



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

[REDACTED]  
Zetta B.,<sup>1</sup>  
Complainant,

v.

Thomas J. Vilsack,  
Secretary,  
Department of Agriculture  
(Forest Service),  
Agency.

Appeal No. 2020003201

Hearing No. 480-2016-00041X

Agency No. FS-2015-00277

**DECISION**

Following its April 16, 2020, final order, the Agency filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) pursuant to 29 C.F.R. § 1614.403(a). On appeal, the Agency requests that the Commission affirm its rejection of an EEOC Administrative Judge's (AJ) finding of discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. The Agency also requests that the Commission affirm its rejection of the relief ordered by the AJ. For the following reasons, the Commission REVERSES the Agency's final order and REMANDS the matter for further processing.

**ISSUE PRESENTED**

The primary issue presented concerns whether the Agency subjected Complainant to discrimination on the bases of race and sex when it did not select her for the position of Supervisory Civil Engineer (Forest Engineer).

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<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.

### BACKGROUND

At the time of events giving rise to this complaint, Complainant (Asian, female) worked as a Supervisory Civil Engineer (Assistant Forest Engineer – Facilities), GS-0810-12, at the Sierra National Forest (Region 5) in Clovis, California.

She joined the Agency in May 1992 as a GS-04 and rose through the ranks. See Complainant's Hearing Testimony contained in Hearing Transcript (Day 1) at 30. As part of her career progression, Complainant underwent a rigorous licensing process to become a licensed Professional Civil Engineer in the state of California. Complainant obtained the license in 2004 after passing a national examination, a seismic examination, and a surveying examination. Complainant also obtained several Agency specific certifications. Id. at 46. Approximately three years later, Complainant reached her current position as a Supervisory Civil Engineer. Id. at 30.

In that position, Complainant was responsible for maintaining the facilities at Sierra National Forest, which consisted of over 300 structures, including buildings, road bridges, trail bridges, and major culverts. See Complainant's Hearing Testimony contained in Hearing Transcript (Day 1) at 31. She also maintained dams spread out across three national forests, including the ones at her assigned duty station at Sierra National Forest. Because Complainant was an Agency certified, state licensed Professional Civil Engineer, she was able to independently conduct inspections of roads, structures, and buildings without going through the Regional Office for approval. Id. at 46 and 49. Due to her qualifications, Complainant also served as a Level 3 Contract Officer Representative (COR), which required her to manage multi-million-dollar contracts, including safety related contracts, as well as new construction projects. Id. at 32-33. Furthermore, she participated on the budget team, and on many occasions, served as the acting Forest Engineer. As a supervisory employee, Complainant had the added responsibility of supervising/overseeing several employees and interns.

In 2009, an intern (Hispanic, male, Witness-1 (W1)) joined the Agency under the Student Career Experience Program (SCEP) and was placed with Complainant. See Complainant's Hearing Testimony contained in Hearing Transcript (Day 1) at 52. Between 2009 to 2012, Complainant mentored W1 and trained him as a (uncertified) bridge inspector and Level 1 COR. Id. at 53. Under Complainant's guidance, W1 conducted inspections of projects and reported his findings back to Complainant, who oversaw the projects as the COR. See W1's Hearing Testimony contained in Hearing Transcript (Day 2) at 224-27. During this time period, W1 also attended graduate classes to obtain his master's degree. He ultimately obtained his master's degree in 2012 and was converted from his SCEP position to a career GS-09, non-supervisory Civil Engineer position. Id. at 210. That year, the Regional Director of Engineering awarded W1 the prestigious, "Technical Engineer of the Year" award for Region 5 for his stellar work on a number of projects, which included his role in implementing a paving management system. Id. at 245.

On May 19, 2013, W1 attained the GS-11 grade level. Due to retirements and budget shortfalls that year, W1 was able to gain informal leadership experience, by serving as the unofficial supervisor for nine members of the road maintenance crew. See Report of Investigation (ROI) at 00209. In his role as the unofficial supervisor for the road crew, W1 assigned work assignments to employees and contractors and monitored their day-to-day accomplishments. See W1's Hearing Testimony contained in Hearing Transcript (Day 2) at 244-45. W1 was also responsible for reviewing and approving all travel, training, time and attendance matters for the road crew. Id. In addition to his unofficial supervisory duties, W1 administrated complex building contracts, coordinated projects with the Regional Office, and qualified as a member of the Burned Area Emergency Response Program. ROI at 000235.

On August 27, 2014, the Agency announced a vacancy for the position of Supervisory Civil Engineer (Forest Engineer), GS-0810-12/13. Both Complainant and W1 applied for the position. The Agency's Human Resources (HR) Office found Complainant to be qualified and eligible for consideration at the GS-12 and GS-13 levels. Though HR also found W1 to be qualified, HR determined that W1 was only eligible for consideration at the GS-12 level, as he did not have the requisite 12 months of experience as a GS-12, to qualify at the GS-13 level.

