



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

[REDACTED]
Willa B.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2020003273

Hearing Nos. 460-2018-00039X
460-2018-00207X

Agency Nos. 2003-0580-2015100572
2003-0580-2016100860

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's March 4, 2020, final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. For the following reasons, the Commission MODIFIES the Agency's final decision.

ISSUES PRESENTED

The issues are whether the Agency should be sanctioned for issuing an untimely final decision; and whether Complainant established that the Agency subjected her to discrimination or harassment based on her disability, national origin, race, or sex, or in reprisal for her protected EEO activity.

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

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Peer Support Specialist (GS-6) at the Agency's Michael E. DeBakey Medical Center in Houston, Texas.

Complainant stated that in March 2014, she injured her foot, but did not request an accommodation because she was not aware that she could do so. Complainant stated that a coworker (CW1) had a similar condition when he injured his ankle and was offered a special accommodation. Report of Investigation (ROI) 1 at 129-30. Complainant stated that in October 2014, her first-line supervisor (S1) (Caucasian, female) denied Complainant's request for mediation training and included a statement that Complainant needed to focus on her work in Complainant's application for the "EVAL" leadership training program. ROI 1 at 138, 146.

Complainant stated that on October 21, 2014, S1 sent an email to the Executive of the Mental Health Line (EMHL) (Caucasian, female), and she suggested that Complainant be placed on a part-time schedule due to her service-connected disability rating. ROI 1 at 151. Complainant stated that on November 13, 2014, S1 reprimanded her for taking leave for medical reasons, which impacted patient care. ROI 1 at 156-7. On November 25, 2014, Complainant received a performance rating of Fully Successful. ROI 1 at 415-6.

Complainant stated that on or about July 2, 2015, she learned of a May 14th memorandum in which she was accused of unethical behavior when she struggled with letting go of firmly held beliefs. ROI 1 at 174. Complainant stated that on July 21, 2015, she met with S1 to discuss her performance, but S1 raised the Agency's procedure for requesting leave. ROI 1 at 180.

Complainant stated that in January or February 2016, she learned that a coworker (CW2) received her Peer Support certification from a facility which was not approved, despite having started her position at the GS-8 level. ROI 2 at 42.

EEO Complaints

On February 17, 2015, Complainant filed an EEO complaint (Agency case number 2003-0580-2015100572) alleging that the Agency subjected her to discriminatory harassment on the bases of race (Hispanic),² sex (female), and disability (physical and mental), and in reprisal for the instant EEO complaint when:

1. in June 2014, Complainant became aware that CW1 was offered a "special" accommodation for a medical condition, but she was not offered one for her medical condition in March 2014;

² The Commission notes that the term "Hispanic" typically denotes national origin rather than race. However, herein the Commission acknowledges Complainant's self-identification of her race as Hispanic.

2. on October 3, 2014, S1 denied Complainant's request for mediation training;
3. on October 7, 2014, S1 recorded a "biased" statement against Complainant in her application for the EVAL leadership program, which resulted in her not being accepted;
4. on October 21, 2014, S1 sent an email to EMHL suggesting that Complaint be placed on a part-time status due to her service-connected disability rating, thereby divulging Complainant's personal information without her permission;
5. on November 13, 2014, S1 verbally reprimanded Complainant during a meeting accusing her of impacting patient care;
6. on November 25, 2014, Complainant received a "Fully Successful" rating on her annual performance evaluation;
7. on July 2, 2015, Complainant was accused of not embracing the values and ethics of the Wellness Recovery Action Plan during a training session on May 4-8, 2015; and
8. on July 21, 2015, S1 met with Complainant to review the facility's leave policy.

The Agency accepted the incidents 2 and 6 as timely discrete acts, in addition to including them in Complainant's overall harassment claim. The Agency dismissed Complainant's allegation of reprisal when a mediator's line of questioning on January 29, 2015, was "forceful and threatening" for failure to state a claim.³ ROI 1 at 87.

