



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

[REDACTED]
Zora T.,¹
Complainant,

v.

Merrick B. Garland,
Attorney General,
Department of Justice
(Federal Bureau of Prisons),
Agency.

Appeal No. 0120171654

Hearing No. 420-2015-00043X

Agency No. BOP-2013-0799

DECISION

On April 5, 2017, 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 6, 2017, final order 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. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission VACATES the Agency's final order and REMANDS the complaint for further processing.

ISSUE PRESENTED

The issue presented is whether the EEOC Administrative Judge (AJ) properly found that there was no genuine issue of material fact and granted the Agency's motion for summary judgment on Complainant's claim of sex discrimination.

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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Teacher, GS-1710-11, at the Agency's Federal Correctional Institution (FCI) in Talladega, Alabama. Complainant's first-line supervisor was the Supervisor of Education (S1), her second-line supervisor was the Superintendent of Industries and Education (S2), and her third-line supervisor was the Warden (S3). Complainant is a heterosexual female.

In July 2012, an Education Technician (C1) began working in the Education Department. C1 is a female and identified her sexual orientation as gay. A Teacher Literacy Coordinator (C2) stated that it is hard to communicate with C1 because she is a "unique individual." A Special Education Teacher (C3) averred that C1 resisted doing her assigned work. According to C3, C1 was immature and exhibited inappropriate behavior. An Education Instructor (C4) averred that C1 was childish.

Complainant averred that C1 would stare at her on a daily basis. According to Complainant, on one occasion C1 rapped on a window to get her attention so hard that the door became ajar. Complainant alleged that on another occasion C1 got in her face, almost sticking a radio antenna up Complainant's nose, and told Complainant that she was talking to her. Complainant averred that one time she was sitting at her desk talking to C3 and C1 hit her desk so hard that the computer mouse fell off the desk. S1 averred that she observed C1 stare at Complainant until she got Complainant's attention or blow on Complainant's window until it fogged up. C2 stated that he saw C1 press her chest or face against Complainant's window and blow smoke rings at Complainant. C3 stated that she observed C1 bang on Complainant's desk, bump into Complainant, and block doors with her foot. C3 averred that on multiple occasions she saw C1 staring at Complainant and that C1 would also press her face and upper body against a window, steaming up the window. According to C4, she observed C1 blow on Complainant's office window and make faces at Complainant. C4 averred that C1 would get in Complainant's personal space. C4 stated that C1 seemed to be keeping tabs on Complainant. A Vocational Training Instructor (C5) stated that he thought that C1 and Complainant had a good relationship because he would see them making faces at each other. C1 stated that she and Complainant had a habit of joking back and forth with each other. C1 averred that she sometimes breaks out in song. C1 also stated that she sometimes punches inanimate objects.

S1 and Complainant stated that they are approved examiners for the General Education Development (GED) exam and that employees who are not approved examiners are not supposed to be present while they are administering the GED test. According to Complainant and S1, on October 18, 2012, Complainant and S1 were administering a GED test in S1's office when C1 approached Complainant from behind and lifted her off the ground in a bear hug. Complainant averred that C1's hands were touching her breasts when she picked her up. Complainant stated that C1 caught her off guard and that she felt C1's actions were inappropriate. Complainant alleged that C1's actions constituted sexual harassment. S1 averred that C1 and Complainant's bodies were touching and that C1 brushed Complainant's breasts when she put her down.

S1 stated that she immediately told C1 that her behavior was unprofessional and would not be tolerated in the Education Department. According to S1, she admonished C1 in the same way she would admonish kindergarten students that they need to keep their hands and feet to themselves. C1 stated that she did not remember grabbing, hugging, or putting her hands on Complainant. S1 stated that she reported this incident to S2 on October 19, 2012.

Complainant alleged that on October 25, 2012, C1 stayed at work past the end of her shift and followed Complainant around the FCI. Complainant stated that on October 31, 2012, C1 knocked on her window while she was conducting GED testing until Complainant acknowledged her, and later blocked Complainant's door. On October 31, 2012, Complainant reported the October 25 and 31, 2012, incidents to S2 in a memorandum. Complainant wrote that C1 made her very uncomfortable and was harassing her. Complainant noted that C1 would constantly stare at her or invade her personal space.

C2 stated that he was the Acting Supervisor of Education on November 1, 2012, and that he saw C1 blocking the door of Complainant's office. According to C2, he reported the November 1, 2012, incident as a potential workplace violence issue to S2 on November 2, 2012. A Teacher (C6) stated that he saw C1 blocking Complainant's doorway with her body at 4:20 p.m. on November 1, 2012. According to C6, C1's shift ends at 4:00 p.m., and there was no reason for C1 to still be in the office. C1 stated that sometimes she stays after work hours to check her bank accounts on the computer. C6 stated that it seemed like C1 was stalking Complainant. According to C6, C1 also seemed to be stalking the female Vocational Training Instructor (C7) and a female staff member of the Psychology Department.

