



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

[REDACTED]
Lacy R.,¹
Complainant,

v.

Barbara M. Barrett,
Secretary,
Department of the Air Force,
Agency.

Appeal No. 2019004084

Hearing Nos. 540-2017-00544X
540-2017-00543X

Agency Nos. 9D1S13008F14
9D1S13011F14

DECISION

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 March 2019, final decision concerning his equal employment opportunity (EEO) complaints alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission MODIFIES the Agency's final decision.

BACKGROUND

Complainant worked as a Student Career Experience Program Trainee, i.e., Developmental Trainee (DT), in the Financial Management and Comptroller Division (FM), Space and Missile Center (SMC), Los Angeles Air Force Base located in El Segundo, California. S1, the Branch Chief, was Complainant's first-level supervisor from March 2011 until September 12, 2011. The record indicates that, at Complainant's request, the Deputy Assistant Secretary of Defense for Space Policy (DASD) reassigned Complainant to the Program Management and Integration

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.

Directorate (PIO) on September 15, 2011. The Personnel Center (AFPC) informed management that Complainant could not be officially reassigned to PIO without a security clearance and that, therefore, he would remain in the FM job series until the final adjudication of his security clearance. Because of AFPC's directive, Complainant remained an FM DT, although he continued to work in PIO; and PIO retained oversight of his day-to-day activities. A1 served as his operational first level supervisor from September 2011 until the fall of 2012, when S1 resumed the role of supervisor.

Complainant contacted an EEO counselor on December 4, 2012, and January 7, 2013, regarding two EEO complaints that he filed on March 22, 2013. The complaints were subsequently consolidated. Complainant alleged that he was subjected to a hostile work environment because of race (African-American), color (black), and disability (Vision loss, GI bleeding, stress) from the period of February 18, 2011, to December 4, 2012, when the following occurred:

Claim A:

1. From February 8, 2012, through June 14, 2012, he was inappropriately marked absent and placed in AWOL numerous times by his supervisor, A1.
2. From March 5, 2012, to present he was ostracized by A1 by not being provided assistance with training and was excluded from meetings.
3. On March 28, 2012, he discovered that his private medical documentation was placed in his Employee Work Folder (AF Form 971) by A1.
4. In April 2012, there was no mention of an award given to him during his mid-term performance review.
5. On July 3, 2012, he received an appraisal from S1 which did not include all his accomplishments during the rating period.
6. On August 15, 2012, he received a memorandum from A1 stating that he would not be placed in the program management career field without a security clearance.
7. On October 10, 2012, he received a memo from A1 and S1 stating that he must complete 11 training classes by February 7, 2013, which was unreasonable.
8. On November 13, 2012, he received negative feedback from S1.
9. On December 4, 2012, he was told by S1 and A1 that they never had approval to reassign him from SMC/FM to the PIO.

Claim B: He was discriminated against because of his race when, on November 27, 2012, he was denied access to the fitness center during duty time by S1.

Claim C: He was discriminated against because of his race when, on November 27, 2012, he was denied his promotion from GS-7 to GS-9 by S1.

Claim D: He was subjected to discrimination based on race when he received a Letter of Reprimand from S1 on December 20, 2012.

Claim E: He was subjected to a hostile environment because of race, color, and disability when he was scheduled for a drug test on February 22, 2011, prior to receiving a tentative job offer for the position of Student Trainee on March 21, 2011.

Claim F: He was subjected to discrimination based on race when he received a Notice of Proposed Suspension from S1 on January 29, 2013.²

Claim G: He was discriminated against because of his race when, on May 2, 2012, he was denied interim computer access.

Claim H: He was discriminated against because of his race when, in August 2012, he received a disciplinary letter for eating lunch in his wife's cubicle.

Claim I: He was discriminated against because of his race when, on September 28, 2012, he received a letter of reprimand from S1 for allegedly threatening an employee in the Airman and Family Readiness Center.³

With respect to Claim A (1), Complainant claimed that from February 8, 2012, through June 14, 2012, he was inappropriately marked absent and placed in an AWOL status nine times even though he followed the call-in procedures. A1 and S2, Complainant's second level supervisor, both stated that he repeatedly failed to comply with the Agency's leave policies and procedures when taking leave, despite their repeated instructions. Their statements were supported by a Human Resources Specialist, and by other evidence in the record, including a Letter of Counseling issued to Complainant on August 23, 2012.