On March 4, 2016, Complainant filed another EEO complaint (Agency case number 2003-0580-2016100860) alleging that the Agency discriminated against her based on her national origin (Dominican Republic) when:

9. On November 2, 2013, Complainant was not onboarded at the Peer Support Specialist position at the GS-7 grade level or above; and
10. prior to November 2013, Complainant was denied reimbursement for relocation expenses when she transferred from an Agency facility in North Carolina.⁴

³ We note that the Commission has the discretion to review only those issues specifically raised in an appeal. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § IV.A.3. On appeal, Complainant did not contest the Agency's procedural dismissal of this claim, and as such, we will not address this claim in the instant decision.

⁴ Complainant withdrew claim 10 in her affidavit. ROI 2 at 44.

At the conclusion of the investigations, the Agency provided Complainant with copies of the ROIs and notices of her right to request a hearing before an EEOC Administrative Judge (AJ). Complainant timely requested hearings but subsequently withdrew her requests, and the AJ issued an Order of Dismissal and remanded the complaint back to the Agency on October 10, 2018. Consequently, the Agency issued a consolidated final decision pursuant to 29 C.F.R. § 1614.110(b).

The Agency assumed a prima facie case of discrimination based on sex, national origin, and disability for claims 2 and 6, and found that the management officials articulated legitimate, nondiscriminatory reasons for their actions. For claim 9, the Agency assumed a prima facie case of national origin discrimination and found that management officials stated that, while Complainant possessed a certificate, which qualified her at the GS-6 level, she did not possess the specialized experience needed to qualify for the GS-7 level. The Agency then found that Complainant did not show pretext for discrimination.

The Agency also found that Complainant did not show that any of the complained of conduct was due to her membership in protected classes, and that they were not severe or pervasive to rise to the level of unlawful harassment. The Agency concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

Complainant filed the instant appeal and submitted a brief in support of her appeal. The Agency opposed Complainant's appeal.

CONTENTIONS ON APPEAL

Complainant's Contentions

Through her attorney, Complainant requests a sanction in the form of a default judgment against the Agency for its delay in issuing the final decision. Complainant states that it is undisputed that the Agency received the AJ's dismissal order on October 10, 2018, and that the Agency did not issue the final decision until March 4, 2020, which was 511 days later. Complainant asserts that the Agency's delay of 451 days exceeds the "extraordinary tardiness" the Commission found in Glynda S. v. Dep't of Justice, EEOC Appeal No. 0120133361 (Feb. 23, 2016).

Complainant states that, after issuing a default judgment, the Commission must determine a right to relief, which can be established with a prima facie case of discrimination. Complainant argues that for claim 9, she established a prima facie case of discrimination based on national origin because she was hired at the GS-6 level, while CW2, whose national origin is Mexican, was hired as a GS-8 despite not having the requisite certification. Complainant also argues that a failure to establish a prima facie case of discrimination does not preclude a right to relief on a default judgment. Complainant requests that the Commission issue a default judgment, vacate the Agency's final decision, and remand the complaint for a determination on damages.

Agency's Contentions

The Agency asserts that its final decision clearly and thoroughly addressed the relevant material facts and correctly determined that a review of the entire record revealed that there was no discrimination on the bases of race, national origin, sex, disability, or reprisal, and that Complainant was not subjected to a hostile work environment. The Agency notes that Complainant's brief did not address the legitimate nondiscriminatory reasons proffered by the Agency that were found to be non-pretextual, and instead, only addressed claim 9 by stating that she had established a prima facie case.

However, the Agency notes that Complainant ignored the fact that she and her alleged comparators were not actually comparable. Specifically, CW2 answered "yes" to the questions that qualified her for the GS-8 level and submitted a certificate with her application. The Agency states that, while it was later determined that CW2's certificate did not meet the requirements, this was not evidence of discriminatory animus since this was not known at the time of hiring. In addition, another comparator (CW3) had a year of graduate education which qualified her for the GS-7 level. The Agency further notes that Complainant did not provide any argument rebutting the Agency's legitimate, nondiscriminatory reasons for hiring her as a GS-6.