Thereafter, both Complainant and W1 were among a total of five candidates selected for interview. The interview panel deemed W1 to be the most qualified for the position, as he had numerous accolades and accomplishments, as well as a broad range of experience. Furthermore, the interview panel found that W1 had the best interview performance of all the candidates who were interviewed. In contrast, the interview panel found Complainant's leadership skills and interview performance to be lacking compared to W1. The interview panel ultimately forwarded W1 to the selecting official, who selected W1 for the Forest Engineer position. Complainant was notified of her non-selection on December 15, 2014. Complainant subsequently contacted the EEO Office on January 13, 2015, to begin the EEO process.

On April 30, 2015, Complainant filed a formal EEO complaint alleging that the Agency discriminated against her on the bases of race (Asian) and sex (female) when:

1. On December 15, 2014, she was notified by her supervisor that she was not selected for the GS-0810-12/13, Supervisory Civil Engineer (Forest Engineer) position, advertised under Vacancy Announcement Number: 14-0515-52425D-mds;
2. In 2012, 2013, and on April 2, 2014, and other unspecified dates, she was denied opportunities to complete a detail as a Forest Engineer; and
3. On several dates, she was subjected to various acts of harassment, including but not limited to:
  - a. In June 2014, management notified her male coworker of a vacancy announcement for a Forest Engineer position, but failed to provide proof that the same notice was sent to her; and

- b. On November 20, 2014, a management official expressed surprise that her colleague was not selected for a leadership program, given that he was Hispanic.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing.

The Agency then submitted a motion for a decision without a hearing, wherein the Agency argued that claims 2 and 3 should be dismissed due to Complainant's failure to timely raise these claims. The Agency also argued that claims 3(a) and 3(b) should be dismissed for failure to state a claim, as the record showed that Complainant was not harmed by either of the alleged incidents and that the alleged comment in claim 3(b) was not directed at her and did not reference her sex and/or race. Furthermore, the Agency asserted that it had legitimate, nondiscriminatory reasons for taking the alleged actions in claims 1, 2, and 3, and that Complainant's harassment claim must fail because the alleged actions were not sufficiently severe or pervasive to constitute a hostile work environment. However, the AJ assigned to the case summarily denied the Agency's motion and held a two-day hearing on February 11-12, 2020.

Following the hearing, the AJ issued a decision on March 13, 2020, wherein the AJ concluded that Complainant had been subjected to discrimination on claims 1, 2, and 3(b). As for claim 3(a), the AJ determined that the probative evidence failed to show that Complainant had been discriminated against as alleged.

In finding discrimination on claim 1, the AJ determined that Complainant was plainly superior to W1 because the record showed that Complainant qualified for the GS-12/13, Forest Engineer position as a GS-13, whereas W1 only qualified at the GS-12 level. The AJ found that this factor alone was enough to refute the Agency's claim that W1 was more qualified than Complainant. Furthermore, in finding Complainant to be plainly superior to W1, the AJ noted that Complainant had certifications, skills, and experience that W1 had not yet obtained, such as a Professional Civil Engineer license. In so finding, the AJ emphasized that W1 admitted to asking Complainant "many, many" questions even after he had been promoted to a higher-grade level than Complainant. Having reviewed the record, the AJ determined that W1 had misrepresented his resume by embellishing the nature of his supervisory experience and had falsely created the impression that he had years of experience as a GS-11 or higher, when in reality, most of his experience was at the GS-03 to GS-09 levels. While the AJ acknowledged the Agency's "valiant effort" to cast W1 as the best qualified candidate by highlighting his allegedly superior interview performance, the AJ determined that such assertion lacked credibility because the record showed that Complainant's "alleged communication difficulties [did] not impact her ability to train and have never resulted in counselings or discipline." The AJ concluded that the panel's repeated references to poor communications skills and public speaking skills when combined with the panel's repeated assurances that this "ha[d] nothing to do with her accent" was indicative of animus towards Asians.

On April 16, 2020, the Agency issued a final decision rejecting the entirety of the AJ's decision. In rejecting the AJ's decision, the Agency failed to simultaneously file an appeal with the Commission in accordance with 29 C.F.R. § 1614.110(a); however, the Agency submitted its appeal on April 22, 2020, within 40 days of receiving the AJ's final decision.<sup>2</sup> The instant appeal followed.

### CONTENTIONS ON APPEAL

On appeal, the Agency reiterates its prior contention that claims 2 and 3 should be dismissed due to Complainant's failure to timely raise these claims. The Agency also reiterates its contention that claim 3(b) fails to state a claim because the alleged comment was not directed at Complainant and was not about her. As for the merits of claim 1, the Agency argues that the AJ erred in finding Complainant to be plainly superior to W1 by virtue of qualifying for the Forest Engineer position at the GS-13 level. In so arguing, the Agency asserts that the AJ's finding "wrongly equates GS levels with qualifications and would have the negative policy implication of an agency never being able to advertise a position at multiple GS levels without risking exposure to a finding of discrimination if hiring someone at the lower GS level advertised."

