



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Lashawn C.,¹
Complainant,

v.

Martin J. Walsh,
Secretary,
Department of Labor,
Agency.

Appeal No. 2019005949

Agency Nos. 13-06-040, 14-06-017, 15-06-055, 16-06-111, 18-06-003

DECISION

On September 3, 2019, Complainant prematurely 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 September 30, 2019, 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 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 AFFIRMS the Agency's final decision.

ISSUES PRESENTED

The issues presented are: (1) whether the EEOC Administrative Judge (AJ) abused his discretion in dismissing Complainant's hearing request; and (2) whether Complainant established that she was subjected to discrimination and harassment as alleged in her complaints.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Regional Safety and Health Manager, GS-13 at the Agency's Occupational Safety & Health Administration (OSHA) facility in Dallas, Texas.

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.

On January 25, 2013, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (African-American), sex (female), color (Black), disability (multiple physical, including torn ligaments), age (57), and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and Section 501 of the Rehabilitation Act of 1973 as set forth below.

Agency No. 13-06-040 and 14-06-017 (consolidated)

Complainant alleged that she was subjected to discrimination based on her race (African American), color (Black), sex (female), age (over 40) disability (physical), and/or in reprisal for prior EEO activity when:

1. in March 2013, and on a continuing basis, Agency management intentionally delayed work activities in order to cause Complainant to fail the timing element of her 2013 performance standards due to Complainant's disability;
2. in 2013, Agency management changed Complainant's position description and performance standards and removed some of her duties;
3. in April 2013, Agency management denied Complainant's request to telework while allowing other employees to utilize telework; and
4. in December 2013, Agency management delayed completing forms for Complainant's workers compensation benefits, resulting in the delay of those benefits.

Agency No. 15-06-055

Complainant alleged that she was subjected to unlawful disparate treatment based on her race (African American), color (Black), sex (female), age (over 40), disability (physical) and/or in reprisal for prior EEO activity when:

1. on October 10, 2014, Complainant received a letter from the Agency stating that they would not accommodate the work restrictions proposed by Complainant's physician and that they were instead placing Complainant in leave without pay (LWOP) status;
2. the Agency has continually failed to provide Complainant with an ergonomic assessment and has continually prohibited Complainant from viewing her government email and/or logging on to government accounts;
3. the Agency has continually failed to honor Complainant's Family and Medical Leave Act (FMLA) request;
4. the Agency has continually failed to process Complainant's Leave Buy-Back slips;

5. Complainant was not given opportunities to perform within all elements of her performance standards during fiscal year (FY) 2014;
6. Complainant was not given any awards or bonuses for her accomplishments during FY 2014, although others were given such awards and bonuses; and
7. Complainant was not given a performance appraisal for FY 2014.

Agency No. 16-06-111

Complainant alleged that she was subjected to unlawful disparate treatment and/or a hostile work environment based on her race (African American), color (Black), sex (female), age (over 40), disability (physical), and/or in reprisal for prior EEO activity when:

1. in or around April 2016, Complainant felt aggrieved when she received her FY 2014, performance appraisal because it was given 18 months after it should have been provided to Complainant and it did not accurately capture Complainant's work output;
2. in or around April 2016, Complainant was placed on performance standards five months after she returned to her position;
3. in or around May 2016, Complainant was not selected to an Assistant Regional Administrator vacancy position;
4. in or around May 2016, Complainant's FY 2016 performance award cycle dates were not correct; and
5. since November 2015, and continuing to the present, Complainant has not been allowed to perform within all elements of her FY 2016 performance standards.

Agency No. 18-06-003

Complainant alleged that she was subjected to unlawful disparate treatment based on her race (African American), age (over 40), sex (female), disability (physical) and/or in reprisal for prior EEO activity when:

1. around May/June 2017, Complainant's mid-year performance appraisal was not conducted by the current acting/active supervisor who had been supervising Complainant, adversely impacting Complainant's review;
2. around May 2017, and ongoing, Complainant is being required to perform monitoring visits remotely, which adversely impacts her performance;