Regarding the request for sanctions, the Agency argues that the Commission has found that sanctions are not warranted in cases where the complainants did not show that they were prejudiced by the delay. For example, in Josefina L. v. Soc. Sec. Admin., EEOC Appeal No. 0120142023 (July 19, 2016), request for recon. denied, EEOC Request No. 0520170108 (Feb. 9, 2017), the Agency's 571-day delay in issuing a final decision did not warrant sanctions, as the complainant did not show that she was prejudiced by the delay. In addition, the Agency notes that Glynda S. v. Dep't of Justice, supra, differs because the complainant had established a prima facie case of discrimination, and the agency had been previously warned about the lengthy delays in issuing final decisions and failed to respond to the complainant's motion for sanctions. The Agency argues that Complainant has not demonstrated that a default judgment is warranted here and requests that the Commission affirm its final decision.

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 Chap. 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

Sanctions

Sanctions serve a dual purpose. On the one hand, they aim to deter the underlying conduct of the non-complying party and prevent similar misconduct in the future. Barbour v. U.S. Postal Serv., EEOC Appeal No. 07A30133 (June 16, 2005). On the other hand, they are corrective and provide equitable remedies to the opposing party. Given these dual purposes, sanctions must be tailored to each situation by applying the least severe sanction necessary to respond to a party's failure to show good cause for its actions and to equitably remedy the opposing party. Royal v. Dep't of Veterans Affairs, EEOC Request No. 0520080052 (Sept. 25, 2009). Several factors are considered in "tailoring" a sanction and determining if a particular sanction is warranted: 1) the extent and nature of the non-compliance, and the justification presented by the non-complying party; 2) the prejudicial effect of the non-compliance on the opposing party; 3) the consequences resulting from the delay in justice; and 4) the effect on the integrity of the EEO process. Gray v. Dep't of Def., EEOC Appeal No. 07A50030 (Mar. 1, 2007).

On appeal, Complainant requested that the Commission sanction the Agency with a default judgment for issuing the final decision 451 days late. EEOC regulations provide that an agency shall issue the final decision within 60 days of receiving notification that a complainant has requested an immediate decision or within 60 days of the end of the 30-day period for the complainant to request a hearing or an immediate final decision where the complainant has not requested either a hearing or a decision. 29 C.F.R. § 1614.110(b).

Here, we find that the Agency failed to comply with the EEOC's regulations, and that the Agency did not provide any explanation for its extraordinary delay in issuing the final decision. However, we note that Complainant did not make a showing that she was prejudiced by the Agency's delay. Thus, although the Agency failed to issue a timely decision as required by regulation, the Commission finds that the Agency did not act in a manner to warrant a default judgment, but we find that less severe sanctions are appropriate for the Agency's delay. See Jordon S. v. Dep't of Justice, EEOC Appeal No. 0120171870 (Mar. 20, 2019); Evelina M. v. Dep't of Justice, EEOC Appeal No. 0120171018 (Dec. 11, 2018); Crysta T. v. Dep't of Agric., EEOC Appeal No. 0120171275 (Nov. 29, 2018).

Based on the specific circumstances of this case, we find the most appropriate sanction to address the Agency's conduct is to order the Agency to: (1) post a notice at its Office of Employment Discrimination Complaint Adjudication in Washington, D.C., regarding its failure to comply with the Commission's regulatory timeframes and orders; and (2) provide training to its EEO personnel who failed to comply with our regulatory timeframes. Our decision to sanction the Agency in this matter will effectively emphasize to the Agency the need to comply with Commission regulations and orders in a timely manner.