Additionally, the Agency contends that the AJ misplaced the burden of demonstrating discrimination on the Agency. In this regard, the Agency emphasizes that it is Complainant who has the burden of showing that she was plainly superior to W1. Specifically, the Agency vehemently maintains that the record clearly shows that W1's qualifications were superior to Complainant, given his breadth of experience in managing budgets, fleet vehicles, bridges, roads, and facilities. While the Agency concedes that W1 was not a Professional Civil Engineer during the relevant period, the Agency emphasizes that the vacancy announcement for the Forest Engineer position did not require applicants to have that qualification. As for the AJ's finding that W1 had embellished the nature of his supervisory experience, the Agency argues such finding was unsupported, as the record shows that W1 did indeed have supervisory duties over the road crew, even if his official title did not reflect his supervisory status. The Agency also takes issue with the AJ's finding that W1 embellished his years of experience and argues that no reasonable person would view W1's resume as showing that he served as a GS-11 throughout his entire career, as step levels do not remain static for four or five years. In this vein, the Agency maintains that the AJ's emphasis on W1's short tenure with the Agency compared to Complainant's decades of experience is inconsistent with established Commission case law that holds that agencies may select candidates with fewer years of experience. Finally, the Agency argues that the AJ's disregard for W1's superior interview performance is also contrary to the law, as Commission precedent clearly establishes that agencies can place importance on interview performance. The Agency emphasizes that there is no evidence whatsoever to show that Complainant had been subjected to discrimination.

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<sup>2</sup> Though 29 C.F.R. § 1614.110(a) requires agencies to issue a final order within 40 days of receipt of the AJ's decision, the AJ extended this period by 20 days and gave the Agency 60 days to issue a final order.

Complainant opposes the Agency's appeal for the reasons stated in her May 18, 2020 appeal of the Agency's final order and her June 12, 2020 opposition to the Agency's appeal. In this regard, Complainant requests that the Commission reverse the Agency's final order and enter judgment in her favor on claims 1, 2, and 3(b).<sup>3</sup>

### STANDARD OF REVIEW

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held.

An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony, or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See EEOC Management Directive 110, Chapter 9, at § VI.B. (Aug. 5, 2015).

### ANALYSIS AND FINDINGS

Our analysis begins with claim 1, wherein Complainant alleged that the Agency subjected her to discrimination when she was notified by her supervisor on December 15, 2014, that she had not been selected for the GS-0810-12/13, Supervisory Civil Engineer (Forest Engineer) position, advertised under Vacancy Announcement Number: 14-0515-52425D-mds.

For Complainant to prevail on her claim of disparate treatment, she must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Complainant must initially establish a prima facie case by demonstrating that she was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Co. v. Waters, 438 U.S. 567, 576 (1978). Proof of a prima facie case will vary depending on the facts of the particular case. McDonnell Douglas, 411 U.S. at 804 n. 14. 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). Complainant must ultimately prove, by a preponderance of the evidence, that the agency's explanation is pretext for discrimination. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 143 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993); Burdine, 450 U.S. at 256.

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<sup>3</sup> Complainant does not dispute the finding of no discrimination on claim 3(a). We also note that the Agency filed an opposition to Complainant's appeal, wherein the Agency essentially reiterated its reasons for not selecting Complainant.

Upon careful review of the AJ's decision and the evidence of record, as well as the parties' arguments on appeal, we find substantial evidence in the record to support the AJ's finding of discrimination on claim 1. In this regard, we initially find that Complainant has established a prima facie case of discrimination, as the record shows that the Agency selected a Hispanic male with significantly less experience than Complainant (Asian, female).<sup>4</sup> See Dixon v. Dep't of Justice, EEOC Appeal No. 07A20008 (Aug. 15, 2002) (holding that a prima facie case can be established by presenting facts that, if unexplained, would reasonably give rise to an inference of discrimination).

Notwithstanding the AJ's finding that Complainant was plainly superior to W1 solely by virtue of qualifying at the GS-13 level, we also find sufficient evidence of pretext in the record to meet the low threshold of the substantial evidence standard of review. Here, our review of the record suggests many of the accomplishments that the Agency cited as evidence of W1's superior qualifications were performed while W1 was under Complainant's supervision. For example, when Complainant's attorney asked W1 to explain the claim in his resume that he saved the government \$1.8 million, W1 clarified that he *assisted* Complainant with performing engineering and survey work, as he could not independently perform those duties himself because he was not a licensed Professional Civil Engineer. See Hearing Transcript (Day 2) at 222-27. We note that W1 was not a licensed Professional Civil Engineer because he failed a fundamental engineering examination known as the "Engineering in Training" examination. *Id.* at 215. While we are mindful that the vacancy announcement did not require applicants to be a licensed Professional Civil Engineer, we still find that qualification to be probative, particularly for a position officially titled as GS-12/13, Supervisory Civil Engineer (Forest Engineer). Moreover, as noted in the AJ's decision, the record shows that W1 still regularly relied on Complainant for help even after he had been promoted above Complainant's grade level.