3. around June 2017, Complainant was not being offered unspecified opportunities that were offered to other employees in the Regions IV Office with the Cooperative State Program (CSP), which enabled other employees to enhance their appraisals and receive additional unspecified awards;
4. around June 2017, Complainant was denied the opportunity to act as Assistant Regional Administrator (ARA) or to perform an equivalent Administration position (GS-14);
5. on June 8, 2017, Complainant became aware that her position was placed into bargaining unit status, removing Complainant from manager's series status, which does not satisfy a settlement reassignment condition that Complainant remain in a (non-bargaining unit) manager's position;
6. around October 2017, Complainant's supervisor did not submit Complainant's name for secretary exceptional awards;
7. around October 2017, and ongoing, Complainant's supervisor has treated Complainant differently from other employees, including by deliberately not answering Complainant's emails and phone calls, holding assigned work within his office without reviewing it, and not allowing Complainant to attend certain meetings or plan certain events;
8. in and around October 2017, and ongoing, management has not approved Complainant's request to be removed from all grant activity under the CSP;
9. around October 2017, and ongoing, Complainant's request to act as a supervisor of another team has not been granted; and
10. on or about November 6, 2017, Complainant received her annual performance appraisal, which was lower than Complainant expected.²

Each set of Complainant's allegations involve her work in the Agency's Dallas Regional Office (specifically focused on grants) under the direct supervision of an Assistant Regional Administrator (S1). Complainant's contentions in each set of her allegations are that she was discriminated against on the basis of her protected classes concerning Complainant's work assignments and duties; and the impact of her work assignments and duties on her performance appraisals, among other things.

² The Agency noted that initially, the complaints included four additional allegations, which were dismissed on April 9, 2014, pursuant to 29 C.F.R. § 1614.107(a)(1). The Agency stated that the first allegation was dismissed as being untimely filed; the second and third allegations were dismissed because they stated claims that were pending before or had been decided by the Agency or Commission; and the fourth claim was dismissed for failing to allege a personal harm or something lost and, therefore, failed to state a claim.

Regarding Agency No. 13-06-040 and 14-06-017, S1 denied delaying Complainant's work, asserting that there was no timing element in Complainant's 2013 performance standards; and that only one of the elements stated that Complainant's duties should be done on a timely basis. S1 also affirmed that Complainant did not fail any element of her 2013 performance standards, indicating that the "Effective" rating Complainant received meant she met each of her elements.

S1 explained that Complainant's new job description added a time element and removed duties from her previous description. S1 affirmed that Complainant had a telework agreement in April 2013, explaining that consistent with that agreement, he denied Complainant's request for episodic telework on April 18, 2013, for that same day because Complainant should have made her request in advance and received approval. S1 stated that he tried to process claims timely, asserting that he was unaware of any untimely payments to Complainant.³

Regarding Agency No. 15-06-055, S1 explained that he received a medical certification from Complainant's physician which caused him to determine that the Agency could no longer continue to accommodate Complainant's restrictions and limitations in a manner that would allow her to perform the essential functions of her position. S1 stated that he continuously accommodated Complainant's medical restrictions for a year and a half, including changing her work duties and hours, but determined that Complainant could no longer perform her principal duties with the medical restrictions placed on her.

S1 asserted that he has provided numerous formal and informal accommodations to Complainant including several ergonomic assessments which resulted in different ergonomic accommodations. S1 also stated that Complainant had received previous ergonomic assessments; and that Complainant was transitioning into her new workstation when she was placed on LWOP status and, therefore, the Agency had not yet performed an ergonomic assessment of her new workstation.

S1 asserted that consistent with applicable Agency policy, Complainant's government account and email address were deactivated while she was on LWOP because she was not permitted to work during that time period

S1 stated that the Agency did not fail to honor Complainant's FMLA request, asserting that he approved all of Complainant's requests for FMLA leave. The record includes copies of 32 "Request for Leave or Approved Absence" forms approved by S1 that invoked FMLA for absences between October 21, 2013, and September 2014.

³ The Agency noted that initially the complaint included one additional allegation which was subsequently dismissed because it was similar or identical to a previously accepted claim that had been decided on July 8, 2015, by an EEOC Administrative Judge in EEOC Case No. 451-2014-00015X.

S1 stated that Complainant has submitted numerous requests to buy-back her leave; and that the Agency processed and approved over forty separate requests. S1 explained that the Human Resources Office (HR) placed a hold on processing 15 leave buy-back requests while the National Finance Center (NFC) had problems processing such requests. S1 asserted that a number of leave buy-back requests that covered a period of advanced leave that were not eligible for leave buy-back were returned to Complainant, consistent with applicable Agency guidance included in the record.

