



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

[REDACTED]  
Eleni M.,<sup>1</sup>  
Complainant,

v.

Robert Wilkie,  
Secretary,  
Department of Veterans Affairs  
(Veterans Health Administration),  
Agency.

Appeal No. 0120182429

Agency No. 200H-0620-2017-104312

**DECISION**

On June 19, 2018, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's May 18, 2018, final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. For the following reasons, the Commission REVERSES the Agency's final decision and REMANDS the case for further processing.

**ISSUES PRESENTED**

The issues presented concern whether the Agency subjected Complainant to discrimination when management denied Complainant's requests for overtime and forced Complainant to use one hour of annual leave when driving between campuses when she was to work overtime.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Painter, WG-09, for the VA Hudson Valley Healthcare System. She began her employment at the Montrose campus in Montrose, New York, where she worked until November 2015.

---

<sup>1</sup> 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 November 2015, Complainant was arrested on a felony drug charge for the unlawful sale of drugs off campus. Following her arrest, the Agency involuntarily reassigned her to the Castle Point campus of the VA Hudson Valley Healthcare System. Report of Investigation (ROI), at 000315. The Agency took this action because the Montrose campus was home to a large drug rehabilitation program. Id. at 000164. Complainant's normal tour of duty at Castle Point began at 07:00 a.m. and ended at 3:30 p.m.<sup>2</sup>

On February 24, 2017, Complainant's new supervisor, the Castle Point Paint/Interior Design Supervisor (S1), forwarded an email from the General Foreman at Montrose, informing Complainant and her colleagues that overtime opportunities would be available at Montrose in the upcoming months. Complainant indicated that she responded to the email and informed her supervisor and the General Foreman that she wished to work overtime. Complainant stated that she also followed up with the General Foreman "a couple of days later" by telephone to make sure he received her email and was aware of her interest in overtime opportunities. She did not receive a response. Id. at 000108.

Complainant maintained that she waited "for a while" to follow up again because she knew that her painting services would not be immediately needed, as the project at Montrose involved demolition. Around March or April 2017, Complainant began noticing her supervisor leaving repeatedly at 2:30 p.m. She indicated that she knew something was happening because her supervisor would leave early almost every day. However, when she asked her supervisor about overtime opportunities at Montrose, her supervisor told her that no overtime was available and "that was the standard answer for quite some time." Id.

To verify her suspicions, Complainant reached out to a colleague around May or June 2017, to inquire as to whether that individual was working overtime at Montrose. Complainant's colleague responded by telling Complainant that he was working so much overtime that he was exhausted and needed to turn down overtime opportunities. Id. Complainant subsequently began following up with her supervisor "a couple of times a week" to inquire as to when she could work overtime. Her supervisor, however, gave her differing explanations regarding overtime, such as telling her that Painters were not yet needed or that he was not sure. Complainant explained that after she requested more answers, her supervisor told her that "he thought it had something to do with the Director [of the Montrose campus] and it was the Director holding things up for [Complainant]." Id. Complainant indicated that when she followed up with the General Foreman at Montrose, the General Foreman gave her the same responses.

On June 21, 2017, Complainant sent an email to the EEO Program Manager for the VA Hudson Valley Healthcare System, alleging that a different Paint/Interior Design Supervisor (S2) told her that her request was being held up by the EEO Office due to her prior EEO complaint. ROI, at 000109 and 000120.

---

<sup>2</sup> Though the Agency reassigned Complainant to the Castle Point campus on November 24, 2015, the record suggests that Complainant did not return to full duty until the end of December 2016. See ROI, pg. 000182.

In response, the EEO Program Manager denied taking any action on Complainant's requests for overtime due to her involvement in the EEO complaint process and offered to raise Complainant's concerns with management. Id. at 000121-123.

On June 27, 2017, Complainant sent the EEO Program Manager a follow up email informing him that her supervisor at Castle Point learned from the Chief of Engineering at Montrose that the decision on whether she could work overtime "all comes down to the Director [of the Montrose campus]." In her email, Complainant emphasized to the EEO Program Manager that she would file a retaliation claim should the Agency continue to deny her overtime. ROI, at 000123.

The Agency subsequently cleared Complainant for overtime at Montrose. On July 21, 2017, Complainant began her first day of overtime since her involuntary reassignment. On her first day, she left Castle Point at 02:30 p.m. to arrive at Montrose by 03:30 p.m., the time when the overtime shift was scheduled to begin. She ended her tour early without putting in an annual leave request. Complainant's supervisor, however, objected to Complainant's early departure and instructed her to either stay at Castle Point until her tour ended at 03:30 p.m. or put in a request for one hour of annual leave. Id. at 000111-112.

