



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

[REDACTED]
Ken M.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs
(Veterans Health Administration),
Agency.

Appeal No. 2020004868

Hearing No. 520201900450X

Agency No. 200H06702018104028

DECISION

Complainant timely appealed, pursuant to 29 C.F.R. § 1614.403, from the Agency's [insert date] Final Order 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., and Section 501 of the Rehabilitation Act of 1973 ("Rehabilitation Act"), as amended, 29 U.S.C. § 791 et seq.

BACKGROUND

At the time of events giving rise to this complaint, Complainant was employed by the Agency as a Community Care Medical Support Assistant ("MSA"), GS-5, for Medical Records Retrieval, within the Business Office at the Syracuse VA Medical Center in Syracuse, New York.

On August 12, 2018, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of national origin (European, Croatian), sex (male), disability², and reprisal for engaging in protected EEO activity³ when:

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.

1. Between March 2018 and May 2018, his second level supervisor (“S2”) subjected him to a hostile work environment/harassment by: constantly threatening to fire him, raising accusations about statements he made to her, having negative reports made against him, and subjecting him to “constant badgering,” accusing him of not working while sitting at his desk, and, treating him differently than female employees by making demeaning comments to make him seem less intelligent, and speaking to him in a condescending manner.
2. On May 8, 2018, he was terminated from the Federal Service during his probationary period.

The Agency accepted the complaint and conducted an investigation. The evidence developed during the investigation shows that on March 1, 2018, Complainant received a notice confirming that he had been noncompetitively appointed to the position of MSA, effective March 18, 2018, and subject to a 1 year probationary period. Complainant’s first level supervisor (“S1”) (male) was the Business Office Operations Manager, his second level supervisor (“S2”) (female) was the MSA Supervisor, and, his third level supervisor (“S3”) (male) was the Chief of the Business Office.⁴ Initially, Complainant reported to the Lead MSA in Documents Retrieval, as did the rest of his MSA team. However, S2 began working with him directly, including weekly meetings. S2 testified that she “provided [Complainant] continuous feedback on his performance and conduct. Feedback included was both positive and negative, and support for performance improvement was provided.”

In his affidavit, Complainant testified that the performance standards he was being held to “had more to do with me as a person than they did with my assigned duties. I was treated more as a mentally disabled individual rather than a member of a team.” He alleged that S2 did all the talking at their performance meetings, and her tone and language were condescending. He testified, “[m]ost of the information and instructions I received were verbal and the frequency of the instructions and information made it difficult to retain or implement any useful part of the information.” Complainant indicated that he was set up to fail at his assignments because he would receive conflicting instructions. For instance, he was told to answer the phone, but when several veterans became aware of his direct extension and called him repeatedly, he was

² Post-Traumatic Stress Disorder (“PTSD”), light sensitivity, irritable bowel syndrome, attention deficit disorder (“ADD”), back pain, cervical pain, disc dysplasia, chronic depression, sleep apnea, insomnia, 80% “totally and permanently disabled due to service-connected disabilities.”

³ S2 was aware Complainant contacted an EEO Counselor no later than April 27, 2018, and S3 became aware no later than April 30, 2019. However, Complainant attributes his termination to retaliation for reporting Management’s favorable treatment of female MSAs to HR, Complainant alleges that S2 and S3 were aware of this activity because S3 allegedly stole his notes tracking the late arrivals and long breaks of female MSAs, and because he told them.

⁴ S1, S2, and S3 all identify their national origin as the United States and have no disabilities.

instructed not to answer the phone. Alternately, he would be accused of not working, yet the work he was provided had already been completed.

On April 27, 2018, Complainant emailed an EEO counselor, stating, "I would like to file a complaint for hostile work environment." He explained that the president and vice president of the Union, who he notified originally, suggested he contact EEO, as he attributed the hostile work environment to his sex.⁵ He recounted S2's conflicting instructions and alleged that S2 "repeatedly threatened and reprimanded [him] for things [he] often have no control over." When he reported S2's treatment to S3, he was threatened with termination, and S3 allegedly responded that Complainant "simply needed to do what [S2] says." According to Complainant, management raised concerns regarding his performance that were "artificial and superficial" and tended to "focus so much on micromanagement and control of every minutiae that I do not feel that my job is safe." On April 30, 2018 the EEO Manager emailed Complainant with information about reporting harassment and stating that she is awaiting a return call from S2 to schedule a meeting with her. Thus, S2 was aware of Complainant's EEO activity by April 30, 2018.

