



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Renae L.,<sup>1</sup>  
Complainant,

v.

Xavier Becerra,  
Secretary,  
Department of Health and Human Services  
(Indian Health Service),  
Agency.

Appeal No. 2020000428

Agency No. HHSIHS01072018

**DECISION**

Complainant timely appealed to the Equal Employment Opportunity Commission (“EEOC” or “Commission”), pursuant to 29 C.F.R. § 1614.403, from an August 16, 2019 Final Agency Decision (“FAD”) concerning an 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 a Contract Representative/Patient Benefits Coordinator, GS-05, at the Agency’s Wanblee Health Center, located in Wanblee, South Dakota.

On March 19, 2018, Complainant filed a Formal EEO Complaint alleging that she had been subjected to discrimination by the Agency, on the bases of race (American Indian/Native American), color (dark skin)<sup>2</sup> and reprisal (protected EEO activity) when:

---

<sup>1</sup> This case has been randomly assigned a pseudonym which will replace Complainant’s name when the decision is published to non-parties and the Commission’s website.

<sup>2</sup> A fair reading of the record indicates Complainant also intended to allege color as a basis for discrimination, as she repeatedly states: “Women that were hired in my department were half native, half white and they have fair skin [named 3 coworkers]. [S2 and S3] treated these women

1. Since February 27, 2018,<sup>3</sup> and continuing to the present, her second and third level supervisors ("S2" and "S3"), subjected her to harassment/hostile work environment, including but not limited to the following actions:
  - a. On a daily basis, she was directed to complete reports regarding credentialing, private insurance ("PI"), Medicaid, and Medicare.
  - b. Her Performance Management Appraisal Program ("PMAP") rating had been adversely affected by her inability to complete all duties she had been assigned, which were duties of her first level supervisor ("S1").
  - c. She was subjected to verbal beratement in a Revenue Generation Meeting for not completing cross training duties, credentialing and signing up individuals for health coverage.
  - d. She was directed to cross train for duties in the Business Office, such as posting, billing, and completing the ASM listing, without proper training for any of these duties.
  - e. She was subjected to humiliation when she was directed to send an email to several Agency employees to notify them of her whereabouts (i.e. bathroom or stepped away from her desk).
  - f. She was denied leave she had requested.
  - g. S1, who was S3's niece, called Complainant a "Dumb Indian" in a provider meeting.
  - h. She learned that S3 warned providers, "to be careful when approaching the Patient Benefit Coordinator [Complainant] as she thinks everyone is out to get her."
2. On February 9, 2018 at 10:48 a.m., S3 confronted her regarding her being a witness in an EEO complaint filed by a coworker in another office ("C1").

At the conclusion of its investigation, the Agency provided Complainant with a copy of the report of investigation ("ROI") and notice of her right to request either a FAD or a hearing

---

much nicer than they treated me. I have a dark complexion and have been treated negatively because of my skin color."

<sup>3</sup> The Agency clarified in its FAD that Complainant likely meant 2017 instead of 2018 because S2 and S3 were placed on administrative leave in February 2018, and neither returned to Complainant's chain of command after that.

before an EEOC Administrative Judge. Complainant opted for a FAD. In accordance with Complainant's request, the Agency issued a FAD pursuant to 29 C.F.R. § 1614.110(b).

The record includes, but is not limited to the following relevant facts:

The Business Office of the Wanblee Health Center was comprised of seven employees, all of whom identified as American Indian. Supervisory staff included: S1, who was the Health System Specialist, GS-09; S2, who was the Administrative Officer, GS-11; and, S3, who was the Chief Executive Officer. The Business Office staff positions were all level GS-04 or 05 and included the Front Desk/Contact Representative (Complainant), the Billing Technician, the Medical Records Coder/Patient Accounts Technician, and the Posting/Medical Support Assistant.

Although the Wanblee Health Center is a federal facility, S3 estimated that "federal appropriations only cover 10% to 15% of the operating costs. The rest is covered by third-party revenue." S2 held a weekly Revenue Generating Meeting with S1 and Business Office staff to ensure that the facility met third-party revenue generation goals and to monitor the budget. As Contact Representative, Complainant was responsible for identifying whether patients were eligible for "alternate resources," and signing patients up with third-party insurance coverage, such as Medicare, Medicaid, and private insurance. Complainant was also responsible for credentialing providers and ensuring that any check payments submitted by providers or patients were deposited to PNC Bank.