S1 denied that Complainant was not given opportunities to perform within all elements of her performance standards; he instead indicated that Complainant was given every opportunity to perform within each element.

S1 explained that Complainant was placed on LWOP on October 10, 2014, prior to her performance evaluation being conducted. S1 asserted that none of the staff he supervised were given their FY 2014 performance evaluation prior to October 10, 2014; and that performance awards are based on the employee's rating of record for the current appraisal period, which Complainant never received, because she went on LWOP.

S1 explained that Complainant was not given an official FY 2014, performance rating because she was out on workers' compensation/LWOP during the time the ratings were given; and that Complainant had not yet returned to work. S1 asserted that once she returned to work, Complainant would be given the evaluation. S1 also stated that all employees in the Regional Office were offered a trip to a fair in 2014, regardless of their performance rating.

Regarding Agency No. 16-06-111, S1 explained that Complainant was not given her FY 2014 performance appraisal until 2016, because she was not at work when the appraisals were given to others due to being on Office of Workers' Compensation Program (OWCP) roles. S1 stated that Complainant was away from work for more than a year and then sustained another injury shortly after returning to work, causing Complainant to be away from work again. S1 asserted that since Complainant was not present when appraisals were given to her peers and could not provide input on her appraisal or the work that she wanted S1 to consider when deciding on her rating, S1 elected to wait to give Complainant the appraisal until after she returned to work on a regular basis. S1 stated that he also did not give a FY 2014 performance appraisal to the other employee out on workers compensation since May 2014, who later medically retired.

S1 stated that Complainant was placed on performance standards beginning April 2016, when she was given her FY 2014 evaluation. S1 asserted that the normal process was followed when Complainant was placed on her FY 2016 performance standards; and that others were placed on their performance standards at an earlier time because they were actually working full time, and were therefore able to be judged by their FY 2016 performance standards.

The selecting official (SO) stated that due to time constraints, the Agency was unable to complete the interview process. SO asserted that none of the candidates were selected for the position to which Complainant applied, adding that the certificate was returned without a selection being made.

S1 explained that Complainant's performance cycle dates were correctly October 1, 2015, to September 20, 2016, but that Complainant's appraisal period began on April 1, 2016, when S1 signed off on Complainant's performance management plan to place her on standards. S1 cited departmental policy providing that appraisal periods start when the reviewing official signs off on the establishment of the plan.

S1 stated that Complainant did perform in all elements of her standards. He asserted that a rating was indicated for each of Complainant's performance elements in her FY 2016 performance management plan.

Regarding Agency No. 18-06-003, S1 explained that he was Complainant's supervisor of record for FY 2017; and that he completed her midyear review on May 11, 2017, because he supervised her for the majority of the year and was in consultation with those who supervised Complainant when he was not present. S1 asserted that Complainant was under his direct supervision from October 1, 2016, through November 28, 2016; January 8, 2017, through March 20, 2017; and July 24, 2017, through September 30, 2017. S1 stated that Complainant reported to another employee who was acting ARA from March 21, 2017, through July 23, 2017. S1 stated that the Acting ARA reported directly to him during that time period. S1 also noted that Complainant was the acting ARA from November 28, 2016, through January 8, 2017; and that she reported directly to the Deputy Regional Director during that time.

S1 asserted that he conducted the FY 2017 mid-year performance reviews for all members of Complainant's work unit while he was on detail, and an acting supervisor was in place. S1 and the Acting ARA both stated that Complainant's review was not adversely impacted by S1 conducting the review.

S1 explained the monitoring process, stating that remote monitoring was reserved for those grantees with historical Susan Harwood grant experience and who did not have any performance issues. S1 and the Regional Administrator (RA1) explained that conducting monitoring visits remotely had no impact on Complainant's performance ratings. RA1 also stated that she required other employees in Complainant's work unit to work remotely, including requiring Complainant's financial partner to perform grantee financial monitoring remotely. Documentary evidence indicated that Complainant was the only employee in her work unit who managed Susan Harwood grants and performed monitoring visits for the program.