On May 1, 2018, Complainant emailed the EEO Counselor, while copying the president and vice president of the Union, three times with respect to an incident where S2 asked Complainant why he had a walkie talkie in a staff meeting. Complainant first emailed at 11:00 am, requesting a meeting with the Director, and accusing S2 of "attacking" him again by asking him to explain why he had a walkie talkie. Complainant explained that he objected to the request because S2 "refused to tell me who said it and why they were concerned. She believes that people have the right to be concerned and I have an obligation to explain myself." This is "absurd. As an employee or as a veteran at a veterans hospital I should not be treated like this." Ten minutes later, he emailed again, stating that S2 called S3, and asked Complainant to have a closed door meeting with them. S2 and S3 denied Complainant's demands to have a witness present at the meeting, another supervisor noted that Complainant had the right to have a union official present.

Around 2:00 pm, the president and vice president of the Union, S2, S3, a supervisor from another office, and Complainant met. Complainant followed up in an email to the EEO Counselor, and the union president and vice president, explaining that he encountered S3 in the hallway after the meeting and apologized. According to Complainant's email, S3 informed him that he spoke with S2 and to "just let the dust settle" S3 allegedly made a comment that they were under the impression Complainant was starting from a "clean slate," however, Complainant states, "I was not notified of this clean slate and have been under constant pressure, stress, and anxiety that I would lose my job. And I have been doing everything I could to include showing my supervisors that I have been doing my job as the information has been falling on deaf ears...threats and badgering continued daily." Complainant was informed he could work in the other Manager's section until another job within the agency, for which he had been selected, was available.

⁵ Complainant also alleged the harassment was due to his status as a veteran, however veteran status is not a protected class under any of the EEO statutes. Complainant did not raise national origin or disability as bases for discrimination at this point.

The May 1, 2018 incident was documented by multiple reports of contact, including two witnesses that were not identified by Complainant as responding management officials in this complaint. The Lead Document Recovery MSA's report of contact recalled that around 11:00 am on May 1, 2018, she could hear CP from S2's office, "in an almost sarcastic but aggressive tone ask [S2] several times "who was concerned or was worried" [Complainant] then, very aggressively and loud shouted "I am a Veteran, in a Veteran hospital, what do you think I am going to do bomb the F*ing place" and then stomped back to his work station." An MSA supervisor who shared an office with S2 and was present for the incident, reported Complainant's language as "vulgar and aggressive," and his tone as "extremely threatening and [it made her] feel extremely uncomfortable both during and following the conversation." She recounted that "the purpose of the discussion was to ask [Complainant] if he had a walkie talkie with him. He indicated that he did not, [S2] asked if he did that morning as other staff recognized this and were concerned." Complainant responded by asking who was concerned, and when S2 wouldn't say, he "indicated to her that it was none of their business and that he didn't have to answer the question." She also confirmed that Complainant "made a comment about others potentially thinking he "had a bomb or something" Then, Complainant "storm[ed] out of the office telling [S2] that he didn't need to "fucking deal with it."

Notably, S3's report of contact indicates awareness of Complainant's EEO activity, stating, "I also told [Complainant] that the fact that he disagreed with [Management's] assessment of his performance did not constitute him being discriminated against." S3 laments in the record that Complainant did not simply explain what happened. Complainant had a reasonable explanation, as he found the walkie talkie in the men's restroom, but before he could return it, he had to attend a team meeting.

A May 3, 2018, email from Complainant to the EEO Counselor, with the president and vice president copied, reveals that Complainant was told to no longer communicate with S2, or the Lead MSA. Instead, Complainant would report to S1 going forward. Complainant's testimony in the record indicates that he had a more cordial working relationship with S1, who, according to Complainant, agreed with Complainant's observations that he was given assignments where the work had already been completed.

