



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

[REDACTED]
Olin M.,¹
Complainant,

v.

Andrew Wheeler,
Administrator,
Environmental Protection Agency,
Agency.

Appeal No. 2019003561

Hearing No. 410-2016-00394X

Agency No. 2015-0105-HQ

DECISION

On May 28, 2019, 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 April 22, 2019, final order concerning his 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 **AFFIRMS** the Agency's final order.

ISSUES PRESENTED

The issues presented are: (1) whether the EEOC Administrative Judge properly issued a decision without a hearing; and (2) whether the preponderance of the evidence in the record establishes that Complainant was subjected to discrimination based on religion, race, color, national origin, and/or reprisal.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a GS-1315-13 Research Hydrologist at the Agency's National Exposure Research Laboratory (NERL) facility

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.

in Athens, Georgia. Complainant worked on a watershed model called the Hydrological Simulation Program-FORTRAN (HSPF). According to Complainant, he was the lead and a national expert on the HSPF model since he was hired by the Agency in 2003. Until November 2015, Complainant's first-line supervisor was the Ecosystems Assessment Branch Chief (S1A), and his second-line supervisor was the Deputy Division Director (S2). The Agency reorganized the NERL in November 2015, and the Watershed Exposure Branch Chief (S1B) became Complainant's first-line supervisor.

Complainant identified his religion as Islam, his race as African, his color as Black, and his national origin as Somali. Complainant stated that he was the only employee supervised by S1A who was Black, African, and/or Muslim. According to Complainant, although S1A did not make any comments about his religion, race, color, or national origin, she singled him out for poor treatment and harassment. Complainant averred that he engaged in prior protected EEO activity in May 2014, when he contacted an EEO counselor, alleging discrimination by S1A. Complainant stated that he discussed the matter with the Division Director (S3A) and decided not to move forward with continuing the EEO counseling process.

In February 2015, the NERL Athens Ecosystems Research Division received \$123,000 in green infrastructure research funding. Complainant alleged that, although the funding was allocated to his project, he was not informed when the funding was first received in February 2015. S1A stated that the funding was not tied to any specific project but that it had to be spent on green infrastructure projects. According to Complainant, he was the only researcher in the NERL Athens Ecosystems Research Division who was eligible to use the funding because he was the only one who was working on a green infrastructure project. Complainant stated that, when S1A informed him of the funding in March 2015, he proposed hiring a graduate fellow, which would have used approximately \$85,000 of the funding. According to S1A, at that time, \$85,000 of the funding was designated for hiring a graduate fellow.

Complainant stated that his fiscal year (FY) 2015 deliverable consisted of creating version 12.4 of the HSPF software and two reports. On April 27, 2015, Complainant emailed S2 and the Acting Division Director (S3B) and asked that S3B assign someone other than S1A to review his FY 2015 work products. In the email, Complainant stated that he had engaged in EEO activity implicating S1A in 2014 and that he was concerned that his protected EEO activity would affect the review of his work. On April 30, 2015, S3B responded to Complainant, stating that, based on Complainant's description of the review process, it appeared that S1A was simply performing her oversight responsibilities. S3B offered to meet with Complainant and S1A to discuss any concerns. On April 30, 2015, Complainant responded to S3B that he had already met with S1A and that the situation was resolved. S3B stated that Complainant did not raise any subsequent issues with S1A while he was the Acting Division Director.

According to Complainant, he sent a proposal to hire the graduate fellow to a Program Analyst (PA1). Complainant stated that PA1 told him that S1A had transferred the funding to another GS-13 Research Hydrologist (C1), and Complainant alleged that the transfer to C1 was inappropriate. S1A denied that the funds were transferred to C1 or away from Complainant.

According to S1A, some funds were temporarily moved around for bookkeeping purposes, but the plan was to hire a graduate fellow with the bulk of the funding, which was still available to Complainant. Complainant met with S3B, S1A, and C1 to discuss the funding. C1 stated that he was not aware that funds were reallocated or taken away from Complainant. According to C1, he was involved in these discussions as a technical advisor because he became the Deputy Project Lead for Green Infrastructure in January 2015. Complainant averred that S3B determined that Complainant's task should use the money. According to Complainant, S1A retained the funding until June 29, 2015, and the graduate fellowship was not advertised until mid-July 2015, even though the funds would expire if they were not used by September 30, 2015. Complainant stated that he met with S1A and a Certified Contract Manager (CM1) on July 29, 2015, to discuss using the funds that would not be used for hiring a graduate fellow. Complainant averred that S1A agreed with his proposal but that she later blocked the funds. S1A denied blocking Complainant from hiring a fellow or otherwise using the green infrastructure funds.