S1 and RA1 stated that the only performance-enhancing opportunity Complainant was denied was acting as ARA in March 2017. They noted that because Complainant had just recently acted in that position from November 2016, through January 2017, the opportunity was given to

another employee who had not served in that position before. S1 added that Complainant was given multiple opportunities for career advancement.

S1 explained that he did not manage the Administrative Programs section of the Regional Office and was not involved in the day to day operations of that unit. Therefore, S1 asserted, he had no knowledge of a solicitation to act in the ARA for Administrative Programs position.

S1 stated that he was not involved in Complainant's placement into the bargaining unit, but that the placement resulted from an informal process between the Agency, National Council of Field Labor Locals (NCFLL), and Federal Labor Relations Authority (FLRA). S1 and RA1 both asserted that they were unaware of the settlement agreement to which Complainant alluded.

S1 stated that coworkers and supervisors can recommend employees for an Honor Award. S1 also stated that he did not recommend any of his subordinates for the Secretary's Exceptional Awards for FY 2017; and that he was unaware of any work that Complainant accomplished that was exceptional and merited the Secretary's Exceptional Award.

S1 stated that he managed eight other regional programs in addition to Complainant, and so must determine workflow and prioritize which of the numerous emails and phone calls he received daily from Complainant actually require a response. S1 asserted that he always expeditiously reviewed work from Complainant before returning it to her. S1 explained that he did not prohibit Complainant from any meetings or events in October 2017, indicating that the only such event of which S1 was aware was the Training Grant Orientation in Dallas, which Complainant organized and attended. S1's statements are affirmed by record evidence, including email exchanges between S1 and Complainant.

RA2, another RA, asserted that he denied Complainant's request because grant activities are an essential requirement of her job, explaining that employees cannot simply request to remove essential functions of their job.

S1 stated that Complainant's position is not supervisory; and that he did not receive a request from Complainant to act as supervisor in another unit during the alleged timeframe. S1 indicated that Complainant had served in the acting ARA for CSP role from November 2016, to January 2017, and in the acting ARA for Administrative Programs role from February 2018, to March 2018.

S1 asserted that as the rating official, he determined, based on Complainant's performance and input, that Complainant met all the criteria within her performance standards and result elements. The reviewing official provided supporting testimony, attesting that he met repeatedly with Complainant and reviewed documents she maintained substantiated an "Exceeds" rating. He asserted that he determined that Complainant's input only showed that she performed her normal duties; and that her performance did not rise to the level of "Exceeds" for any element.

S1 asserted that the employees identified by Complainant as having received better ratings were either not supervised by him or were not appropriate comparators because they perform different jobs than Complainant.

Record evidence indicates that Complainant has been involved in several EEO activities. Complainant asserted that all the responsible management officials (RMOs) were aware that she had engaged in EEO activity because she has filed at least ten EEO complaints based on her protected classes since 2005.

Record evidence indicates that Complainant has multiple permanent disabling conditions that include shoulder and rotator cuff tears, sprains, contusions, and carpal tunnel syndrome/dysfunction. Complainant indicated that she has multiple restrictions; and stated that she made management aware of her disabilities by filing OWCP claims of injuries impacting her major life activities from at least 2006 through 2015. Complainant acknowledged that her medical conditions prevented her from performing the essential functions of her position; and that her condition made it difficult to perform certain tasks but that management has worked with her regarding those restrictions.

At the conclusion of the investigations, the Agency provided Complainant with copies of the reports of investigation and notices of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing on each of the EEO complaints filed. The EEO complaints were consolidated by the AJ.

On May 22, 2019, the AJ issued a Notice to Show Cause. The AJ indicated that Complainant had been warned several times regarding her displays of unprofessional behavior and disrespectful conduct and informed that future displays of disrespect, unprofessional, or threatening conduct could result in dismissal of the hearing. Despite the warnings, the AJ noted that Complainant continued her unprofessional and threatening conduct on May 22, 2019. As such, the AJ issued the Notice requiring Complainant to respond why the hearing should not be dismissed. Subsequently, the AJ noted that Complainant continued to engage in threatening and unprofessional conduct in emails and on conference calls on May 24, 2019 and May 30, 2019. Further, on June 10, 2019, Complainant failed to appear for a mandatory conference call. Therefore, based on Complainant's contumacious conduct, on June 25, 2019, the AJ dismissed the complaints and remanded them to the Agency for the issuance of a FAD. The AJ also noted that Complainant sought to have her cases held in abeyance. The AJ indicated that Complainant only provided a vague and open-ended timetable and suggested that she would be medically incapacitated for 12 months or more. The AJ determined that the matter should be dismissed for Complainant's contumacious conduct, or in the alternative, for her inability to proceed with her hearing requests. As such, the AJ remanded the matter to the Agency.

