



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

[REDACTED]
Markus C.,¹
Complainant,

v.

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

Appeal No. 2019004183

Agency No. BOP-2017-0138

DECISION

On June 11, 2019, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's May 29, 2019 final decision concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an Associate Warden at the Agency's Bureau of Prisons, Federal Correctional Institution in Greenville, Illinois.

On December 13, 2016, Complainant filed an EEO complaint alleging that the Agency unlawfully retaliated against him² for engaging in prior protected EEO activity under Title VII of the Civil Rights Act of 1964 when:

1. on May 1, 2017, Complainant's supervisor, the Warden, removed supervision of the Safety and Facilities departments from Complainant's duties; and

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.

² Complainant withdrew sex and age as bases of the alleged discrimination.

2. from August 4, 2016 and ongoing, the Warden and other employees subjected complainant to retaliatory harassment.³

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). The record does not indicate whether Complainant failed to timely request a hearing or whether he requested that the Agency issue a final decision. We note, however, that on appeal, Complainant has not argued that he was improperly denied a hearing.

The Agency issued its final decision, based on the evidence developed during the investigation of the complaint, concluding that Complainant failed to prove that the Agency subjected him to retaliation as alleged. The Agency found that the Warden articulated a legitimate nondiscriminatory reason for removing Complainant's supervisory duties over the Safety and Facilities departments, namely that Complainant had undermined the facility manager's authority and credibility, and that Complainant failed to establish that the Warden's articulated reason for his action was a pretext. With regard to harassment, the Agency also found that Complainant failed to show that the actions complained of were based on reprisal.

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").

³ Complainant raised several additional claims of non-selection. The Agency correctly decided that these additional claims had been subsumed into a pending class complaint, identified as EEOC Hearing No. 541-2008-00255X, and that Complainant's non-selection claims would be addressed in that class complaint.

Disparate Treatment

With regard to the removal of Complainant's supervisory duties over the Safety and Facilities departments, we note that where, as here, Complainant does not have direct evidence of discrimination, a claim alleging disparate treatment is examined under the three-part test set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Under this analysis, a complainant initially must establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. See St Mary's Honor Center v. Hicks, 509 U.S. 502, 507 (1993); Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981); McDonnell Douglas 411 U.S. at 802. Next, in response, the agency must articulate a legitimate, nondiscriminatory reason for the challenged actions. See Burdine, 450 U.S. at 253-54; McDonnell Douglas, 411 U.S. at 802. Finally, it is complainant's burden to demonstrate by a preponderance of the evidence that the agency's action was based on prohibited considerations of discrimination, that is, its articulated reason for its action was not its true reason but a sham or pretext for discrimination. See Hicks, 509 U.S. at 511; Burdine, 450 U.S. at 252-53; McDonnell Douglas, 411 U.S. at 804.

Complainant can establish a prima facie case of reprisal discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination. Shapiro v. Social Security Administration, EEOC Request No. 05960403 (Dec. 6, 1996) (citing McDonnell Douglas at 802). Specifically, in a reprisal claim, and in accordance with the burdens set forth in McDonnell Douglas, and Hochstadt v. Worcester Foundation for Experimental Biology, 425 F. Supp. 318, 324 (D. Mass.), aff'd, 545 F.2d 222 (1st Cir. 1976), and Coffman v. Department of Veteran Affairs, EEOC Request No. 05960473 (November 20, 1997), a complainant may establish a prima facie case of reprisal by showing that: (1) he engaged in a protected activity; (2) the agency was aware of her protected activity; (3) subsequently, he was subjected to adverse treatment⁴ by the agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Department of the Air Force, EEOC Appeal No. 01A00340 (September 25, 2000).

Following a review of the record we find that Complainant established a prima facie case of reprisal when the Warden removed his supervisory duties over the Safety and Facilities departments. Complainant contends that he engaged in protected EEO activity when, beginning in January 2016, he notified the Warden of what Complainant believed to be EEO violations. Complainant averred that, "My prior EEO activity started with a ... I wouldn't even call it a "complaint" – but around January 10th ... the week of January 10th, 2016, when I voiced some concerns with ... promoting other staff to the acting position and compensating one at the higher grade, but not compensating another employee to serve in an acting role at a higher grade."