On May 7, 2018, S3 submitted a Request or Removal to Human Resources, having previously discussed the matter with an HR Specialist a few weeks earlier. His stated reason for the termination was that S2 and the Lead MSA brought "numerous reports of poor performance and conduct" to his attention, that Complainant's "performance and conduct were consistently below a respectable level," and that Complainant admitted to falling asleep at his work station. S3 explained that while typically, MSAs learn from one on one instruction with an MSA Lead, S2 stepped in to train Complainant, as he "struggles following directions and repeatedly deviates from established department processes." S3 listed examples of undesirable conduct, including the May 1, 2018 incident, and how, on April 20, 2018, Complainant and a coworker were discussing the community refrigerator in the common area, within earshot of workstations where conversations between Business Office staff and Veterans took place to coordinate Veterans' care. Complainant's "vulgar and unprofessional language could be easily overheard" by a

Veteran during a phone call with an MSA, to such an extent that S2 had to intervene. Later that day, when S2 counseled Complainant that the conversation was unprofessional, Complainant told S2 that she could not tell him what he can and cannot say based on freedom of speech.

On May 8, 2018, S3 handed Complainant a Memorandum entitled Termination during Probationary period, for, among other things, failure to follow directions, repeatedly deviating from established department processes, and exhibiting undesirable conduct and behavior, including freely using profanity and vulgar language. The May 1, 2018 incident was listed in Complainant's termination memo as an example of Complainant's "unacceptable behavior," specifically, verbally abusive remarks directed toward his supervisors. According to the memo, when S2 asked Complainant about the walkie talkie, he "immediately became defensive and hostile, saying, *"I am a Veteran in a Veteran's Hospital, what do they think I am going to bomb this fucking place?"* or words to that effect. When she attempted to explain to you that it was her responsibility to address staff concerns you became angry and said, *"Fuck you – no It's not, this is bullshit."* or words to that effect. When [S1] arrived in an attempt to deescalate the situation, you said to him, *"I don't give a fuck what you want, this Is bullshit."* or words to that effect." (emphasis original).

After its investigation into the complaint, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission ("EEOC" or "Commission") Administrative Judge ("AJ"). Complainant timely requested a hearing. Once the parties were provided an opportunity to engage in discovery, along with several extensions, the Agency submitted a motion for a decision without a hearing (summary judgment). Over Complainant's objection, the AJ issued a decision by summary judgment in favor of the Agency on August 3, 2020.

The Agency issued its Final Order adopting the AJ's finding that Complainant failed to prove discrimination as alleged. The instant appeal followed.

ANALYSIS AND FINDINGS

The Commission's regulations allow an AJ to grant summary judgment when they find that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). An issue of fact is "genuine" if the evidence is such that a reasonable fact finder could find in favor of the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A fact is "material" if it has the potential to affect the outcome of the case. In rendering this appellate decision, we must scrutinize the AJ's legal and factual conclusions, and the Agency's Final Order adopting them, *de novo*. See 29 C.F.R. § 1614.405(a)(stating that a "decision on an appeal from an Agency's final action shall be based on a *de novo* review..."); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110), at Chap. 9, § VI.B. (as revised, August 5, 2015)(providing that an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed *de novo*).

In order to successfully oppose a decision by summary judgment, a complainant must identify, with specificity, facts in dispute either within the record or by producing further supporting evidence, and must further establish that such facts are material under applicable law. Such a dispute would indicate that a hearing is necessary to produce evidence to support a finding that the agency was motivated by discriminatory animus. Here, however, Complainant has failed to establish such a dispute. Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable fact-finder could not find in Complainant's favor.