With regard to Claim A (2), Complainant maintained that from March 5, 2012, he was ostracized by A1 by not being provided assistance with training and was excluded from meetings. He stated that he was not given space conducive to training and was placed in facilities where he was exposed to constant noise and interruptions. A1 stated that he was not aware of any requests by Complainant for specific training or assistance and that he had provided him with a computer, printer and a quiet work environment in which to complete his training requirements. He further testified that he had only one recurring weekly meeting which Complainant was required to attend if he was at work.

With regard to Claim A (3), Complainant stated that, on March 28, 2012, he discovered his private medical documentation was placed in his AF Form 971. Complainant stated that his supervisors were required to maintain his medical documentation in a separate folder.

² Claims E and F were not accepted for investigation because the Agency determined that Complainant contacted the EEO counselor in an untimely manner. Complainant does not contest their dismissal on appeal; therefore, they will not be addressed further in this decision.

³ Claims G – I also alleged discrimination based on reprisal; however, in his affidavit, Complainant acknowledged that he never engaged in prior EEO activity and stated that the basis of reprisal could be removed.

According to Complainant, during an earlier meeting on March 5, 2012, the DASD told him that this information would be removed, but it was not. A1 maintained that the only medical documentation in Complainant's AF Form 971 were the medical notes from his doctors excusing his absences from work and that they contained no personal information on his medical conditions. The Agency, however, acknowledged in its final decision that an inspection of Complainant's AF Form 971 revealed that there was one exception. A July 8, 2012, doctor's note provided, under the section entitled, "Other needs and/or restrictions," "GI bleeding with fatigue." S1 also stated that medical excuses were commonly placed in an employee's AF Form 971 to document attendance.

With respect to Claim A (4), Complainant claimed that, in April 2012, there was no mention of an award given to him during his mid-term performance review. Complainant stated that he had received an award for his work on the Independent Strategic Assessment Group Space Information Operations Panel on April 4, 2012. Complainant maintained that A1, S1 and S2 were responsible. The Agency noted that Complainant did not provide any evidence of the award or of the mid-term performance review at issue. A1, S1 and S2 all denied any involvement in his April 2012 mid-term review. According to DASD, Complainant was not given a mid-term performance review in April 2012.

With respect to Claim A (5), Complainant claimed that on July 3, 2012, he received an appraisal from S1 which did not include all his accomplishments during the rating period. The Agency acknowledged that, on March 19, 2012, Complainant sent S2 a list of his accomplishments during the rating period and that none of the accomplishments were included in his appraisal. S1 indicated that, as Complainant's supervisor of record, he wrote the performance appraisal, but maintained that he was never provided any input on Complainant's accomplishments and he had no knowledge of his accomplishments at the time he issued the appraisal. S1 felt that rather than include any negative information about Complainant's duty performance, he was advised that the appraisal should contain only the statement that Complainant was "a Student Career Experience Program (SCEDP). He is working towards the completion of his master's degree." S1 stated that he subsequently learned that S2 had misgivings about the veracity of the appraisal inputs Complainant had provided to A1, and he concluded that he had not received the inputs because S2 and A1 could not verify their accuracy.

S2 confirmed that he had received Complainant's inputs but had been unwilling to "sign off" on the inputs after concerns were raised about their credibility. In an email to A1, he indicated that he was troubled by some of the statements and "flat out lies" in Complainant's inputs, and he was "unable to move forward on any type of appraisal due to conflicts being reported in performance."

With respect to Claim A (6), Complainant claims that, on August 15, 2012, he received a memorandum from A1 stating that he would not be placed in the program management career field without a security clearance. A1 would remain his direct supervisor. Complainant maintained that A1 failed to complete the paperwork necessary to affect his permanent reassignment, and that the Agency had repeatedly lost or misplaced his security clearance paperwork (SF Form 86).

He claimed that he had to complete the security clearance paperwork seven times, through no fault of his own. He also stated that he did not believe his SF Form 86 had ever left the base and therefore his security clearance had never been adjudicated.