⁴ The Commission interprets the statutory retaliation clauses "to prohibit any adverse treatment that is based on a retaliatory motive and is reasonably likely to deter the charging party or others from engaging in protected activity." EEOC Compliance Manual, Section 8 (Retaliation) at 8-13, 8-14 (May 20, 1998).

Complainant told the EEO Counselor, “that when he tried to address a problem for a temporary promotion between a black female supervisor who did not receive the promotion and a white female supervisor who received the promotion, [the Warden] told [Complainant] not to worry about it.” It is unclear whether the Complainant is describing two separate incidents or the same one. We next note that in his Formal complaint, Complainant alleged:

In late April/early May 2016, I was notified of more staff concerns related to Equal Employment Opportunity: The Associate Warden's Secretary, African-American female, expressed concerns to me she was being discriminated against as it related to providing relief to the Warden's Secretary for lunch breaks, leave use, etc. I again, expressed my concerns to the Warden about the perceived mistreatment of minority staff, and was again told not to worry about it.

We therefore find Complainant engaged in protected EEO activity.

We further find that, despite his denials, the Warden was aware of Complainant's prior protected activity. We next find that having supervisory duties taken away constitutes adverse treatment. The FAD noted that:

As a threshold matter, it was not clear how the removal of certain supervisory duties harmed complainant. The record did not indicate that complainant's loss of certain supervisory duties affected his wages, benefits, or ability to be promoted, nor did it incur a stigma or entail unwanted or odious new duties. It did not appear that this deprivation of supervisory duties would have dissuaded a reasonable employee from engaging in protected conduct.

On the contrary, we find that having supervisory duties taken away is precisely the kind of action that would dissuade a reasonable employee from engaging in protected conduct. Being given supervisory duties indicates that management has a high level of trust in the person so awarded and provides the person granted such duties authority over other employees. Being stripped of such authority undoubtedly would have a chilling effect on any reasonable employee. Finally, given that the action occurred less than six months after Complainant filed his Formal complaint, we find that Complainant has shown a nexus between his protected activity and the Warden's action. Complainant having established a prima facie case of reprisal, the agency must articulate a legitimate, nondiscriminatory reason for the challenged actions. See Burdine; McDonnell Douglas.

The Warden averred that the reason he removed Complainant's supervisory duties was because:

Facility Manager [name omitted] (“FM”) (who was also assigned supervision of the Safety Department), approached me and asked to have his department removed from complainant's line of supervision. He then proceeded to tell me that complainant was once again attempting to undermine his authority and credibility with his staff. [FM] indicated he had received an email from Associate Warden

[name omitted] requesting information on various projects assigned to his department for completion prior to an upcoming external audit. [Associate Warden]'s email also indicated several other issues had been identified and needed to be addressed. [FM] stated he responded to [Associate Warden's] request by email, indicating the status of current projects and that the newly identified projects would also be addressed. Complainant received a courtesy copy of the email. [FM] alleged complainant then edited the email to make it look as if [FM] was not supporting his staff with regard to the [Associate Warden's] request and the completion of the previously identified projects. Complainant then spoke to [the then-Safety Specialist [name omitted] ("SS") and a candidate for the Safety Manager position]. Complainant provided [SS] a copy of the edited email and instructed him to go to the Facilities Department and show the email to [FM]'s subordinate staff so they could see for themselves in writing that [FM] was not supporting them. [SS] gave the email to [FM] instead who brought the situation to my attention.

During the conversation with [FM] it was readily apparent that he was physically upset. He also indicated he had been providing complainant with verbal updates regarding projects, information which had never been passed along to other executive staff. I believed that reassigning the supervision responsibilities was the least disruptive option I had at a critical time during which [the Facility] was preparing for the American Correctional Association Audit.

The Agency having articulated legitimate nondiscriminatory reasons for its actions, the burden shifts back to Complainant to establish, by a preponderance of the evidence, that the Agency's reasons were not its true reasons, but were pretexts for discrimination. See Hicks; Burdine; McDonnell Douglas. Following a review of the record, we find that Complainant has met this burden. We note that on appeal, Complainant has submitted a sworn statement from FM, who was not interviewed or presented as a witness by the Agency. In his affidavit, FM was asked:

Did you complain to the Warden that Complainant should be moved from overseeing the Facilities Management Department?

Response: No, [Complainant] was the AW over Facilities two different times while station [sic] at [the facility]. Not sure why this happen [sic].

Please explain in detail why you wanted Complainant removed from overseeing your department.