No AJ Error/Abuse of Discretion

The AJ shall have the power to regulate the conduct of a hearing. 29 C.F.R. § 1614.109(e). The AJ has full responsibility for the adjudication of the complaint. EEO Management Directive 110 ("MD-110") (Aug. 5, 2015), Ch. 7 § III(D). This responsibility gives the AJ wide latitude in directing the terms, conduct, or course of EEOC Administrative hearings. Douglas F. v. Equal Employment Opportunity Commission, EEOC Appeal No. 0120122183 (Dec. 4, 2015); Andy B. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120131912 (Oct. 28, 2015); Complainant v. United States Postal Serv., EEOC Appeal No. 0120122616 (Jun. 23, 2015); Turner v. United States Postal Serv., EEOC Request No. 0520110239 (Apr. 12, 2011); Ponisciak v. Soc. Sec. Admin., EEOC Appeal No. 0120082062 (Apr. 23, 2010); Clarke v. Dep't of the Army, EEOC Appeal No. 01A33392 (May 25, 2004); Bey v. United States Postal Serv., EEOC Appeal No. 01A15147 (Dec. 12, 2002); Duff v. HUD, EEOC Appeal No. 01A15239 (Dec. 21, 2001).

On appeal, Complainant asserts that the AJ committed an "egregious error" by failing to include timely introduced email evidence, and "preventing" discovery. We agree that the record could have been further developed, perhaps with additional testimony from parties that were not responding management officials, such as S1 and the Lead MSA, or evidence related to Complainant's performance. However, Complainant was provided an opportunity to obtain statements or otherwise further develop the record through discovery and failed to do so. See EEOC's Management Directive (MD)-110, at Ch. 6, § XI and Ch. 7, § I. The AJ properly determined that despite the lack of discovery, the record was sufficiently developed to allow for a decision without a hearing. See 29 C.F.R. § 1614.108(b) (an appropriate factual record is "one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred"). The ROI contains affidavit testimony from Complainant, S2, S3, and HR, as well as Reports of Contact regarding the May 1, 2018 incident, and data and organizational charges for the Business Office. Documents in the record include Complainant's offer letters, position description, the Request for Removal, and the Termination Memo. See, e.g. Robinson v. United States Postal Serv., EEOC Appeal No. 0120101782 (Aug. 27, 2010) (AJ did not abuse discretion when AJ did not sanction the agency after it did not respond to the complainant's discovery requests because the documents in complainant's discovery request were already provided in the ROI, and complainant's other requests were outside the scope of the case, and finding the ROI was sufficiently developed and contained appropriate evidence for a determination on the complainant's claims).

We find no abuse of discretion or error by the AJ. The record reflects that rather than “preventing” discovery, the AJ provided Complainant with instructions on the discovery process on multiple occasions, and extended the deadline for Complainant. Significantly, as the Agency points out in response to Complainant’s appeal, the record includes the emails Complainant referenced from April 27 and 30, 2018 and May 1, and 3, 2018. Given Complainant’s emphasis on this evidence in particular, we discussed the emails at length in the previous section.

Claim 1 – Harassment/Hostile Work Environment

To prove his harassment claim, Complainant must establish that he 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 his prior EEO activity. Only if Complainant establishes both hostility and 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 (Jun. 18, 1999).

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We note that Title VII is not a civility code. Rather, it forbids “only behavior so objectively offensive as to alter the conditions of the victim's employment.” Oncale v. Sundowner Offshore Serv., 523 U.S. 75, 81 (1998). Not every unpleasant or undesirable action which occurs in the workplace constitutes an EEO violation. Bernard S. v. Dep’t of the Treas., EEOC DOC 2020003782 (Aug. 24, 2021) citing, Shealey v. EEOC, EEOC Appeal No. 0120070356 (Apr. 18, 2011) citing Epps v. Dep’t of Transp., EEOC Appeal No. 0120093688 (Dec. 19, 2009).

Even considering the evidence in a light most favorable to Complainant (i.e. the versions of events as described in the emails he provided for the record), Complainant’s allegations involve routine work assignments, instructions, and admonishments, which are all “common workplace occurrences” that do not rise to the level of harassment. See Gray v. United States Postal Serv., EEOC Appeal No. 0120091101 (May 13, 2010) citations omitted. To the extent Complainant alleges that he was singled out and subjected to micromanagement, we have previously found similar claims, while unpleasant, are also “common workplace occurrences.” See Gormley v. Dep’t of the Interior, EEOC Complaint No. 01973328 (Feb. 18, 2000) (finding the complainant’s allegation that her supervisor monitored her work duties and time in and out of the office more closely than her coworkers amounted to a common workplace occurrence).