During the relevant time frame, all Business Office staff positions, including that of Complainant, were engaged in cross-training to ensure adequate staff coverage. S1 also covered billing and posting duties. Complainant contends that S2 and S3 provided the other staff with additional resources and support because they had lighter complexions. S2 and S3 recount in the record that all of the Business Office staff, including Complainant, were scheduled to train on three occasions, and for various reasons, Complainant either missed the training or left early. S1 testified that she and Complainant's co-workers were unsuccessful when they tried to provide Complainant with individual cross-training. As a result, S1 states that she did not approve Complainant for tasks related to posting payments, billing, or the ASM report. S1 asserted that she did not consider these cross-training tasks when calculating Complainant's PMAP rating.

### *Retaliation*

The underlying EEO activity for Complainant's retaliation claim occurred in January 2018, when she served as a witness in an EEO investigation for a coworker ("C1"), who worked in a different office. However, C1's EEO complaint named S2 and S3 as the management officials responsible for the alleged discrimination.

Complainant alleges that on February 9, 2018, S3 asked her to come to her office. In her capacity as Complainant's third-level supervisor, S3 did not communicate with Complainant on a daily basis. However, they had known each other for twenty years as members of the same community. When she arrived, Complainant noticed that S3 kept looking at a paper on her desk.

Then, S3 allegedly said, "I just wanted to ask you if you are a witness for [C1's] EEO complaint." Complainant felt pressured, so she denied her role as a witness. S3 allegedly responded, "I did not think you would, because your mother raised you better than that." Complainant felt the conversation was inappropriate and found S3's reference to her deceased mother upsetting.

According to S3, the February 9, 2018 meeting never occurred, and she had no knowledge of C1's EEO complaint until after she left the Agency. However, Complainant notified her EEO Counselor and S1 right after. S1 confirms in the record, "Complainant told me that [S3] asked her about her participation in [C1's EEO] complaint." S2 indicates that she was on notice of C1's EEO complaint, as she testifies that she completed and submitted her affidavit for C1's EEO activity on February 14, 2018. The record contains a February 26, 2018 email from C1 to Complainant's EEO Counselor that also indicates that S3 was aware of her EEO activity and Complainant's involvement before she left the Agency.

On February 28, 2018, S2 and S3 were placed on administrative leave by the Agency. S3 was subsequently removed, and S2 transferred to another location until her retirement in September 2018. S1 was on sick leave through most of January and February 2018, then off and on until she retired for health reasons in April 2018.

The FAD concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged. 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").

#### *Untimely EEO Contact – Claim 1(f)*

The regulation set forth under 29 C.F.R. §1614.107(a)(2) states, in relevant part, that an agency shall dismiss a complaint or a portion of a complaint that fails to comply with the applicable time limits contained in §1614.105. Under §1614.105(a)(1), an aggrieved person must initiate contact with an EEOC Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action.

Claim 1(f) concerns alleged denial of leave, which is a personnel action, so the 45-day limitation period applies. Specifically, Complainant alleges that she was denied leave to attend funerals on November 7, 2015, October 9, 2016, and March 7, 2017. She also alleges that she was improperly marked as absent without official leave (AWOL) when she had to leave due to a family emergency on October 3, 2016. Complainant alleges that she was granted leave to take her sister to the doctor on May 5, 2017, but S1 made it difficult and asked, “is she dying” when Complainant requested the leave. Complainant notes that she had ample leave stored, and S1 was much nicer to her coworkers when they requested leave for family reasons.

The record reflects that Complainant initiated EEO contact for the instant complaint on December 4, 2017, which makes Claim 1(f) untimely. It appears from the record that the Agency did not previously dismiss Complainant’s allegation of denied leave as untimely because Complainant had yet to identify the dates the leave was denied when she filed her Formal Complaint. In its FAD, the Agency clarifies that it finds Complainant’s allegations of denied leave untimely, but considered them as evidence in support of Complainant’s overall harassment claim. We have done this as well. Complainant has not offered any explanation for the delayed EEO contact in the record or on appeal that would warrant waiving the 45-day limitation period.

#### *Disparate Treatment – Claim 1(b) and (d)*

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. Texas 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. United States Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 713-714 (1983); Hernandez v. Dep’t. of Transp., EEOC Request No. 05900159 (Jun. 28, 1990); Peterson v. Dep’t. of Health and Human Serv., EEOC Request No. 05900467 (Jun. 8, 1990); Washington v. Dep’t. of the Navy, EEOC Petition No. 03900056 (May 31, 1990).