On November 2, 2012, the Threat Assessment Team conducted a Workplace Violence Threat Assessment following a complaint from Complainant that C1 was subjecting her to a hostile work environment and bullying. According to Complainant, the Threat Assessment was not conducted in accordance with Agency policy. The Agency policy indicates that the Warden has the discretion to decide who the members of the Threat Assessment Team will be. S1 stated that S2 was the Acting Warden at the time and that he should not have been involved in the Threat Assessment. According to S2, he consulted S3, who instructed him to conduct a Workplace Violence Threat Assessment. S3 stated that S2 was serving as Acting Associate Warden of Programs and not as Acting Warden while conducting the Threat Assessment. The Team found that there was no real threat of physical harm between C1 and Complainant but recommended that the Agency reassign C1 to the Federal Prison Camp (FPC) pending a formal investigation. S3 stated that he referred the matter to the Office of Internal Affairs (OIA) for investigation on November 2, 2012. S2 averred that he reassigned C1 to the FPC pending the investigation. According to Complainant, while C1 was assigned to the FPC, Complainant was assigned space in the warehouse to conduct testing for inmates assigned to the FPC to avoid having to come in contact with C1.

On May 13, 2013, the OIA investigation found that C1 acted in an unprofessional manner. According to the heavily redacted version of the OIA Investigative Report that is in the record, C1 admitted standing in Complainant's doorway, looking at Complainant through a window, fogging up Complainant's window, and blocking Complainant's doorway on at least one occasion. As a result of the OIA finding, S1 proposed a five-day suspension for unprofessional conduct for C1. S3 mitigated the proposal to a one-day suspension. According to Complainant, on May 20, 2013, she was told that the OIA investigation was completed and that she could resume going to the FPC. In June 2013, C1 resumed her duties in the FCI.

On June 25, 2013, S2 had a meeting with the Education Department which C1 did not attend. According to S1, the teachers discussed C1's reluctance to do her job and that C1 should be held accountable. S1 stated that C1 should have been fired for her actions. S1 alleged that management is afraid to discipline C1 because she is the LGBT Program Manager. C3 stated that the Education Department staff is constantly walking on eggshells around C1.

On June 10, 2013, Complainant contacted an EEO Counselor and filed a formal EEO complaint on June 29, 2013, alleging that the Agency discriminated against her on the bases of race (Caucasian), sex (female, heterosexual), age (45), and in reprisal for prior protected EEO activity when she was subjected to a hostile work environment, including when:

1. In October 2012, C1 grabbed her from behind in a bear hug and lifted her off her feet;
2. In November 2012, the workplace violence/threat assessment investigation was not conducted in accordance with Agency policy;
3. In May 2013, after an internal investigation into C1's actions, Complainant was ordered to return to the Education Department with C1; and
4. Following her return to the Education Department, Complainant was subjected to bullying and intimidation by C1.

The Agency dismissed Complainant's complaint for failure to state a claim. Complainant appealed the dismissal of her EEO complaint to the Commission, which reversed the Agency's dismissal. See EEOC Appeal No. 0120133345 (March 14, 2014). During the subsequent investigation, the EEO Investigator decided not to interview C1 because "her conduct is well documented by the investigation and threat assessments."² Report of Investigation (ROI) Exhibit 23 at 1.

² Because C1 did not participate in the EEO investigation, statements attributed to her in this decision are based on her OIA affidavit and the provided excerpts from her deposition.

At the conclusion of the investigation, Complainant was provided a copy of the investigative file and requested a hearing before an EEOC AJ. During the hearing process, the Agency submitted a Supplement to the ROI, which contained exhibits, including excerpts from a deposition of C1 and affidavits from the OIA investigation into Complainant's allegations. In Complainant's OIA affidavit, she stated that C1 "approached me from behind and quickly grabbed me around the shoulder area. I was surprised and felt this action was inappropriate." Supplement to ROI Exhibit 4 at 2. In S1's OIA affidavit, she stated that C1 grabbed Complainant in a "'bear hug' type grip." Supplement to ROI Exhibit 5 at 1.

Over Complainant's objections, the AJ granted the Agency's motion for summary judgment and issued a decision finding no discrimination. The AJ found that there was no genuine issue of material fact and that there was no need to assess the credibility of any of the witnesses. The AJ further found that, viewing the evidence in the light most favorable to Complainant and drawing all permissible inferences in her favor, a reasonable fact-finder would not find in Complainant's favor.