Response: Did not request change.

Please give a detailed explanation as to why his responsibilities over your department was [sic] changed.

Response: No knowledge.

Following a review of the record we find FM's testimony to be more credible than the Warden's. We find it implausible that FM would have been as upset at Complainant's alleged undermining of his authority as the Warden claimed yet would deny under oath that he knew why the reassignment happened, and would deny any involvement. If indeed FM had complained to the Warden about Complainant, he would have no reason to deny it considering the fact FM also averred that, "After Jan 2018, I lost contact with [Complainant] when he transfer [sic] to another institution" and thus FM would have no reason to fear any retaliation from Complainant. We further find the Warden's description of Complainant's claimed undermining of FM to be implausibly elaborate. Altering an email, printing it out, and then handing it to a third party to distribute among FM's staff is an inherently unreliable method of seeking to undermine a subordinate given the likelihood that the third party would not cooperate but would instead reveal the plan to higher-ups or to the intended victim, as the Warden alleges happened here. As FM's supervisor, Complainant, had he so wished, could surely have come up with other ways of undermining FM, ways that would not come back to hurt him. We note in this regard that the Warden did not present a copy of the alleged doctored email in question.

With regard to the Warden's contention that he was unaware of Complainant's prior protected activity, because we find W's statements to be not credible, we similarly find his blanket denials of any knowledge of Complainant's protected activity to be not credible. We therefore find that the Warden was aware of Complainant's prior protected activity.

We further note that when asked whether Complainant's reassignment from supervising the Safety and Facilities Department was based on reprisal for his prior EEO activity, a facility Captain averred that, "I believe [the allegation of retaliation] to be accurate." Additionally, the Operations Manager also averred that in his opinion, the Warden retaliated against Complainant for his prior EEO activity. Given the above, we find that Complainant has established, by a preponderance of the evidence, that he was subjected to reprisal when his supervisory duties over the department were removed by the Warden.

Hostile Work Environment

Complainant alleges the following acts of harassment occurred: on August 4, 2016, the Warden told Complainant that he was no longer needed at weekly Special Investigative Services (SIS) supervisory meetings even though Complainant supervised the department in which the SIS unit was contained; after receiving numerous awards prior to the Warden's supervision of the facility, once the Warden became his supervisor he received just one time-off award while the Associate Warden received awards for "things that were not completed" and for completing assignments that Complainant had started; prior to the Warden's arrival, Complainant served as acting Warden on numerous occasions but after the Warden's arrival at the facility he served only "one or two days here and there" as acting Warden; in October 2016, Complainant learned that a locksmith had been called in from vacation to re-key the locks on the doors of the Warden and Associate Warden and other management officials, and that the Warden and other senior staff had access to Complainant's office but he no longer had access to theirs; and on December 5,

2016, the Warden told Complainant “do not speak to [C] to give him any advice or guidance, everything you do is counterproductive.”

We note initially that the FAD incorrectly describes the holding of National Railroad Passenger Corporation v. Morgan, 536 U.S. 101, 117 (2002). In that case the Supreme Court held that a hostile work environment claim is comprised of a series of separate acts that collectively constitute one unlawful employment practice. Unlike a claim which is based on discrete acts of discrimination, a hostile work environment claim is based upon the cumulative effect of individual acts that may not themselves be actionable. Id. at 115. A hostile work environment claim will not be time barred if all acts constituting the claim are part of the same unlawful practice even if some component acts of hostile work environment fall outside the statutory time period so long as an act contributing to the claim falls within the filing period. Id. at 117. Discrete incidents which are part of the hostile work environment that occurred more than 45 calendar days prior to Complainant contacting an EEO counselor may only be challenged as part of the hostile work environment claim and are not independently actionable (meaning, for example, no reinstatement or back pay for an untimely demotion claim itself). EEOC Compliance Manual, Threshold Issues Sec. 2-IV-C, OLC Control No. EEOC-CVG-2000-2 (REV. July 21, 2005).

The FAD, however, found that “the evidence indicated that all of Complainant's cited acts of harassment involved specific, definable incidents that had a beginning and end, and cannot be fairly characterized as recurring. As such, they were discrete acts, and cannot form the basis for a colorable claim of a hostile work environment.” Despite such an incorrect finding, we note that the FAD did in fact proceed to an analysis of the claim on the merits and so we find the FAD’s finding that these acts could not form the basis of a claim to be harmless error.

