



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

[REDACTED]
Amina W.,¹
Complainant,

v.

Merrick B. Garland,
Attorney General,
Department of Justice
(Federal Bureau of Prisons),
Agency.

Appeal No. 2021000697

Hearing No. 420-2017-00084X

Agency No. BOP-2016-0324

DECISION

Following its November 5, 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 partial 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.

BACKGROUND

During the period at issue, Complainant worked as a Correctional Treatment Specialist, GS-11, at the Agency's Federal Correctional Institution in Aliceville, Alabama.

On February 5, 2016, Complainant filed a formal EEO complaint claiming the Agency discriminated against her based on race (Black), sex (female), and in reprisal for prior protected EEO activity 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. from October 2015 to January 21, 2016, the Associate Warden, management, and co-workers created a hostile work environment;
2. the Associate Warden threatened to file a defamation of character suit against Complainant;
3. Complainant was excluded from the Community Relations Board meeting;
4. Complainant was placed under investigation;
5. Complainant was asked to leave a Department Head meeting; and
6. Complainant was threatened with being written up for failure to report.

After the investigation of the claims, the Agency provided a copy of the report of investigation and notice of right to request a hearing before an AJ.

Complainant timely requested a hearing. On July 17, 2017, the Agency issued a motion for a decision without a hearing.

On May 1, 2019, the assigned AJ (AJ1) issued an order granting in part the Agency motion for a decision without a hearing. In the order, AJ1 categorized Complainant's complaint into three essential claims which consisted of:

- a hostile work environment claim (claims 1 – 6),
- a *per se* reprisal claim (claim 2), and
- discriminatory acts of alleged disparate treatment (claims 3 – 6).

AJ1 granted summary judgment in favor of the Agency for the hostile work environment claim and the disparate treatment claims identified as 3, 5 and 6. However, regarding claims 2 and 4, AJ1 granted the Agency's motion only for the basis of race. A final July 30, 2019 summary judgment decision by the AJ confirmed the finding of no discrimination on these claims.

Also, on May 1, 2019, AJ1 issued a notice of intent to issue a partial decision without a hearing *in Complainant's favor*. AJ1 proposed that there was sufficient evidence in the record to issue a decision without further hearing concluding unlawful retaliation had been established in claims 2 and 4.

On August 13, 2020, after receiving responses to the notice of intent from both Complainant and the Agency, a newly assigned AJ (AJ2) issued an interim decision finding that there was sufficient undisputed evidence in the record to conclude Complainant was subjected to retaliatory discrimination in claims 2 and 4, and Complainant was entitled to compensatory damages. AJ2 incorporated AJ1's findings in the notice of intent in reaching this determination.

Regarding relief, AJ2 issued a separate September 25, 2020 decision on damages. AJ2 rejected Complainant's request for \$75,000 in non-pecuniary compensatory damages and instead, awarded Complainant \$7,500. AJ2 denied Complainant's request for the restoration of 50 hours of sick leave she alleged to have taken due to the Agency's retaliatory actions. Finally, AJ2 reduced Complainant's request for \$13,251.75 attorney's fees (consisting of 23.75 billable hours) by 33 percent and awarded Complainant \$8,878.67 in attorneys' fees.

On November 5, 2020, the Agency issued a final order rejecting AJ2's finding of retaliation on claims 2 and 4, as well as the award of damages, and filed the instant appeal.

On appeal, the Agency specifically rejects AJ2's finding that Complainant was unlawfully retaliated against when she was allegedly subjected to an investigation (claim 4). The Agency argues that the record supports a determination that the Agency never placed Complainant under investigation during the relevant period at issue, and that, therefore, Complainant cannot establish a *prima facie* case of retaliation. Consequently, the Agency requests that the Commission reduce the \$7,500 award in non-pecuniary compensatory damages to an amount not exceeding \$3,900.

The Agency further argues that a portion of the attorney billable hours that were submitted improperly included eight (8) hours of work conducted by an attorney who was not the attorney of record on April 13, 2017, August 25, 2017, August 31, 2017, and September 15, 2017. Because these hours occurred before Complainant's legal counsel filed the September 20, 2017 Notice of Appearance, the Agency argues that payment of these hours is impermissible. The Agency further argues that AJ2 arbitrarily reduced the attorney's fee by 33 percent and reasons that the attorney's fees should have been reduced by 83 percent totaling to \$1,546.62 in attorney's fees.

In response to the Agency's appeal, Complainant argues, through counsel, that the record supports the AJ's determination that she was subjected to retaliatory discrimination when she was placed under investigation. Complainant further argues that the \$7,500 in non-pecuniary compensatory damages was appropriate given the emotional and physical harm she suffered due to the Agency's retaliation. Complainant also argues that the AJ's award of \$8,878.67 in attorneys' fees was reasonable and Complainant seeks additional \$5,801.25 in attorneys' fees to cover the extra 9.75 hours her attorney spent preparing the brief for the instant appeal.