On July 15, 2015, Complainant submitted the new HSPF software version 12.4 and two reports, a HSPF Reference Manual and an HSPF User Manual. Complainant emailed S1A on July 15, 2015, to notify her that the materials were available. Complainant also provided the contact information for two external experts on the HSPF model, and he asked S1A to have technical reviews of the reports completed by August 15, 2015. S1A assigned herself and C1 to conduct internal reviews of the work products. According to Complainant, neither S1A nor C1 were qualified to review his work because they did not have expert level knowledge of HSPF models. Complainant stated that, because HSPF version 12.4 is complex, no one at the Agency was qualified to review his reports, and S1A should have had external reviewers look at his work. S1A stated that, as Branch Chief, she was responsible for managing the review of Complainant's work. According to S1A, all work is reviewed internally, and external review can only be conducted after the internal review process is complete. S1A stated that she participated in internal review of all her subordinates' work.

S1A stated that Complainant had been expected to submit quality assurance documentation in addition to the submitted work products. S1A averred that, because Complainant did not do so, she obtained quality assurance documentation from Agency contractors. Complainant stated that S1A did not tell him that she was going to involve the contractors. Complainant alleged that S1A had the contractors create reports to replace his reports. Complainant averred that, although he had previously worked with the contractors on software development, the contract had ended in January 2015. According to Complainant, because the contract had ended, the contractors were not qualified to review his work. S1A denied asking the contractors to rewrite or review Complainant's reports. S1A stated that the contractors had previously produced quality assurance documentation as part of their contract. According to S1A, because Complainant did not incorporate this documentation into his reports, she asked the contractor to submit the quality assurance documentation directly to her.

According to C1, he had technical concerns with Complainant's reports. On July 31, 2015, S1A emailed Complainant about his work products. In the email, S1A stated that she and C1 were having a hard time seeing the big picture of the approach and how it works. S1A asked Complainant to prepare an informal, 20-minute seminar to go over the approach and the key elements of the manual with her and C1. C1 stated that Complainant did not hold a seminar and refused to communicate with him about the reports. On August 31, 2015, Complainant notified management that, as of that date, he did not have the reviewers' comments on the reports submitted on July 15, 2015, and that he did "not believe that the internal review process will result in helpful comments and suggestions. It seems that this product will be delayed, but I do not know for how long." Report of Investigation (ROI) at 326.

On September 2, 2015, S1A returned the reviewed materials to Complainant. The manuscript review form stated that the reports could be published after major revision. Complainant stated that this review was fake because neither S1A nor C1 understood his work. S1A averred that Complainant's work did not adequately describe the science behind the new approach. According to S1A, the user manual did not adequately describe how to apply the technique or demonstrate how the concept could work to address real world green infrastructure problems. S1A stated that she suggested that it might be better to delay the completion of the manual for a year until he could execute a case study applying the modeling and the software. According to S1A, Complainant never responded to the internal review, so his reports have not been completed.

S1A averred that, at first, that there were no applicants for the green infrastructure graduate fellowships. According to S1A, if the funds were not used by the end of the fiscal year, they would be returned to NERL. S1A stated that on or about September 11, 2015, she met with the new Acting Division Director (S3C), S1B, and C1 to discuss how to use the green infrastructure funds if they were not able to hire a graduate fellow by the end of the month. S1A stated that two candidates applied for the fellowship right before the deadline. According to S1A, she was not involved in the process of hiring a fellow, but no fellow was ultimately hired, and the funds were returned.

On September 16, 2015, Complainant met with S3C to discuss the review process and possible delay of his deliverable. S3C stated that he told Complainant that Agency policy is to complete the internal peer review process before sending anything out for external review. According to S3C, while Complainant may not agree with the comments made by the reviewers, he needed to specifically respond to the proposed changes. According to Complainant, S3C told him that the deliverables had already been submitted. Complainant stated that when he looked in a database after the meeting to see what had been submitted, he saw two reports submitted by the contractor. S1A averred that NERL management considered Complainant's deliverable complete after the software tools and the contractor's quality assurance documentation was submitted.

On October 28, 2015, S1A issued Complainant's performance evaluation for FY 2015. S1 rated Complainant "Fully Successful" for each of the five critical elements, which resulted in an overall rating of "Fully Successful."