A2, the Personal Security Manager, stated that Complainant was required to obtain a security clearance for his position. He denied that Complainant's security clearance paperwork had ever been lost, maintaining that it had repeatedly been returned to Complainant because of insufficient information or a lack of supporting documentation. He stated that he had asked Complainant for the additional information necessary to complete the SF Form 86 on numerous occasions, but instead of providing the requested information, Complainant would remove some of the previously provided information. A2 stated that, at the end of the process, when Complainant had only needed to provide information about his current government employment to finalize his application, he had declined to provide the information and, instead, stated that he was currently unemployed and refused to change his answer when asked to do so. A2 stated that Complainant never received his security clearance because he refused to correct his security clearance submission.

With respect to Claim A (7), Complainant claims that, on October 10, 2012, he received a memo from A1 and S1 stating that he had to complete 11 training classes by February 7, 2013, which he felt was unreasonable. Complainant maintained that, according to the Defense Acquisition University (DAU), he had ninety days to complete each of the courses. The record indicates that DAU's October 15, 2012, e-mail to Complainant stated that he was given sixty calendar days to complete eight of the Continuous Learning Modules. In a separate e-mail sent to Complainant on the same date, DAU advised him that he had sixty calendar days from the date of his enrollment to complete the remaining three courses.

A1 testified that to receive their Level 1 Certification, all DTs were required to take the eleven DAU courses. A1 explained that not only had Complainant been given more time to complete the training than other DTs, the other DTs had completed the courses while performing work-related duties, whereas Complainant's sole duty had been to complete the courses and his security clearance paperwork.

S1 also stated that Complainant had been given ninety days to complete the courses required for his certification requirements and failed to complete any of them, despite being given considerably more time to complete the courses than other DTs. He also noted that under DAU's schedule, all eleven courses should have been completed in two and a half weeks.

Complainant maintained that the DASD exempted him from having to take most of the courses. His representative provided some support for this contention. The DASD, however, stated that Complainant had raised this with him during one of their meetings but that A1 had decided to have him perform the training full time because he lacked the security clearance necessary to perform any other duties.

With respect to Claim A (8), Complainant claims that, on November 13, 2012, he received negative feedback from S1. Complainant's Civilian Progress Review Worksheet for the period from April 1, 2012, to September 30, 2012, issued on November 13, 2012, indicates that Complainant needs significant improvement in all aspects of his duty performance. S1 stated that the feedback he gave Complainant, on November 13, 2012, was based on input he received from him, A1, the Financial Management leadership, together with guidance from Civilian Personnel. He stated that, in his feedback, he provided the rationale for his specific comments. According to S1, his actions were based only on performance and attendance issues, not on Complainant's protected classes, and that the feedback was only meant to help Complainant improve his duty performance.

With respect to Claim A (9), Complainant maintained that, on December 4, 2012, he was told by S1 and A1 that they never had approval to reassign him to PIO. A1 denied making the statement. According to A1, after learning that Complainant had only taken one Acquisition course, they asked him if he had enrolled in the other designated courses. A1 stated that Complainant maintained that the DASD told him he did not have to take the courses. According to A1, he merely reiterated to Complainant that the process of him initially coming to the PIO was "in good faith" but that, subsequently, AFPC stated that he could not be in the program management field until he obtained a security clearance.

With respect to Claim B, Complainant claimed that he was discriminated against when, on November 27, 2012, he was denied access to the fitness center during duty time by S1. According to the record, on November 21, 2012, Complainant sent an e-mail to A1 advising him that he would "like to take advantage of the health club on the base according [to] the policy." On November 27, 2012, S1 issued a memorandum to Complainant denying his request to use the gym during working hours. S1 advised Complainant that his decision was based on Complainant's failure to meet the qualification standards for his grade, his failure to complete required FM and Acquisition training, his inability to maintain his required work schedule due to his frequent and unpredictable absences from work, and his November 2012 feedback, which reflected the need for significant improvement in all areas.