It is also well established that instances of a supervisor questioning an employee with respect to their duties, even if done in a confrontational manner, is a “common workplace occurrence.” See Agnus W. v. United States Postal Serv., EEOC Appeal No. 0120160826 (Mar. 23, 2016) citing Carver v. United States Postal Serv., EEOC Appeal No. 01980522 (Feb. 18, 2000). For instance, asking an employee who does not typically carry a walkie talkie, and does not require one as part of their work duties, why they brought a walkie talkie to a meeting does not constitute harassment. Likewise, it does not constitute harassment if a supervisor declines to explain why they are directing an employee to complete a task within the scope of their work duties. *Id.*, see also, Dewitt L. v. Dep’t of the Navy, EEOC Appeal No. 0120160682 (May 3, 2016) (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.”)

Claim 2 – Termination During Probationary Period

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

A probationary employee may be terminated at any time based on their work performance or conduct during the probationary period under Office of Personnel Management (“OPM”) regulations. See 5 C.F.R. § 315.804, see also Harmon v. Dep’t of Commerce, EEOC Appeal No. 01A33155 (Sept. 11, 2003). Consistent with these regulations, the Commission has long held that probationary employees are “subject to retention, advancement, or termination at the

discretion of an agency so long as these decisions are not based on a protected category.” Tristan W. v. United States Postal Serv., EEOC Appeal No. 0120152084 (Jul. 11, 2017) citing Complainant v. Dep’t of the Treas., EEOC Appeal No. 0120132983 (Jun. 10, 2015), Coe v. Dep’t of Homeland Sec., EEOC Appeal No. 0120091442 (Oct. 7, 2011); Kaftanic v. United States Postal Serv., EEOC Appeal No. 01882895 (Dec. 27, 1988), see also Chadwick S. v. Dep’t of Homeland Sec., EEOC Appeal No. 0120152446 (Dec. 8, 2017).

Here, the Agency cites both work performance and conduct as its legitimate nondiscriminatory reason for terminating Complainant’s employment during his probationary period. We see minimal evidence in the record with respect to Complainant’s performance. For instance, there is no documentation that Complainant was provided with conflicting instructions as alleged, or documentation of his weekly counseling meetings with S2. Regardless, there is ample evidence to support the Agency’s rationale concerning Complainant’s conduct. The VA Handbook 5021 (Apr. 15, 2002) provides that an Agency’s decision to terminate an employee for reasons that are not based solely on unacceptable performance, the conduct-related reasons must be supported by a preponderance of the evidence, however, this only applies where the employee already completed their 1 year probationary period. As a probationary employee, Complainant’s conduct on May 1, 2018, easily meets the low bar for termination of a probationary employee.

Moreover, Complainant has not shown that the Agency’s actions were pretext for discrimination on the bases of his membership in protected classes. Complainant testified that female MSAs, including the Lead MSA, “frequently used profanity as a mode of emotional expression among each other and to clients on the phone. But when I said that the way I was being treated was bullshit, and that it was unfair, I got fired.” S3 testified that the Lead MSA was counseled on professionalism, but that her actions did not warrant further discipline, as she had not engaged in repeated instances of misconduct. We note that there is no evidence that the referenced female employees directed vulgar language at their first and third level supervisors in an “aggressive” manner or refused when asked by their supervisor not to use such language in a public area. However, even assuming the language was used in an identical context as Complainant, none of the female employees were probationary employees. We have previously established that there is no expectation that a probationary employee would be subject to the same disciplinary action as a non-probationary coworker, even if they committed the same infraction. See Tristan W. v. United States Postal Serv., EEOC Appeal No. 0120152084 (Jul. 11, 2017). While the result may appear harsh in certain instances, it is not evidence of discriminatory motive.

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 Final Order adopting the AJ’s decision.

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 their request for reconsideration, and any statement or brief in support of their request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit their 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 their request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the request for reconsideration.** The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

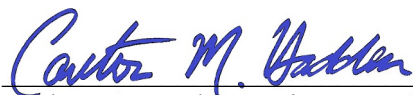
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by their 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

October 18, 2021

Date