S1A had also rated Complainant as “Fully Successful” for FY 2014. Complainant alleged that the rating was unfair because S1A hindered his productivity by not signing off on work-related requests, hiding the funding from him so he could not hire a student to support his work, and by conducting fake reviews so that his work would not be published. According to Complainant, S1A did not mention HSPF version 12.4 in the appraisal, which was one of his greatest accomplishments. Complainant averred that the appraisal falsely stated that he had no publications in 2015. Complainant stated that he had one publication in 2015 and that S1A prevented his submitted reports from being published.

S1A stated that Complainant would have received a higher rating if he had fully engaged the quality assurance aspects of his research. According to S1A, the Agency was emphasizing this area more than it had in the past. S1A added that Complainant worked on projects in FY 2015 that were not part of the Agency’s national program research plans, which is not authorized by the Agency and hindered his completion of the quality assurance documentation for the HSPF model. According to the record, S1A evaluated eight employees for FY 2015, and she rated Complainant and three of his coworkers “Fully Successful.”

On November 25, 2015, PA1 emailed Complainant, S3C, S1A, and C1, noting that there was still at least \$80,000 in uncommitted green infrastructure funding that would be redirected if not committed soon. The record contains a December 9, 2015, email from PA1 to S2 and a Budget Analyst (BA1). In the email, PA1 asked whether Complainant could still access \$85,000 to hire a graduate fellow, noting that a graduate fellow would likely not be able to start until mid-February 2016. On December 9, 2015, BA1 responded that she was not sure she would be able to swap funds to allocate FY 2016/2017 funding for a graduate fellow for Complainant. Complainant stated that on December 16, 2015, he met with S2, PA1, and BA1 to discuss the green infrastructure funds. According to Complainant, BA1 stated that CM1 had received \$40,000 of the funds for his project and that the remainder of the funding had expired and was returned to NERL. Complainant averred that he never was able to use any of the funding. On January 13, 2016, PA1 emailed S2 and BA1, stating that the potential graduate fellow had accepted another position and was no longer interested in the fellowship with Complainant. On January 14, 2016, BA1 notified a Senior Budget Analyst (BA2) that the green infrastructure funds should be reprogrammed because they could not be used.

On December 14, 2015, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of religion (Islam) and reprisal for prior protected EEO activity (contacting EEO counselor in 2014) when:

1. S1A, S1B, and C1 conducted an internal review of his submitted work products;²
2. On September 2, 2015, S1A asked a contractor to write reports to replace the reports Complainant had prepared;

² Although this accepted claim states that S1A, S1B, and C1 conducted an internal review of Complainant’s work, the record reflects that Complainant alleged that S1A and C1 improperly participated in the internal review process.

3. On October 28, 2015, S1A gave him an unfair performance evaluation; and
4. S1A and C1 gave away the \$123,000 research funding that Complainant's task had received on February 28, 2015.³

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.

On December 9, 2016, the Agency filed a motion to dismiss and, in the alternative, motion for summary judgment. Over Complainant's objections, the AJ granted summary judgment on Complainant's hostile work environment claim, finding that none of the incidents of alleged harassment involved or were based on Complainant's membership in a protected class. The AJ declined to rule on the disparate treatment claims because Complainant had not yet had an opportunity to conduct discovery.

During the discovery process, Complainant filed three motions to compel. On February 27, 2019, the AJ denied the motions to compel. The AJ found that, although Complainant's motions stated that he had tried to resolve the discovery disputes in good faith with the Agency, Complainant had merely expressed dissatisfaction with the Agency's discovery responses and did not specifically articulate his concerns or work with the Agency to resolve the issues. The AJ's decision also noted that Complainant had filed a motion to consolidate in Hearing No. 410-2018-00091X. According to the AJ, he had conferred with the AJ assigned to that case, and they agreed that it was not appropriate to consolidate the cases.

The Agency submitted a second motion for summary judgment on March 14, 2019. In response to the Agency's motion for summary judgment, Complainant requested to amend his complaint to add race (African), color (Black), and national origin (Somali) as bases for discrimination. Over Complainant's objections, the AJ assigned to the case granted the Agency's motion for a decision without a hearing and issued a decision without a hearing on April 10, 2019. The AJ's decision considered Complainant's new allegations of discrimination based on race, color, and national origin.