With respect to Claim C, Complainant claimed he was discriminated against when, on November 27, 2012, he was denied a promotion from GS-7 to GS-9 by S1. The record indicates that, on November 27, 2012, S1 issued Complainant a memorandum advising him that he was proposing to withhold his promotion to the grade of GS-09 based on his failure to meet the qualification standards for his grade, his failure to complete required training, his inability to maintain his required work schedule, his frequent and unpredictable absences from work and the need for significant improvement in all areas.

Both A1 and S2 stated that they had no reason to believe Complainant had been discriminated against. S2 explained that DTs were usually promoted when they had met their responsibilities and performed well, and Complainant had done neither, while A1 stated that Complainant's failure to meet promotion requirements was well documented.

With respect to Claim D, Complainant claims he was discriminated against when he received a Letter of Reprimand from S1 on December 20, 2012. According to the record, on November 13, 2012, S1 issued Complainant a November 8, 2012, Notice of Proposed Reprimand, proposing to reprimand him for three specifications of failing to properly request leave and three specifications of being AWOL. S1 informed Complainant that, in proposing this reprimand, he considered that, on August 23, 2012, he had been issued a Letter of Counseling (LOC) in which he was informed of the procedures for notifying his supervisor if he would be reporting to work late. S1 noted that the LOC had also informed Complainant that failure to follow the procedures would result in his tardiness being recorded as AWOL. S1 further indicated that he considered their past conversations regarding Complainant's excessive absences and Complainant's continued failure to request leave in accordance with Agency rules, regulations and policies. On December 20, 2012, S1 issued a Decision to Reprimand, advising Complainant his decision to reprimand him for the reasons stated.

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 requested a hearing, but the AJ subsequently remanded the matter back to the Agency to issue a final decision pursuant to 29 C.F.R. § 1614.110(b). Complainant does not argue the AJ erred and does not request a hearing on appeal. The Agency decision concluded that Complainant failed to prove that the Agency subjected him to discrimination or harassment with respect to Claims A, B, C, and D. Furthermore, the Agency dismissed Claims G, H, and I for untimely counselor contact. Claim I was also dismissed for failure to state a claim. The instant appeal followed.

ANALYSIS AND FINDINGS

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that EEOC "review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law").

After a careful review of the record, based on the standards set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), and assuming that Complainant established a prima facie case of race, color, and disability discrimination, we find that the Agency provided legitimate nondiscriminatory reasons for its actions in Claims A (1), (4), (5), (6), (7), (8), (9), B, C, and D as set forth above. We also find that Complainant presented no persuasive evidence to establish that management's explanations were unworthy of belief or were a pretext for unlawful discrimination.

We also find that claims G – I, as discrete incidents, were properly dismissed for untimely EEO counselor contact. The record indicates that these matters arose on or in May 2, 2012; August 2012; and September 28, 2012, respectively.

Complainant, however, did not seek EEO counseling until December 4, 2012, and later January 7, 2013, for his second complaint.⁴ Furthermore to the extent that claim G is also part of the harassment claim and not a discrete incident, we shall consider it as part of a timely raised harassment claim.

With respect to Complainant's overall hostile work environment claim, we find, at the outset that under the standards set forth in Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993) that Complainant's claim of a hostile work environment must fail because we find no persuasive evidence that any of the actions (apart from Claim A(3) discussed herein) were motivated by discrimination. The Commission recognizes that ordinary managerial and supervisory duties include assuring compliance with agency policy and procedures, monitoring subordinates, scheduling the workload, scrutinizing and evaluating performance, providing job-related advice and counsel, taking action in the face of performance shortcomings, and otherwise managing the workplace. Erika H. v. Dep't of Transportation, EEOC Appeal No. 0120151781 (Jun. 16, 2017). Employees will not always agree with supervisory communications and actions, but absent discriminatory motives, these disagreements do not violate EEO law.

Regarding Claim A(3), we find that the Agency violated the Rehabilitation Act with regard to its handling of Complainant's medical information.

