unreliable." On the contrary, S3 was unaware of any tardy or attendance issues Complainant had, yet according to S1 and S2, S3 directed Complainant's rating be reduced. The AJ made the following findings which are supported by substantial evidence and/or noted the following evidence: S1 repeatedly assured Complainant that he was on track to receive an "Achieved Excellence" rating; S1 and S2 actually initially recommended an "Achieved Excellence" rating for Complainant, which higher management reversed, without explanation; S1's contended at the hearing that Complainant's performance justified the higher rating; and there was a lack of responsibility taken by anyone within management for making the decision.

The burden now shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. See Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). Here, the record shows that prior to the events at issue, Complainant was in communication with S1 throughout FY 2016 regarding how he could achieve a higher performance rating. Despite S1 and S2's assertions that Complainant earned the top rating and the documentation justified his rating of "Achieved Excellence", Complainant's score was lowered at the instruction of S3. S3 denied any involvement in lowering Complainant's score and could not recall if she even reviewed Complainant's TOPS score and documentation. S3 denied knowledge of Complainant's attendance issues, which S2 stated was the reason S3 instructed his score to be lowered. Without identifying the specific deficiencies in "Competencies" that Complainant was not achieving when the rating was reduced, we find that the Agency failed to rebut the inference of discrimination created when Complainant established a prima facie case of discrimination. Therefore, we find that the Agency discriminated against Complainant based on his race, color, and/or sex when it rated him at a lower level.

Turning to the remedial issue, compensatory damages do not include back pay, interest on back pay, or any other type of equitable relief authorized by Title VII. To receive an award of compensatory damages, a complainant must demonstrate that he has been harmed as a result of the agency's discriminatory action; the extent, nature and severity of the harm; and the duration or expected duration of the harm. See Rivera v. Department of the Navy, EEOC Appeal No. 01934157 (July 22, 1994), request for reconsideration denied, EEOC Request No. 05940927 (December 11, 1995); EEOC's Enforcement Guidance: Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.002 at 11-12, 14 (July 14, 1992). A complainant is required to provide objective evidence that will allow an agency to assess the merits of his request for damages. See Carle v. Department of the Navy, EEOC Appeal No.01922369 (January 5, 1993).

Non-pecuniary losses are losses that are not subject to precise quantification, i.e., emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, injury to credit standing, and loss of health. See EEOC Notice No. 915.002 at 10 (July 14, 1992).

We note that for a proper award of nonpecuniary damages, the amount of the award should not be “monstrously excessive” standing alone, should not be the product of passion or prejudice, and should be consistent with the amount awarded in similar cases. See Complainant v. Department of the Interior, EEOC Appeal No. 01961483 (March 4, 1999) (citing Cygnar v. City of Chicago, 865 F.2d 848 (7th Cir. 1989)).

At the hearing, while not required, Complainant provided no medical documentation or testimony regarding increased medical/therapeutic attention as a result of the Agency’s failure to rate him “Achieved Excellence.” Complainant was promoted to Lead TSO a little over a year after he was rated “Exceeds Expectations.” Complainant’s testimony was generally vague and, as the AJ noted, the majority of Complainant’s testimony related to stress and hassles with the EEO process. However, damages for stress and inconvenience associated with pursuing the EEO process are not compensable. See Renato K. v. Dep’t of Homeland Sec., EEOC Appeal No. 0120172853 (Nov. 2, 2018) (excluding damages associated with the EEO process, as opposed to damages caused by the discrimination).

We find the AJ’s award of \$5,000.00 in nonpecuniary, compensatory damages is consistent with prior Commission precedent. See Complainant v. Dep’t of Veterans Affairs, EEOC Appeal No. 0120121222 (Mar. 20, 2014) (awarding \$5,000 in nonpecuniary damages after complainant suffered a low rating and was denied a performance award which resulted in him suffering stress, anxiety, and the feeling of insecurity among his peers). We find this \$5,000.00 amount takes into account the severity of the harm suffered and is consistent with prior Commission precedent. Finally, we find this award is not “monstrously excessive” standing alone, is not the product of passion or prejudice, and is consistent with the amount awarded in similar cases. Other than their argument of challenging the finding of discrimination, the Agency did not challenge the relief granted by the AJ. We find the AJ’s relief, as slightly modified herein, is supported by substantial evidence.

CONCLUSION

We REVERSE the Agency’s final order and direct the Agency to comply with this decision and the Order herein, which slightly modifies the AJ’s order.

ORDER

To the extent it has not already done so, the Agency shall take the following actions:

1. Within 60 days of the date this decision is issued, the Agency shall pay Complainant \$5,000.00 in nonpecuniary, compensatory damages.
2. Within 60 days of the date this decision is issued, the Agency shall pay Complainant \$1,807.55 in costs.

3. Within 60 days of the date this decision is issued, the Agency is directed to change Complainant's personnel file to reflect the rating of "Achieved Excellence" for FY 2016, Complainant would have received but for the discrimination.
4. The Agency shall pay Complainant back pay, with interest, and other benefits due Complainant, pursuant to 29 C.F.R. §1614.501. This back pay includes the 1% pay increase he would have received with an "Achieved Excellence" score. The back pay shall be calculated from the date FY 2016 performance rating pay increases were instituted at the facility. Complainant shall cooperate with the Agency's efforts to compute the amount of back pay and benefits due, and he shall provide all relevant information requested by the Agency. The Agency shall pay the amount within 60 days from the date of that determination of the appropriate amount. If there is a dispute regarding the exact amount of back pay and/or benefits, the Agency shall pay Complainant the undisputed amount within 60 days of the date the Agency determines the amount it believes to be due. Complainant may petition for enforcement or clarification of the amount in dispute. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."
5. Within 60 days of the date this decision is issued, the Agency is directed to pay Complainant \$450.00, with interest, for loss of performance awards he would have been entitled to but for the discrimination.
6. After the Agency has calculated and paid Complainant's back pay award, Complainant shall have 60 days following the end of the tax year in which the final payment is received to calculate the adverse tax consequences of any lump-sum back pay awards, if any, and notify the Agency. Following receipt of Complainant's calculations, the Agency shall have 60 days to pay Complainant for any adverse tax consequences established, with a written explanation for any amount claimed but not paid.
7. Within 90 days of the date this decision is issued, the Agency shall provide eight hours of in-person or interactive EEO training for S1 and S3 (we note S2 has retired). The training shall emphasize management officials' obligation to not to discriminate with regard to the prohibitions against sex, race, and color discrimination under Title VII.
8. Within 60 days of the date this decision is issued, the Agency shall consider taking appropriate disciplinary action against S1 and S3 (we note S2 has retired). If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If any of the responsible management officials have left the Agency's employment, then the Agency shall furnish documentation of their departure date(s).

POSTING ORDER (G0617)

The Agency is ordered to post at its Los Angeles International Airport, California 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)), 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 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).

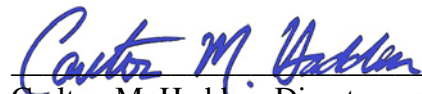
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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

August 18, 2020

Date