The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that the AJ erred in granting the second motion for summary judgment because it repeated many of the Agency's arguments from the first motion for summary judgment. According to Complainant, neither the facts nor the law changed in the time between the AJ's decisions on the Agency's motions for summary judgment.

³ Complainant withdrew two additional claims during the hearing process.

Complainant asserts that the AJ erred in adopting the Agency's statement of undisputed facts because the undisputed facts enumerated by the Agency were not material. Complainant contends that he identified a number of genuine issues of material fact that were overlooked by the AJ. For example, Complainant notes that S1A wrote on his performance appraisal that he did not have any publications in FY 2015. Complainant also cites the Agency's Peer Review Handbook, which states that internal reviews should be conducted by subject matter experts who can offer independent scientific advice. Complainant also argues that the AJ stated the law but failed to apply any facts to the law. According to Complainant, the AJ erred in applying disparate treatment analysis instead of analyzing the claims as reprisal. Complainant requests that the matter be remanded for a hearing. Complainant also contends that Hearing No. 410-2018-00091X is a continuation of the instant complaint and that, on remand, the matters should be consolidated for hearing.

The Agency did not submit a brief in response to Complainant's appeal.

ANALYSIS AND FINDINGS

In rendering this appellate decision, we must scrutinize the AJ's legal *and* factual conclusions, and the Agency's final order adopting them, de novo. See 29 C.F.R. § 1614.405(a) (stating that a "decision on an appeal from an Agency's final action shall be based on a de novo review . . ."); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (Aug. 5, 2015) (providing that an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed de novo). This essentially means that we should look at this case with fresh eyes. In other words, we are free to accept (if accurate) or reject (if erroneous) the AJ's, and Agency's, factual conclusions and legal analysis – including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. See id. at Chapter 9, § VI.A. (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").

Decision without a Hearing

We determine whether the AJ appropriately issued the decision without a hearing. The Commission's regulations allow an AJ to issue a decision without a hearing upon finding that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). EEOC's decision without a hearing regulation follows the summary judgment procedure from federal court. Fed. R. Civ. P. 56. The U.S. Supreme Court held summary judgment is appropriate where a judge determines no genuine issue of material fact exists under the legal and evidentiary standards. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

In ruling on a summary judgment motion, the judge is to determine whether there are genuine issues for trial, as opposed to weighing the evidence. Id. at 249. At the summary judgment stage, the judge must believe the non-moving party's evidence and must draw justifiable inferences in the non-moving party's favor. Id. at 255. A "genuine issue of fact" is one that a reasonable judge could find in favor for the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A "material" fact has the potential to affect the outcome of a case.

An AJ may issue a decision without a hearing only after determining that the record has been adequately developed. See Petty v. Dep't of Def., EEOC Appeal No. 01A24206 (July 11, 2003). We carefully reviewed the record and find that it is adequately developed. On appeal, Complainant contends that the AJ erred in granting the Agency's second motion for summary judgment because the AJ had rejected the same arguments in the Agency's first motion for summary judgment. We disagree. The AJ denied in part the Agency's pre-discovery summary judgment motion because Complainant had not yet had the opportunity to engage in discovery. After the close of discovery, Complainant was able to respond to the Agency's second motion for summary judgment, and the AJ properly considered whether a decision without a hearing was appropriate.

To successfully oppose a decision without a hearing, Complainant must identify material facts of record that are in dispute or present further material evidence establishing facts in dispute. Here, Complainant contends that he identified a number of genuine issues of material fact that were ignored by the AJ. However, we find that the AJ correctly determined that there were no genuine issues of material fact. Regarding Complainant's performance appraisal, S1A noted that Complainant did not have any publications in FY 2015, but Complainant contends that he did have one publication and that S1A blocked the publication of his reports. However, we find that failing to mention the publication of one item is not a genuine issue of material fact, as it is undisputed that Complainant's FY 2015 deliverable was not published, and the publication of a non-priority item while priority items remained incomplete would not result in a higher rating than "Fully Satisfactory." Moreover, although Complainant asserts that S1A blocked the publication of his deliverable, the evidence in the record reflects that S1A and C1 provided Complainant with comments of his reports that Complainant never addressed. Complainant also asserts that S1A and C1 were not qualified to review his deliverable because they were not subject matter experts. However, Complainant also asserted that no one at the Agency had sufficient expertise to review his work, and it is undisputed that the Agency policy was that external review could not occur until after the completion of the internal review process. We find that the AJ properly issued a decision without a hearing because the record is sufficiently developed and there are no genuine issues of material fact.