The Agency, as the employer, has broad discretion to set policies and carry out personnel decisions, absent evidence of unlawful motivation. See Burdine at 259; Vanek v. Dep't of the Treasury, EEOC Request No. 05940906 (Jan. 16, 1997); see also Furnco at 567 (An employer has the discretion to determine how best to manage its operations and may make decisions on any basis except a basis that is unlawful under the discrimination statutes.) In other words, this Commission "does not second-guess the business judgment of Agency officials regarding personnel decisions without a demonstrably discriminatory motive." Camden v. Dep't of Justice, EEOC Appeal No. 0120093506 (Jul. 27, 2012), rec. den. EEOC Request No. 0520120603 (Jan. 31, 2013). In the instant case, Claims 1(b) and 1(d) allege personnel decisions, so they can be analyzed as disparate treatment claims.

For Claim 1(b), the evidence shows that Complainant's PMAP rating dropped from 3.5 in 2016 to 3 in 2017. According to the Agency witnesses, in or around early Fall 2017, approximately \$35,000 worth of undeposited checks were found in Complainant's desk and file cabinet because she stopped performing her assigned duty of depositing check payments to PNC Bank. Management witnesses stated that Complainant's PMAP rating was lowered not for failing to complete assignments (S1's or otherwise), but for her decision to allow checks to accumulate in her desk and file cabinet when she was unable to deposit them. The decision to lower Complainant's PMAP rating is supported by S1, S2, and S3's testimony that Wanblee Health Center's finances and budgeting were significantly impacted as a result of the missing \$35,000. They also explained that Complainant's action created more work for two of her coworkers, who were tasked with depositing the checks, and working with insurance companies to get checks re-issued. Complainant failed to prove, by a preponderance of the evidence that this legitimate, non-discriminatory reason for lowering her PMAP rating was a pretext masking discrimination.

For Claim 1(d), Agency management's legitimate nondiscriminatory reason for directing Complainant to cross train for duties in the Business Office was to ensure adequate staff coverage. As S1 put it, "we cross-trained the whole Business Office so we could cover for each other." Such an operational decision falls within the Agency's business judgement. The record indicates that Complainant was ultimately never required to complete the training. According to S2, Complainant's position did not entail posting and billing, so she was not trained to do those tasks. Also, S1, S2 and S3 state that Complainant missed 2.5 out of 3 days of formal cross-training, and while attempts at one on one training were made, there is no indication Complainant was required to make up the cross-training sessions that she missed or complete any sort of certification in these duties. Again, Complainant has failed to prove that discriminatory factors played any role in the disputed events.

#### *Harassment/Hostile Work Environment*

To prove her harassment claim, Complainant must establish that she was subjected to conduct that was either so severe or so pervasive that a "reasonable person" in Complainant's position would have found the conduct to be hostile or abusive. Complainant must also prove that the conduct was taken because of her race, color, and/or prior EEO activity. Only if Complainant establishes both hostility and discriminatory motive, will the question of Agency liability present

itself. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, EEOC Notice 915.002 (June 18, 1999).

For reasons already discussed, Claims 1(b) and 1(d) will not be included in this analysis. The remaining harassment allegations, even when considered together, and assumed to have occurred exactly as Complainant describes, involve common workplace occurrences or isolated incidents that while unpleasant, are insufficient to establish a hostile work environment.

The Commission has long held that allegations describing “common workplace occurrences,” such as routine work assignments, instructions, and admonishments, do not rise to the level of hostility necessary to constitute harassment. See Gray v. United States Postal Serv., EEOC Appeal No. 0120091101 (May 13, 2010). Even if done in a confrontational manner, a supervisor assigning work duties or questioning an employee about their work duties is a “common workplace occurrence.” See Carver v. United States Postal Serv., EEOC Appeal No. 01980522 (Feb. 18, 2000). The statutes under the Commission's jurisdiction do not protect an employee against adverse treatment due simply to a supervisor's personality quirks or autocratic attitude. See Bouche v. U.S. Postal Serv., EEOC Appeal No. 01990799 (Mar. 13, 2002). See also Jackson v. City of Killeen, 654 F.2d 1181, 1186 (5th Cir. 1981) (“Title VII is not a shield against harsh treatment at the workplace; it protects only in instances of harshness disparately distributed. The essence of the action is, of course discrimination.”).