Complainant maintained that her supervisor's refusal to allow her to leave early without being required to use annual leave was discriminatory because her supervisor allowed a male employee to leave early without putting in a leave request. Complainant further alleged that her supervisor also left early without putting in a leave request. Id. at 000111-112 and 000116.

On October 2, 2017, Complainant filed a formal EEO complaint alleging that the Agency discriminated against her on the bases of race (Caucasian), sex (female), and in reprisal for prior protected EEO activity arising under Title VII when:<sup>3</sup>

1. Between February 2017 and July 17, 2017, she was denied the opportunity to participate in overtime; and
2. On July 21, 2017, she was required to use one hour of annual leave to drive from the Castle Point campus to the Montrose campus to work overtime.

#### *Claim 1*

During EEO investigation, Complainant's supervisor at Castle Point, S1, expressly denied Complainant's allegations. In this regard, he stated, "No[,] she was never denied the opportunity to participate [in overtime]. My understanding was that she needed clearance to be at the Montrose campus due to other on-going issues she had."

---

<sup>3</sup> The record reflects that the Agency dismissed Complainant's claim concerning work assignments. ROI, pgs. 000061-62. Because Complainant did not challenge the propriety of the Agency's dismissal, we limit our review to the accepted claims.

The record reflects that the Paint/Interior Design Supervisor at Montrose, S2 provided a verbatim explanation identical to S1's statement. ROI, at 000175 and 000187.

The General Foreman at Montrose added that he recalled someone telling him that Complainant could not work overtime because she had to do community service for selling drugs outside of work; however, the General Foreman denied saying no to any request for overtime. ROI, at 000192-193.

The Chief Engineer recalled that management had to clear Complainant's request through the Front Office because Complainant had recently been involved in a police action involving illegal drugs and had been separated from the Montrose campus, as that campus had a large drug rehabilitation program. The Chief Engineer explained that in the first week of July, the Front Office cleared Complainant, and so she was offered any overtime available at Montrose from that point forward. The Chief Engineer further explained that "the overtime policy for these projects generally allows enough work for all who volunteer so employees are asked during the week if they would like to participate and whoever says yes works the overtime." However, "[o]n certain occasions where a limited number of staff are required[,] the decision is made based on seniority." ROI, at 000164.

The Director of the Montrose campus, however, maintained that "[she] did not know exactly what the [Chief Engineer] meant" with regard to Front Office involvement because the Front Office was not involved in clearing Complainant and did not ask for or review any paperwork. The Director specifically emphasized that "[she] made no decision as to whether [Complainant] could or could not work overtime." Rather, "[she] merely asked that [Complainant] be treated fairly and [be] offered the same amount of overtime as everyone else working on this project." ROI, at 000383-384.

The record also contains affidavits from Complainant's witnesses. In an affidavit from Complainant's union representative, the union representative alleged that management did not offer Complainant overtime because of Complainant's sex and her engagement in EEO activity. ROI, at 000151-152. In support of this allegation, the union representative noted that the General Foreman and Chief Engineer offered him overtime to work as a Painter at the Montrose campus even though his primary work was in interior design. He further noted that "[m]any employees worked overtime in painting and interior design and carpeting and furniture." He emphasized that "Complainant could have participated in this, but overtime was not offered to her whereas it was offered to others." Id.

Another witness, who worked as a Zone Mechanic (CW1), averred that he was aware that people from interior design and paint shop worked overtime at Montrose. He indicated that he was aware of Complainant's many requests to her supervisor because he rode to work with Complainant and Complainant would tell him about her frustrations with management's excuses. CW1 maintained that it was clear to him that management had an issue with Complainant and was denying her requests for overtime because of her sex and in reprisal for her prior protected EEO activity. ROI, at 000159.

*Claim 2*

As for requiring Complainant to use annual leave to travel between campus, Complainant's supervisor at Castle Point stated that he required Complainant to request annual leave because Complainant wanted to leave work prior to the end of her tour. Complainant's supervisor further explained that Complainant's comparator was still on the clock when he left Castle Point early to go to Montrose, as he was taking supplies to that campus. ROI, at 000178-179.

The General Foreman at the Montrose campus added that he checked the time records and found that Complainant's supervisor put in annual leave to travel to the Montrose campus before the end of his tour. ROI, at 000194 at q.30.

*Final Decision*

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). In accordance with Complainant's request, the Agency issued a final decision on May 18, 2018, pursuant to 29 C.F.R. § 1614.110(b).