Disparate Treatment

Generally, claims of disparate treatment are examined under the analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Hochstadt v. Worcester Found. for Experimental Biology, Inc., 425 F. Supp. 318, 324 (D. Mass.), aff'd, 545 F.2d 222 (1st Cir. 1976). For Complainant to prevail, 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. Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978); McDonnell Douglas, 411 U.S. at 802 n.13. Once Complainant has established a prima facie case, 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). If the Agency is successful, the burden reverts back to Complainant to demonstrate by a preponderance of the evidence that the Agency's reason(s) for its action was a pretext for discrimination. At all times, Complainant retains the burden of persuasion, and it is her obligation to show 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); U.S. Postal Ser. v. Aikens, 460 U.S. 711, 715-716 (1983).

On appeal, Complainant argued that she established a prima facie case of national origin discrimination for claim 9 because she identified comparators who were of a different national origin and treated more favorably when they were hired at a higher-grade level. However, we find that the identified comparators were not similarly situated to Complainant. Among other things, to be considered "similarly situated," the comparator must be similar in substantially all aspects, so that it would be expected that they would be treated in the same manner. See Grappone v. Dep't of the Navy, EEOC No. 01A10667 (Sept. 7, 2001), request for recon. denied, EEOC Request No. 05A20020 (Jan. 28, 2002).

We find that CW2 is not similarly situated to Complainant due to her education and experience. A Human Resources Specialist (HRS1) stated that CW2 was employed at another Agency facility at the GS-7 level and had education to qualify her at a higher grade level, while Complainant was a GS-4 at another Agency facility and did not provide evidence of specialized experience to show that she was qualified beyond a GS-6 level. ROI 2 at 48. In addition, another Human Resources Specialist (HRS2) stated that CW2 provided responses in her application that she was qualified up to the GS-8 level, and Complainant's responses showed that she was not qualified above the GS-6 level. ROI 2 at 57-8, 125-7, 139-42.

Complainant argued that CW2 was hired as a GS-8, despite not having the requisite certification. However, HRS2 noted that this was not learned until 2015. ROI 2 at 63. Complainant corroborated that CW2 was hired in October 2013, and that CW2 stated in January or February 2016 that her certification was not from an approved facility. ROI 2 at 42. Further, HRS2 stated that grade level determinations are based on experience and education, and not on certification as a Peer Specialist. ROI 2 at 64.

We also find that CW3 was not similarly situated because she did not obtain her position in the same manner as Complainant, who applied for a Peer Support Specialist position under vacancy announcement number JP-13-KH-916772-P2P. ROI 2 at 56. HRS2 stated that CW3 was hired into a GS-5 Peer Support Apprentice position and was subsequently non-competitively converted to a GS-7 Peer Support Specialist position after she completed her Peer Support certification. ROI 2 at 62-3. HRS1 also noted that CW3 had one year of graduate education, which qualified her at the GS-7 level. ROI 2 at 51.

We find that CW2 and CW3 were not appropriate comparators because they were not similarly situated, and that Complainant did not establish a prima facie case of national origin discrimination. Accordingly, we find that Complainant did not establish that the Agency discriminated against her based on her national origin when she was not onboarded at the GS-7 grade level, or above.

Assuming, arguendo, that Complainant established a prima facie case of discrimination based on disability, national origin, race, or sex, or in reprisal for her protected EEO activity for claims 2 and 6, we find that the Agency proffered legitimate, nondiscriminatory reasons for its actions. For claim 2, S1 stated that she denied Complainant's request for mediation training because it was not related to her job duties. S1 noted that the requested training was intended for EEO Specialists, and that it was not geared toward mental health providers. S1 added that she suggested other trainings for Complainant. ROI 1 at 223.

Regarding claim 6, S1 stated that she gave Complainant a fully successful performance rating because Complainant did not provide anything in her self-appraisal that had her surpass the fully successful level. S1 stated that she rated Complainant exceptional in the element of Patient Care, but that Complainant needed an exceptional rating in all her critical elements, and at least a fully successful in her non-critical elements, to receive a rating of outstanding or exceptional. ROI 1 at 247, 249-50.