The daily directions referenced in Claim 1(a) appear to be “routine work assignments” because they are consistent with the work duties listed in the Contact Representative position description and the descriptions of Complainant’s work duties offered by S1, S2, and S3. Claim 1(c) also involved questioning about work duties. With respect to Claim 1(c), we note the Commission’s well established stance that while an employee may prefer certain assignments over others, or have a different idea about how operations should be run, “these are not issues which should be pursued in the EEO complaint process since decision makers in the complaint process cannot substitute their judgment on how to run the day to day operations of an Agency for that of the managers involved.” Dewitt L. v. Dep’t of the Navy, EEOC Appeal No. 0120160682 (May 3, 2016).

To the extent that Complainant alleges that her whereabouts were monitored to such a degree that she felt humiliated, and like she was being treated like a child, as alleged in Claim 1(e), we previously found similar agency actions to be “common workplace occurrences.” See Gormley v. Dep’t of the Interior, EEOC Complaint No. 01973328 (Feb. 18, 2000) (allegation that the complainant’s supervisor monitored her work duties and time in and out of the office more closely than her coworkers amounted to a common workplace occurrence).

Further, the Commission has repeatedly found that a few isolated incidents of alleged harassment, are usually insufficient to state a claim. See Phillips v. Dep’t of Veterans Affairs, EEOC Request No. 05960030 (Jul. 12, 1996), Banks v. Health and Human Serv., EEOC Request No. 0594081 (Feb. 16, 1995). Claim 1(g), where S1 allegedly referred to Complainant as a

“dumb Indian” and Claim 1(h), where S3 allegedly warned providers to be careful when approaching Complainant, while improper, occurred months apart and appear to be isolated incidents. We note that Complainant offered no rebuttal for the record or statement on appeal.

### *Retaliation*

Comments that, on their face, discourage an employee from participating in the EEO process violate the letter and spirit of the EEOC regulations and evidence a violation of the law. See Leisa C. v. Dep’t of Defense, EEOC Appeal No. 0120132212 (Nov. 8, 2013), citing Binseel v. Dep’t of the Army, EEOC Request No. 05970584 (Oct. 8, 1998). See also, Vincent v. United States Postal Serv., EEOC Appeal No. 0120072908 (Aug. 3, 2009), rec. den., EEOC Request No. 0520090654 (Dec. 16, 2010) (*per se* violation found where supervisor during an employee meeting referenced that EEO complaints had been filed and said "what goes around, comes around"). A violation also occurs where a supervisor's behavior has a potentially chilling effect on use of the EEO complaint process. Binseel. See also, Ashby v. Dep’t of the Treas., EEOC Appeal No. 0120090364 (Feb. 27, 2012), recon. denied, EEOC Request No. 0520120435 (Jul. 12, 2012) (violation found where the complainant’s supervisor mentioned complainant’s prior EEO activity to another colleague and made inappropriate comments about complainant’s EEO complaints).

Complainant’s account of the February 9, 2018 meeting with S3, describes such a violation. On their face, S3’s comments could reasonably discourage participation in the EEO process, given her and Complainant’s roles in C1’s EEO complaint, their supervisor/subordinate dynamic, and the timing of the meeting in relation to Complainant’s protected activity. Complainant provides additional intimidation factors, such as S3’s use of her personal relationship with Complainant, evinced by her reference to Complainant’s mother. The situation includes an additional layer of context because throughout the relevant time frame, S2, S3, and C1 were involved in Tribal Court matters, which were openly discussed at the office. S2 and S3 testify that they were aware Complainant was also a witness for C1 in Tribal Court.

Typically, the Agency would be directed to provide EEO training to, and consider disciplinary action of, a management official found to have engaged in retaliation in the form of discouraging an employee from engaging in the EEO complaint process. However, as here these officials are no longer employed by the Agency, we will order the Agency to post a notice of our finding.

### CONCLUSION

Having thoroughly reviewed the record, we AFFIRM the Agency’s finding of no discrimination in Claim 1 and REVERSE the Agency’s finding with regard to Claim 2. We conclude that Complainant was subjected to unlawful retaliation in the form of an attempt to discourage her from using the EEO process. We hereby REMAND the matter for further processing in accordance with the Order below.



### ORDER

The Agency is ordered to post at its Wanblee Health Center facility, in Wanblee, South Dakota, 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).

### IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and §1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

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

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

STATEMENT OF RIGHTS - ON APPEAL  
RECONSIDERATION (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).

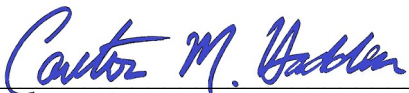
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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

April 29, 2021  
Date