In finding no discrimination, the Agency found that management had articulated legitimate, nondiscriminatory reasons for its actions. For claim 1, the Agency found that the delay in providing Complainant with permission to work overtime at the Montrose campus was due to the process of securing permission from the Director of the Montrose campus for Complainant to be on campus. In this regard, the Agency emphasized that Complainant was allowed to work overtime once the Director gave permission. As for claim 2, the Agency found that management instructed Complainant to use overtime on July 21, 2017, because there was a requirement for employees to use annual leave if they leave early from their regularly scheduled shifts, even to work overtime at another facility. The Agency concluded that Complainant failed to present any evidence, other than her own subjective statements, to refute management's articulated reasons. As such, the Agency determined that a finding of no discrimination was warranted on both claims.

Complainant then filed the instant appeal.

CONTENTIONS ON APPEAL

Neither Complainant nor the Agency filed contentions on appeal.

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 (EEO MD-110), 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”).

### *Claim 1*

To prevail in a disparate treatment claim, such as this, Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Complainant must initially establish a prima facie case by demonstrating that she was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Construction Co. v. Waters, 438 U.S. 567, 576 (1978). Proof of a prima facie case will vary depending on the facts of the particular case. McDonnell Douglas, 411 U.S. at 802 n. 13.

Complainant can establish a prima facie case of discrimination based on race and sex by showing that: (1) she was a member of a protected class; (2) she was subjected to an adverse employment action concerning a term, condition, or privilege of employment; (3) she was treated less favorably than similarly situated employees outside her protected class; and (4) a causal relationship existed between her membership in the protected class and the adverse action. See McDonnell Douglas, *supra*.

For her claim of reprisal, Complainant must show that: (1) she engaged in a protected activity; (2) the agency was aware of the protected activity; (3) subsequently, she was subjected to adverse treatment by the agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Dep’t of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000).

The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dep’t of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). To ultimately prevail, Complainant must prove, by a preponderance of the evidence, that the Agency’s explanation is pretextual. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 143 (2000); St. Mary’s Honor Center v. Hicks, 509 U.S. 502, 519 (1993).

We initially find that Complainant has persuasively established a prima facie case of discrimination on the basis of sex, as our review of the record clearly shows that the Agency allowed males, both Painters and non-Painters alike, to work overtime but denied Complainant the opportunity to do the same.<sup>4</sup> *Id.* at 000152, 000159, 000164, 000175, 000187. For this reason, we find sufficient evidence to raise an inference of discrimination on the basis of sex.<sup>5</sup>

---

<sup>4</sup> The record reflects that Complainant was the sole female employee in the Engineering Service. ROI, at 000152.

<sup>5</sup> Though Complainant also alleged discrimination on the basis of race, we find that she cannot persuasively establish a prima facie case on this basis because the record fails to show that the Agency treated Complainant less favorably than other similarly situated individuals due to her

We turn now to the Agency's articulated explanation for delaying approval of Complainant's overtime requests. Here, the Agency's final decision found that the Agency met its burden of articulating a legitimate, nondiscriminatory reason because Complainant's supervisor, S1, and the Chief Engineer maintained that the delay was due to the need to obtain approval from the Front Office for Complainant to return to the Montrose campus. The Agency emphasized that management allowed Complainant to work overtime once the Front Office gave approval.

After careful consideration of the record, we find that the Agency's articulated explanation was pretext for discrimination. The Commission has long held that a complainant can establish pretext by providing evidence of: discriminatory statements or past personal treatment attributable to those responsible for the personnel action that led to the filing of the complaint; comparative or statistical data revealing differences in treatment across various protected-group lines; unequal application of agency policy, deviations from standard procedures without explanation or justification; or inadequately explained inconsistencies in the evidentiary record. Mellissa F. v. U.S. Postal Serv., EEOC Appeal No. 0120141697 (Nov. 12, 2015). Here, while we acknowledge that Complainant's supervisor and the Chief Engineer repeatedly cited to the need to obtain Front Office approval as the basis for the delays in approving Complainant's overtime requests, the record clearly shows that the Director of the Montrose campus (*i.e.*, the Front Office) expressly denied any Front Office involvement. In fact, the Director maintained that "[she] did not know exactly what the [Chief Engineer] meant" with regard to Front Office involvement because the Front Office was not involved in clearing Complainant and did not ask for or review any paperwork. ROI, at 000383-384 at q. 16 and 19. Moreover, our review of the record shows that the Agency allowed male employees, even those who were not Painters, to work overtime painting assignments, but denied Complainant the same opportunity. *Id.* at 000152, 000159, 000164, 000175, 000187. The record also contains affidavits from witnesses who supported Complainant's version of events and attributed the Agency's actions to discrimination on the bases of sex and reprisal. *Id.* at 000152-153 and 000159. Based on these inconsistencies, as well as the affidavits from Complainant's witnesses, we conclude that the Agency's articulated explanation was more likely than not pretext for discrimination.