In considering whether any of the actions listed by Complainant, whether individually or collectively, constitute harassment, the Commission notes that in Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993), the Supreme Court reaffirmed the holding of Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986), that harassment is actionable if it is sufficiently severe or pervasive that it results in an alteration of the conditions of the complainant’s employment. See EEOC Notice No. 915.002 (March 8, 1994), Enforcement Guidance on Harris v. Forklift Systems, Inc. at 3. To establish a claim of harassment a complainant must show that: (1) he belongs to a statutorily protected class; (2) he was subjected to unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on the statutorily protected class; (4) the harassment had the purpose or effect of unreasonably interfering with his work performance and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. See McCleod v. Social Security Administration, EEOC Appeal No. 01963810 (August 5, 1999) (citing Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982)).

Furthermore, in assessing whether the complainant has set forth an actionable claim of harassment, the conduct at issue must be viewed in the context of the totality of the circumstances, considering, inter alia, the nature and frequency of offensive encounters and the span of time over which the encounters occurred. See 29 C.F.R. § 1604.11(b); EEOC Policy Guidance on Current Issues of Sexual Harassment, N 915 050, No. 137 (March 19, 1990); Cobb v. Department of the Treasury, Request No. 05970077 (March 13, 1997). However, as noted by the Supreme Court in Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998): “simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the ‘terms and conditions of employment.’” The Court noted that such conduct “must be both objectively and subjectively offensive, [such] that a reasonable person would find [the work environment to be] hostile or abusive, and . . . that the victim in fact did perceive to be so.” Id. See also Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 752 (1998); Clark County School Dist. v. Breeden, 532 U.S. 268 (2001).

We note, however, that with regard to retaliatory harassment, Complainant only needs to show that such actions are the type of action that would dissuade a reasonable employee from making or supporting a charge of discrimination. See Burlington Northern & Santa Fe Railroad. Co. v. White, 548 U. S. 53, 126 S. Ct. 2405 (2006). See also, EEOC Enforcement Guidance on Retaliation and Related Issues, No. 915.004 (August 25, 2016); Carroll v. Department of the Army, EEOC Request No. 05970939 (April 4, 2000). Here, after careful consideration, we conclude Complainant has not established that the actions forming his harassment claim either involved or were based on his protected activity. The evidence supporting reprisal is stronger in claim 1 than it is in claim 2 and we find that Complainant has not shown retaliatory harassment by a preponderance of the evidence.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM in part and REVERSE in part the Agency's final decision finding no discrimination, as we find that Complainant has shown that he was subjected to reprisal when the Warden removed Complainant's supervision of the Safety and Facilities departments from his duties.

ORDER

The Agency is ORDERED to undertake the following remedial actions:

1. Within 120 days of the date this decision is issued, the Agency shall conduct a supplemental investigation to determine whether Complainant is entitled to compensatory damages as a result of harm caused by removing his supervision of the Safety and Facilities departments from his duties. The Agency shall afford Complainant an opportunity to establish a causal relationship between the disclosure and pecuniary and/or non-pecuniary losses. Complainant shall cooperate in the

Agency's efforts to compute the amount of compensatory damages he is entitled to and shall provide relevant information requested by the Agency. The Agency shall issue a new Agency decision awarding compensatory damages to Complainant within 60 calendar days after the date this decision is issued. The final decision shall contain appeal rights to the Commission. The Agency shall submit a copy of the final decision to the Compliance Officer at the address set forth below.

2. Within 90 days of the date this decision is issued, the Agency shall conduct a minimum of eight hours of in-person or interactive EEO training for the Warden with a focus on reprisal.
3. Within 60 days of the date this decision is issued, the Agency shall consider discipline against the Warden. The Commission does not consider training to be a disciplinary action. 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.
4. Within 30 days of the date this decision is issued, the Agency shall post a notice in accordance with the statement below entitled "Posting Order."

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).

POSTING ORDER (G0617)

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

ATTORNEY'S FEES (HI016)

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 the date this decision was issued. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0617)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report within thirty (30) calendar days of the completion of all ordered corrective action. The report shall be in the digital format required by the Commission, and submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. 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.

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)

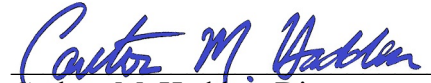
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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

May 20, 2021
Date