The Agency issued four final decisions pursuant to 29 C.F.R. § 1614.110(b). The Agency concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

CONTENTIONS ON APPEAL

In her Appeal Brief, among other things, Complainant reiterates her allegations. In addition, she expresses frustration with the hearing process, asserting that the AJ failed to place the instant complaints in abeyance as Complainant had requested because Complainant was unable to respond to the hearing documents sent to her by the Agency due to surgery.

In its Appeal Brief, the Agency reiterates its explanations for all the alleged management actions, asserting that Complainant failed to present sufficient evidence that those actions were directed at her because of her protected classes or that she was subjected to a hostile work environment. The Agency therefore requests that the Commission affirm its decision finding that there was no discrimination, retaliation, or hostile work environment.

STANDARD OF REVIEW

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”).

ANALYSIS AND FINDINGS

AJ’s Dismissal of Complainant’s Hearing Request

An EEOC Administrative Judge has the authority to sanction a party for failure to comply fully with an order without good cause shown. See 29 C.F.R. 1614.109. The Commission has long held that sanctions must be tailored in each case to appropriately address the underlying conduct of the party being sanctioned. A sanction may be used to both deter the non-complying party from similar conduct in the future, as well as to equitably remedy the opposing party. If a lesser sanction would suffice to deter the conduct and to equitably remedy the opposing party, an AJ may be abusing his or her discretion to impose a harsher sanction. See Gray v. Dep’t of Def., EEOC Appeal No.07A50030 (March 1, 2007); Hale v. Dep’t of Justice, EEOC Appeal No. 01A03341 (Dec. 8, 2000). We note that on appeal, Complainant stated a concern with the hearing process but did not deny the contumacious conduct outlined in the AJ’s Notice of Show Cause or Dismissal of the hearing requests. Upon review of the record, we find that the AJ did not abuse his discretion in dismissing Complainant's hearing request.

Disparate Treatment and Harassment/Hostile Work Environment

A claim of disparate treatment based on indirect evidence is examined under the three-part analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). For Complainant to prevail, he or she must first 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. McDonnell Douglas, 411 U.S. at 802; Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978). The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Tex. Dep't. of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the Agency has met its burden, Complainant bears the ultimate responsibility to persuade the fact finder by a preponderance of the evidence that the Agency acted on the basis of a prohibited reason. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993).

This established order of analysis in discrimination cases, in which the first step normally consists of determining the existence of a prima facie case, need not be followed in all cases. Where the Agency has articulated a legitimate, nondiscriminatory reason for the personnel action at issue, the factual inquiry can proceed directly to the third step of the McDonnell Douglas analysis, the ultimate issue of whether Complainant has shown by a preponderance of the evidence that the Agency's actions were motivated by discrimination. U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 713-714 (1983); Hernandez v. Dep't. of Transp., EEOC Request No. 05900159 (June 28, 1990); Peterson v. Dep't. of Health and Human Serv., EEOC Request No. 05900467 (June 8, 1990); Washington v. Dep't. of the Navy, EEOC Petition No. 03900056 (May 31, 1990).

A review of the record indicates that the Agency articulated legitimate, nondiscriminatory reasons for the alleged actions as noted above. Complainant did not contest nor refute with any evidence, the Agency's explanations. We also find no persuasive evidence of pretext. Therefore, Complainant has failed to establish that she was subjected to discrimination and harassment as alleged in her four complaints.

Likewise, Complainant's hostile work environment claims must fail under the standards set forth in Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993). See Enforcement Guidance on Harris v. Forklift Systems, Inc., EEOC Notice No. 915.002 (Mar. 8, 1994). A finding of a hostile work environment is precluded by our determination that Complainant failed to establish that any of the actions taken by the Agency were motivated by discriminatory animus. See Oakley v. U.S. Postal Serv., EEOC Appeal No. 01982923 (Sept. 21, 2000).

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency final decisions.

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 (S0610)

You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

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

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

April 29, 2021

Date