We find that Complainant has not shown that the proffered reasons were pretexts for discrimination. Complainant can establish pretext in two ways: "(1) indirectly, by showing that the employer's proffered explanation is unworthy of credence because it is internally inconsistent or otherwise not believable, or (2) directly, by showing that unlawful discrimination more likely motivated the employer." Chuang v. Univ. of Cal. Davis Bd. of Trs., 225 F.3d 1115, 1127 (9th Cir. 2000) (internal quotation marks omitted); see also McDonnell Douglas, 411 U.S. at 804-05. Here, Complainant did not provide any arguments on appeal that the proffered reasons were pretext for discrimination. As such, we find that Complainant did not establish that the Agency discriminated against her based on her disability, national origin, race, or sex, or in reprisal for her protected EEO activity, for claims 2 and 6.

Harassment

Harassment is actionable if it is sufficiently severe or pervasive that it results in an alteration of the conditions of a complainant's employment. See Enforcement Guidance on Harris v. Forklift Systems, Inc., EEOC Notice No. 915.002, at 3 (Mar. 8, 1994). To establish a claim of harassment, Complainant must show that: (1) she belongs to a statutorily protected class; (2) she 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 her 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 Humphrey v. U.S. Postal Serv., EEOC Appeal No. 01965238 (Oct. 16, 1998).

We find that Complainant belongs to statutorily protected classes based on her disability, national origin, race, sex, and protected EEO activity, and that she was subjected to unwanted verbal conduct. However, we find that Complainant did not establish that any of the complained of conduct was due to her protected classes. For example, Complainant stated that when she injured her foot, she was not offered an accommodation, while S1 offered CW1 an accommodation. Complainant stated that neither asked for an accommodation, but that white males "obtain privileges" that are not afforded to her. However, S1 stated that Complainant did not request an accommodation, and denied that there was a time when someone was granted an accommodation without requesting one. EMHL stated that CW1 was not offered a special accommodation, but that he asked for one, while Complainant never requested an accommodation. ROI 1 at 129-34, 217, 219, 282-3.

Even assuming that the incidents were based on a statutorily protected category, we find that they did not rise to the level of unlawful harassment. The Commission has held that routine work assignments, instructions, and admonishments do not rise to the level of harassment because they are common workplace occurrences. See Gray v. U.S. Postal Serv., EEOC Appeal No. 0120091101 (May 13, 2010). Unless it is reasonably established that the common workplace occurrence was somehow abusive or offensive, and that it was taken in order to harass Complainant on the basis of her protected class, we do not find such common workplace occurrences sufficiently severe or pervasive to rise to the level of a hostile work environment or harassment as Complainant alleges. See Complainant v. Dep't of Veterans Affairs, EEOC Appeal No. 0120130465 (Sept. 12, 2014). In this case, there is no evidence that the allegedly harassing incidents were abusive, offensive, or intended to harass Complainant. As such, we find that Complainant did not establish that the Agency subjected her to harassment based on her disability, national origin, race, or sex, or in reprisal for her protected EEO activity.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's finding of no discrimination based on disability, national origin, race, or sex, or in reprisal for her protected EEO activity.

The Agency's final decision, however, is MODIFIED in accordance with this decision and the ORDER below.

ORDER

Unless otherwise indicated, the Agency is ordered to complete the following remedial actions within 60 days of the date this decision is issued:

1. The Agency shall post a notice in accordance with the paragraph below.
2. The Agency shall provide in-person or interactive training to its EEO management officials in the Office of Employment Discrimination Complaint Adjudication in Washington, D.C. regarding their responsibilities concerning case processing under 29 C.F.R. Part 1614.

The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation verifying that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Office of Employment Discrimination Complaint Adjudication in Washington, D.C. 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).

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 (T0610)

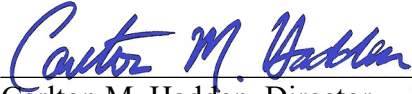
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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

August 9, 2021

Date