With respect to the prima facie case of a hostile work environment, the AJ determined that Complainant failed to establish that the alleged harassment was sufficiently severe or pervasive to constitute a hostile work environment. According to the AJ, Complainant also did not establish that the bear hug was sexual in nature. The AJ cited to OIA affidavits from Complainant and S1 as describing the bear hug in non-sexual terms but noting that the EEO affidavits described the bear hug as sexual in nature. The AJ made a finding that Complainant assumed that the harassment was based on her sex and sexual orientation but that she did not provide any evidence beyond her assumption that the harassment was based on her sex and/or sexual orientation.

The AJ concluded that, even assuming that Complainant established a prima facie case of a hostile work environment, the Agency took appropriate remedial action in response to C1's actions. The AJ noted that C1 was verbally reprimanded on October 18, 2012, for the hug, that a Threat Assessment was conducted on November 2, 2012, and that C1 and Complainant were separated pending an investigation.

The Agency's final order fully implemented the AJ's decision. In its final order, the Agency agreed with the AJ's conclusion that Complainant failed to demonstrate that she was subjected to a sexually hostile work environment. The Agency also agreed with the AJ that Complainant failed to establish that the Agency was negligent in responding to the harassment. The Agency further noted that the record did not indicate that C1 subjected Complainant to any sexual harassment after returning to the Education Department in June 2013.

CONTENTIONS ON APPEAL

On appeal, Complainant states that the sole claim that she is pursuing is that she was subjected to sexual harassment by C1. According to Complainant, in addition to following Complainant around the FCI, blocking Complainant's doorway on multiple occasions and bear hugging Complainant on October 18, 2012, C1 would fog up Complainant's window and draw hearts in the steam, and C1 constantly stared at Complainant. Complainant argues that these instances of harassment were both severe and pervasive. Complainant also argues that the alleged harassment was sexual in nature and based on Complainant's sex. Complainant further argues that the Agency failed to adequately address the harassment. Complainant requests that the matter be remanded for a hearing.

In response to Complainant's appeal, the Agency contends that Complainant failed to establish that the alleged harassment was sufficiently severe or pervasive to establish a hostile work environment or that the alleged harassment was based on her sex or sexual orientation. The Agency also contends that it took appropriate immediate remedial action upon learning about C1's conduct. The Agency requests that its final order be affirmed.

STANDARD OF REVIEW

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 summary judgment decision, 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").

ANALYSIS AND FINDINGS

We must 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). Issuing a decision without holding a hearing is not appropriate for a case that can only be resolved by weighing conflicting evidence. If the non-moving party "has not had the opportunity to discover information that is essential to his opposition," then a decision without a hearing is inappropriate. Anderson, 477 U.S. at 250. The AJ must enable the non-moving party to engage in sufficient discovery to respond to a motion for a decision without a hearing. After receiving an opposition to a motion for a decision without a hearing, an AJ may order discovery as necessary. 29 C.F.R. § 1614.109(g)(2).

We carefully reviewed the record and find that it is inadequately developed. Further, the AJ improperly determined that there are no genuine issues of material fact or credibility that merited a hearing. Therefore, the AJ's issuance of a decision without a hearing was inappropriate.

In order to establish a prima facie case of sexual harassment or sexual orientation-based harassment,³ a complainant must prove, by a preponderance of the evidence, the existence of five elements: (1) that she is a member of a statutorily protected class; (2) that she was subjected to unwelcome conduct related to her sex or her sexual orientation; (3) that the harassment complained of was based on her sex or sexual orientation; (4) that the harassment had the purpose or effect of unreasonably interfering with her work performance and/or creating an intimidating, hostile, or offensive work environment; and (5) that there is a basis for imputing liability to the employer. See Henson v. City of Dundee, 682 F.2d 897, 903 (11th Cir. 1982). Whether the harassment is sufficiently severe to trigger a violation of Title VII must be determined by looking at all of the circumstances, including the frequency of the discriminatory conduct, its severity, whether it is physically threatening or humiliating, or a mere offensive utterance, and whether it unreasonably interferes with an employee's work performance. Harris v. Forklift Systems, Inc., 510 U.S. 17, 23 (1993).

³ In Bostock v. Clayton County, the Supreme Court held that discrimination based on sexual orientation or transgender status is prohibited under Title VII. 590 U.S. ___, 140 S. Ct. 1731 (2020); see also Baldwin v. Dep't of Transp., EEOC Appeal No. 0120133080 (July 15, 2015) (an allegation of discrimination based on sexual orientation states a claim of sex discrimination under Title VII because sexual orientation is inherently a sex-based consideration).