Having reviewed the record, we also see no basis to reverse the AJ's overall credibility determinations, as we share the AJ's concerns regarding the manner in which W1 represented his qualifications, such as indicating in his resume that he independently performed the work, when in reality, he assisted Complainant and others. See Hearing Transcript (Day 2) at 222-27. To the extent that W1's experience included budget experience, we note that Complainant served on the budget team for the entire Sierra National Forest. As for the Agency's contentions regarding the AJ's alleged failure to properly consider the candidates' interview performance, even if we assume *arguendo* that W1 performed better than Complainant on his interview, we still find substantial evidence to support the AJ's conclusion that Complainant was plainly superior to W1, given the totality of her qualifications, including the comparative breadth of her supervisory experience. Given that there is ample evidence to meet the low threshold of the substantial evidence standard of record, we find that the Agency improperly rejected the AJ's finding of discrimination on claim 1.

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<sup>4</sup> At this stage, we make no judgments as to the quality of W1's experience, as compared to Complainant's experience. That, we save for our analysis on pretext.

As we are finding discrimination on claim 1, concerning Complainant's non-selection, we decline to address the Agency's contentions regarding claims 2 and 3, as Complainant would not be entitled to other remedies.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency's final order and REMAND the matter to the Agency for further processing.

### ORDER

The Agency shall take the following remedial actions.

1. Within **thirty (30) calendar days** of the date this decision is issued, the Agency shall promote Complainant to a substantially equivalent, permanent, GS-13, Supervisory Civil Engineer (Forest Engineer) position within her commuting area, retroactive to December 15, 2014. The Agency shall retroactively promote Complainant to the next appropriate step and/or grade, respectively, if appropriate, on the one-year anniversary of her promotion and then on an annual basis or according to Agency policy;
2. Within **sixty (60) calendar days** of the date this decision is issued, the Agency shall determine the appropriate amount of benefits with interest, if applicable, due Complainant from December 15, 2014 to the effective date of her promotion to the Supervisory Civil Engineer (Forest Engineer) position. Complainant shall cooperate in the Agency's efforts to compute the amount of benefits due and shall provide all relevant information requested by the Agency. If there is a dispute regarding the exact amount of benefits, the Agency shall issue a check to Complainant for the undisputed amount within sixty (60) calendar days of the date the Agency determines the amount it believes to be due. Complainant may petition for enforcement or clarification of the amount in dispute as outlined in the section titled, IMPLEMENTATION OF THE COMMISSION'S DECISION;
3. Within **ninety (90) calendar days** of the date this decision is issued, the Agency shall complete a supplemental investigation concerning Complainant's entitlement to compensatory damages and determine the amount of compensatory damages due Complainant in a final decision with appeal rights to the Commission. The Agency shall pay this amount to Complainant within **thirty (30) calendar days** of the date of the determination of the amount of compensatory damages. If there is a dispute regarding the exact amount of compensatory damages, the Agency shall issue a check to Complainant for the undisputed amount. Complainant may petition for enforcement or clarification of the amount in dispute. The petition for clarification or



enforcement must be filed with the Compliance Officer, as outlined in the section titled, IMPLEMENTATION OF THE COMMISSION'S DECISION;

4. Within **ninety (90) calendar days** of the date this decision is issued, the Agency shall provide eight hours of training to the members of the interview panel and the selecting official. The training shall address the Agency's obligations under Title VII of the Civil Rights Act of 1964; and
5. Within **ninety (90) calendar days** from the date this decision is issued, the Agency shall consider disciplining the members of the interview panel and selecting official. The Commission does not consider training to be disciplinary action. The Agency shall report its decision to the Compliance Officer. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If these individuals have left the Agency's employ, the Agency shall furnish documentation of their departure dates.

#### POSTING ORDER (G0617)

The Agency is ordered to post at the Sierra National Forest (Clovis, California). 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 thirty (30) calendar days of the date this decision was issued, and shall remain posted for sixty (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 ten (10) calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

#### ATTORNEY'S FEES (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of receipt of this decision. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

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

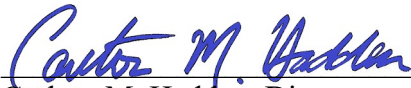
#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

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

September 2, 2021

Date