### *Claim 2*

We proceed now to Complainant's second claim, which concerns her allegation that she was subjected to discrimination on July 21, 2017, when she was required to use one hour of annual leave to drive from the Castle Point campus to the Montrose campus to work overtime. We conclude that the preponderant evidence fails to show that the Agency subjected Complainant to discrimination as alleged.

---

race. To the contrary, the record clearly shows that the Agency allowed similarly situated individuals in the same race category as Complainant to work overtime. ROI, at 000110. Because Complainant has not presented any other evidence that could raise an inference of discrimination on the basis of race, we find no *prima facie* case in this regard. As for her allegation of reprisal, we need not consider this basis, as we are finding discrimination on the basis of sex, and Complainant would not be entitled any additional relief.

As in claim 1, we shall analyze this claim under the legal standard set forth in McDonnell Douglas, supra. Assuming arguendo that Complainant established a prima facie case of discrimination on the alleged bases, we find that the Agency articulated a legitimate, nondiscrimination reason for requiring Complainant to use one hour of annual leave to drive from the Castle Point campus to the Montrose campus to work overtime. Specifically, as reflected in the Agency's final decision and the investigative report, Complainant's supervisor maintained that he required Complainant to request annual leave because Complainant wanted to leave work before the end of her tour.

Complainant, however, asserted during the EEO investigation that this explanation was pretext for discrimination because her supervisor allegedly allowed a male employee to leave early without putting in a leave request. Complainant further alleged that her supervisor also left early without putting in a leave request for himself.

After careful consideration of the Agency's final decision and the evidence of record, we find no merit with regard to her claim. The Commission has long held that agencies have broad discretion to set policies and carry out personnel decisions and should not be second-guessed by the reviewing authority absent evidence of unlawful motivation. Vanek v. Dep't of the Treasury, EEOC Request No. 05940906 (January 16, 1997). Given the facts in this case, we find that the Agency had a legitimate, nondiscriminatory reason for requiring Complainant to take annual leave on July 21, 2017, which Complainant cannot persuasively demonstrate was pretext.

In reaching this conclusion, we considered whether the comparator evidence offered by Complainant would be sufficient to establish pretext. While the record does in fact show that Complainant's supervisor allowed a male employee to leave early without putting in a leave request, the record also shows that the male employee was still on the clock, as he was taking supplies to the Montrose campus. ROI, at 000178-179. Complainant has not proffered any evidence to contradict that assertion. As such, we find that the Agency did not treat Complainant disparately due to her alleged bases.

We also considered Complainant's contention that her supervisor left early without putting in a leave request for himself; however, our review of the record shows that Complainant's supervisor did in fact submit leave requests on the days that he left early to work overtime. ROI, at 000170, 000293-296, and 000305. We are unable to find any other evidence to establish that Complainant was subjected to discrimination as alleged.<sup>6</sup>

---

<sup>6</sup> Although the record contains a statement from the union president stating that his managers did not charge him time for travel between campuses, we do not find the union president to be similarly situated to Complainant because Complainant worked in the paint shop while the union president worked in interior design. They also had different immediate supervisors. ROI, at 000149-150 and 000153.



### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, we REVERSE the Agency's final decision with regard to claim 1 and REMAND the complaint for further processing in accordance with the Order herein. As for claim 2, we AFFIRM the Agency's finding of no discrimination.

### ORDER

The Agency shall take the following actions:

1. Within 90 days of the date this decision is issued, the Agency shall conduct a supplemental investigation to determine whether Complainant is entitled to backpay and compensatory damages as a result of the denial of her overtime requests between February 2017 and July 17, 2017. The Agency shall allow Complainant to present evidence in support of her claim on backpay and compensatory damages. See Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (January 5, 1993). Complainant shall cooperate with the Agency in this regard.
2. The Agency shall issue a final decision on backpay and compensatory damages no later than 90 days after the date this decision is issued. The Agency shall pay Complainant the assessed backpay and compensatory damages as determined by the Agency within 30 days from the date of the Agency's decision. The Agency shall submit a copy of the final decision on compensatory damages to the Compliance Officer at the address set forth herein.
3. Within 90 days of the date this decision is issued, the Agency shall provide eight hours of in-person or interactive training to Complainant's supervisor (D.J.) and the Chief Engineer (J.C.). The required training shall address management's responsibilities with regard to eliminating discrimination in the workplace.
4. Within 60 days of the date this decision is issued, the Agency shall consider taking disciplinary action against Complainant's supervisor and the Chief Engineer. The Commission does not consider training to be a disciplinary action. The Agency shall report its decision to the Commission and specify what, if any, action was taken. If the Agency decides not to take disciplinary action, then it shall set forth the reasons for its decision not to impose discipline.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation that the corrective action has been implemented.

POSTING ORDER (G0617)

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

ATTORNEY'S FEES (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of 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 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 6, 2020  
Date