After a careful review of the record, we find that the AJ erred when he concluded that there was no genuine issue of material fact in this case. There is a genuine issue of material fact as to whether C1 was motivated by Complainant's sex, Complainant's sexual orientation, or some other factor. The AJ found that Complainant's assumption that the alleged harassment was sex- or sexual orientation-based because C1 is gay was the only evidence that C1's actions were sexual or based on Complainant's sex or sexual orientation. However, Complainant's statement that C1 would fog up her window and draw hearts in the steam suggests that romantic interest or sexual desire towards Complainant may have motivated her conduct. With respect to the Agency's point in its final order that C1 also appeared to harass other female employees, we note that C1 harassing other female employees does not establish that C1's harassment of Complainant was not based on her sex nor sexually motivated. In fact, if C1 was harassing other female employees, this could constitute further evidence that C1 was harassing Complainant based on her sex.

We also find that the AJ erred, while looking at the evidence in the light most favorable to Complainant, when he concluded that the alleged harassment was not severe or pervasive. With respect to this finding, C1's conduct crossed a line when she engaged in physical full body contact with Complainant and picked her off the ground. The Commission has repeatedly found that a single incident of sexual harassment involving physical touching can be sufficiently severe to create a hostile work environment. See Weaver v. U.S. Postal Serv., EEOC Appeal No. 0120065324 (Aug. 26, 2008); Lopez v. U.S. Postal Serv., Appeal No. 01A45212 (Feb. 10, 2005). Moreover, testimony from S1 and Complainant's coworkers indicates that C1 frequently seemed to be following Complainant or trying to interact with her, so there is also a genuine issue of whether the harassment was also pervasive.

Additionally, there is also a genuine issue of material fact regarding the Agency's response to the harassment. Although S1 witnessed the bear hug incident and verbally reprimanded C1 on October 18, 2012 and after S1 reported the incident to S2 the next day, the Agency did not conduct a Threat Assessment or otherwise separate Complainant and C1 until November 2, 2012. It appears undisputed that between October 18, 2012, and November 2, 2012, C1 continued to harass Complainant, including by physically blocking Complainant from being able to leave her office.

Furthermore, in finding no discrimination, the AJ seemed to render impermissible credibility determinations, finding that the bear hug incident was not sexual in nature in part because he found that Complainant and S1 appeared to have embellished their version of events from the OIA affidavits to the EEO affidavits. We find that the OIA affidavits and the EEO affidavits are not inconsistent and further note that the OIA affidavits were summaries of interviews with a Special Investigative Agent, whereas the EEO affidavits were in the format of a Question and Answer by the EEO Investigator. It is possible that the OIA Agent asked more limited questions or eliminated details in preparing the summary for Complainant and S1 to sign. The scope of the OIA investigation was also different than that of the EEO investigation, as OIA was investigating whether C1 had engaged in misconduct, while the EEO Investigator was investigating alleged discriminatory harassment.

Therefore, we find that the AJ must assess the credibility of Complainant, S1, and C1 at a hearing. In summary, there are simply too many unresolved issues which require an assessment as to the credibility of Complainant, S1, C1, and other witnesses who allegedly observed C1 harassing Complainant. If C1 is no longer employed by the federal government or is otherwise unable to testify at the hearing, the record should be supplemented with a complete copy of her deposition.

Therefore, judgment as a matter of law for the Agency should not have been granted. Accordingly, we reverse the Agency's final order and remand the matter for a hearing on Complainant's claim that she was subjected to a hostile work environment based on sex and sexual orientation.

CONCLUSION

Therefore, after a careful review of the record, including Complainant's arguments on appeal, the Agency's response, and arguments and evidence not specifically discussed in this decision, the Commission REVERSES the Agency's final order and REMANDS the matter to the Agency in accordance with this decision and the ORDER below.

ORDER

The Agency is directed to submit a copy of the complaint file to the Hearings Unit of the EEOC Birmingham District Office within fifteen (15) calendar days of the date this decision is issued. The Agency shall provide written notification to the Compliance Officer at the address set forth below that the complaint file has been transmitted to the Hearings Unit. Thereafter, the Administrative Judge shall hold a hearing and issue a decision on the complaint in accordance with 29 C.F.R. § 1614.109 and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

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 (M0920)

The Commission may, in its discretion, reconsider this appellate decision if 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, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

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

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

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

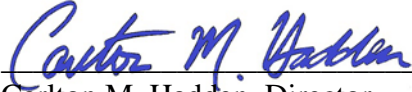
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. **Filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests.

Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

March 23, 2021

Date