Disparate Treatment, Harassment, and Reprisal

To prevail in a disparate treatment claim, Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

He must generally establish a prima facie case by demonstrating that he was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Co. v. Waters, 438 U.S. 567, 576 (1978). The prima facie inquiry may be dispensed with in this case, however, since the Agency has articulated legitimate and nondiscriminatory reasons for its conduct. See U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 713-17 (1983); Holley v. Dep't of Veterans Affairs, EEOC Request No. 05950842 (Nov. 13, 1997). To ultimately prevail, Complainant must prove, by a preponderance of the evidence, that the Agency's explanation is a pretext for discrimination. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993); Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 256 (1981); Holley, supra; Pavelka v. Dep't of the Navy, EEOC Request No. 05950351 (Dec. 14, 1995).

To establish a claim of harassment a complainant must show that: (1) he belongs to a statutorily protected class; (2) he 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 his 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 to the employer. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982). Further, the incidents must have been "sufficiently severe or pervasive to alter the conditions of [complainant's] employment and create an abusive working environment." Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993). 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 Systems Inc., EEOC Notice No. 915.002 at 6 (Mar. 8, 1994).

Reprisal claims are considered with a broad view of coverage. See Burlington Northern and Santa Fe Ry. Co. v. White, 548 U.S. 53, 67-68 (2006); see also, Carroll v. Dep't of the Army, EEOC Request No. 05970939 (Apr. 4, 2000). Retaliatory actions which can be challenged are not restricted to those which affect a term or condition of employment. Id. Rather, a complainant is protected from any discrimination that is reasonably likely to deter protected activity. Id.; see also, Carroll, supra.

Assuming that Complainant established a prima facie case of discrimination and/or reprisal, we find that the Agency has provided legitimate, nondiscriminatory reasons for its actions. The Agency's legitimate, nondiscriminatory explanation for the internal review of Complainant's reports was that the Agency policy required internal review of all publications. As evidence of pretext, Complainant questions the qualifications of S1A and C1 to review his work. However, even if S1A and C1 did not have expertise in this area, Complainant asserted that he was the only subject matter expert on HSPF at the Agency. S1A was Complainant's Branch Chief, and C1 was also a Research Hydrologist. We find that Complainant has not established that the Agency's legitimate, nondiscriminatory reason for conducting an internal review is a pretext for discrimination or reprisal.

The Agency's legitimate, nondiscriminatory reason for contacting the contractors in August 2015 was to request previously provided quality assurance documentation that was not included in Complainant's reports. Complainant asserts that the documentation was requested from the contractors to replace his reports, noting that S3C and NERL found that Complainant's FY 2015 deliverable was complete after receiving the updated software and the documents from the contractors. While NERL may have regarded the deliverable as completed, we find that this does not establish pretext because the completion of the deliverable is a separate issue from the completion of Complainant's reports. It is undisputed that S1A and C1 provided feedback to Complainant that the reports could be published with revisions and the addition of a real-world case study. Complainant has not established that the Agency's legitimate, nondiscriminatory reason is pretextual.

The Agency's legitimate, nondiscriminatory explanation for Complainant's "Fully Successful" performance appraisal was that Complainant's performance generally met expectations and his FY 2015 reports were not published because he did not respond to comments from S1A and C1. Complainant contends that this appraisal was unfair and, as evidence of pretext, asserts that he was the only employee who was Black, African, and Muslim, and that he was the only employee who engaged in protected EEO activity. However, these assertions are insufficient to establish pretext for discrimination.

Finally, the Agency's legitimate, nondiscriminatory reason for redistributing the research funding was that Complainant was unable to use it in a timely manner. As evidence of pretext, Complainant contends that S1A had the funds moved around and transferred to C1 so he would not be able to use the funding. However, it is undisputed that the majority of the funding was reserved for a graduate fellow for Complainant beyond the end of FY 2015 until the selectee declined the fellowship offer in January 2016. We find that preponderant evidence in the record does not establish that the Agency's proffered legitimate, nondiscriminatory reason is a pretext for discrimination.

A finding of a hostile work environment is precluded by our determination that Complainant has not established by preponderant evidence that any of the actions taken by the Agency were motivated by discriminatory or retaliatory animus.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's final order implementing the AJ decision finding no discrimination.

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).

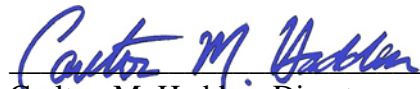
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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. 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

October 21, 2020

Date