Title I of the ADA requires that all information obtained regarding the medical condition or history of an applicant or employee must be maintained on separate forms, in separate files, and treated as confidential medical records. 42 U.S.C. §§ 1212(d)(3)(B), (4)(C); 29 C.F.R. §1630.14. These requirements also extend to medical information that an individual voluntarily discloses to an employer. See EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act (ADA), No. 915.002, at 4 (Jul 26, 2000).⁵ The Commission has also previously held that an agency's failure to maintain a complainant's medical information in a separate medical file violates the Rehabilitation Act and constitutes disability discrimination. See Mayo v. Dep't of Justice, EEOC Appeal No. 0720120004 (Oct. 24, 2012) (medical information was placed in a non-medical adverse action file in the Human Resources Department), req. for recon. den'd, EEOC Request No. 0520130124 (Apr. 25, 2014); Higgins v. Dept' of the Air Force, EEOC Appeal No. 01A13571 (May 27, 2003) (medical information was placed in a non-medical work file maintained by employee's supervisor); Brunnell v. U.S. Postal Serv., EEOC Appeal No. 07A10009 (July 5, 2001) (medical information was placed in the employee's personnel file).

⁴ Claims H and I will, however, be considered as background evidence for Complainant's overall claim of harassment.

⁵ By its terms, this requirement applies to confidential medical information obtained from "any employee," and is not limited to individuals with disabilities. See Hampton v. U.S. Postal Serv., EEOC Appeal No. 01A00132 (April 13, 2000).

By its own admission, the Agency kept at least one doctor's note containing Complainant's medical information, i.e., "GI bleeding with fatigue" in his AF Form 971 folder (a non-medical work file). The Commission considers documentation of an individual's diagnosis or symptoms to be confidential medical information. Hampton, EEOC Appeal No. 01A00132. Thus, the Agency's failure to maintain Complainant's medical information in separate medical files constitutes a violation of the Rehabilitation Act, even in the absence of an unauthorized disclosure.

Accordingly, we find that the Agency violated the Rehabilitation Act when it placed Complainant's confidential medical information in his AF Form 971 folder and that Complainant is entitled to relief. We note that the Agency is obligated to separate Complainant's medical information from other, non-medical information in the AF Form 971 folder. Further, we caution the Agency that, to the extent that it is the Agency's practice to place doctor's notes in AF Form 971s to document absences, the Agency should revise its practices to ensure compliance with the Rehabilitation Act.

CONCLUSION

We find that the Agency violated the Rehabilitation Act with respect to Claim A(3). We further find that Complainant did not establish that the Agency subjected him to discrimination or harassment based on race, color, or disability regarding the remainder of his consolidated complaints. Accordingly, the Commission MODIFIES the Agency final decision and REMANDS this matter for further remedial action in accordance with this decision and the ORDER herein.

ORDER

The Agency shall take the following remedial actions:

1. Within 30 days of the date this decision is issued, the Agency shall expunge all medical information concerning Complainant from its non-medical files, including personnel files, and shall ensure that Complainant's medical information is maintained in a separate and appropriate medical file.
2. Within 90 days of the date this decision is issued, the Agency shall conduct a supplemental investigation on compensatory damages. The Agency shall allow Complainant to present evidence in support of his compensatory damages claim. See Carle v. Dep't of the Navy, EEOC No. 01922369 (Jan. 5, 1993). Complainant shall cooperate with the Agency in this regard. The Agency shall issue a final decision addressing the issues of compensatory damages no later than 30 days after the completion of the investigation.
3. Within 90 days of the date this decision is issued, the Agency shall provide 8 hours of training to A1 regarding his responsibilities under the Rehabilitation Act, with a special emphasis on the Agency's obligation to maintain employees' medical information in separate and appropriate medical files.

4. Within 60 days of the date this decision is issued, the Agency shall consider taking appropriate disciplinary action against A1. The Commission does not consider training to be disciplinary in action. The Agency shall report its decision to the Compliance Officer. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If any of the responsible management officials have left the Agency's employ, the Agency shall furnish documentation of their departure date(s).

POSTING ORDER (G0617)

The Agency is ordered to post at its Financial Management and Comptroller Division, Space and Missile Center, Los Angeles Air Force Base located in El Segundo, California copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

ATTORNEY'S FEES (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she/he is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of receipt of this decision. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and §1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g).

The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 CFR § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which tend to establish that:

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

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

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

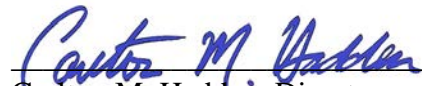
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

September 15, 2020

Date