ANALYSIS AND FINDINGS

The Commission's regulations allow an AJ to issue a decision without a hearing upon finding that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). The U.S. Supreme Court held summary judgment is appropriate where a judge determines no genuine issue of material fact exists under the legal and evidentiary standards. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a summary judgment motion, the judge is to determine whether there are genuine issues for trial, as opposed to weighing the evidence. Id. at 249.

At the summary judgment stage, the judge must believe the non-moving party's evidence and must draw justifiable inferences in the non-moving party's favor. Id. at 255. A "genuine issue of fact" is one that a reasonable judge could find in favor for 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 "material" fact has the potential to affect the outcome of a case.

Here, the only issue on appeal is whether or not AJ2 correctly determined by summary judgment that Complainant was subjected to unlawful retaliation with regard to claim 4, as well as the remedies that should be awarded for the unlawful retaliation. The Agency does not dispute the AJ's finding of retaliation with regard to claim 2 and Complainant does not appeal the conclusions of no discrimination with regard to the remaining claims, as well as the remedial orders.

Placement Under Investigation (Claim 4)

A claim of disparate treatment is examined under the three-part analysis first enunciated in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973). For complainant to prevail, she must first establish a *prima facie* 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. See 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. See Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the agency has met its burden, the 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. See St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

To establish a *prima facie* case of reprisal, as in the instant case here, Complainant must demonstrate that she (1) engaged in prior protected activity; (2) the Agency was aware of the prior protected activity; (3) she was subjected to adverse treatment by the Agency; and (4) a nexus exists between the protected activity and the adverse action. See Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000).

Here, our review of the undisputed evidence developed during the investigation reflects that Complainant has established a *prima facie* case of reprisal discrimination when she was placed under investigation. First, Complainant engaged in protected oppositional activity when on October 8, 2015 Complainant informed the Warden that Associate Warden had instructed a co-worker (CW1) not to speak or associate with Complainant and to "stop running around with Black people." Complainant notified the Warden that the Associate Warden's behavior was, or could, constitute employment discrimination. Second, the record reflects that the Warden and the Associate Warden were aware that Complainant reported the Associate Warden's comments following an October 8, 2015 meeting where Complainant, a union representative, the Warden, and the Associate Warden were present to discuss the comment the Associate Warden made to CW1.

Third, shortly after the Warden and Associate Warden became aware of Complainant's protected activity, Complainant alleges she learned in December 2015 that she was the subject of an investigation. On appeal, the Agency now argues that no investigation occurred, there is no evidence of an investigation, and as a result, Complainant was not investigated. However, this reasoning does not negate the fact that the Warden testified that Complainant *was* under investigation, nor does it refute another management official's testimony that she was aware that Complainant was under investigation in December 2015. Here, we note that the anti-retaliation provisions of the employment discrimination statutes seek to prevent an employer from interfering with an employee's efforts to secure or advance enforcement of the statutes' basic guarantees and are not limited to actions affecting employment terms and conditions. Burlington Northern & Santa Fe Railroad. Co. v. White, 548 U. S. 53, 126 S. Ct. 2405 (2006). Even if Complainant cannot establish that an actual investigation occurred, the evidence is clear that Agency management, at a minimum, led Complainant to believe one was occurring.

Finally, a nexus between Complainant's protected activity and the adverse action is indicated because of the proximity in time between the two events.

Once Complainant has established a *prima facie* case of reprisal, the burden shifts to the Agency to articulate a legitimate, non-discriminatory reason for investigating Complainant in December 2015. The record reflects that the Agency has not offered a legitimate, non-discriminatory reason for investigating Complainant (or even threatening to investigate her). Notably, the Warden testified that she could not explain why Complainant was under investigation because "it's a big case" and she "can't talk about it." Consequently, the Agency has not articulated any reason for Complainant's investigation and has failed to demonstrate that its decision to investigate Complainant was not pretext masking unlawful retaliatory animus. In sum, the record evidence clearly establishes that Complainant was subjected to an action (led to believe there was an investigation) which a reasonable employee would have found materially adverse, and which could dissuade a reasonable employee from engaging in activity protected by Title VII. See Burlington Northern, id. See also, EEOC Enforcement Guidance on Retaliation and Related Issues, No. 915.004 (August 25, 2016); Carroll v. Department of the Army, EEOC Request No. 05970939 (April 4, 2000).

Therefore, we find that AJ2 properly determined that Complainant was subjected to retaliatory discrimination when management led her to believe that she was the subject of an investigation.

Non-pecuniary Damages

Non-pecuniary compensatory damages are losses that are not subject to precise quantification, i.e., emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, injury to credit standing, and loss of health. See Enforcement Guidance: Compensatory and Punitive Damages Available under § 102 of the Civil Rights Act of 1991 (EEOC Guidance), EEOC Notice No. 915.002 at 10 (July 14, 1992). Objective evidence in support of a claim for non-pecuniary damages claims includes statements from Complainant and others, including family members, co-workers, and medical professionals. See id.; see also Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993). Non-pecuniary damages must be limited to compensation for the actual harm suffered as a result of the Agency's discriminatory actions. See Carter v. Duncan-Higgans, Ltd., 727 F.2d 1225 (D.C. Cir. 1994); EEOC Guidance at 13. Additionally, the amount of the award should not be “monstrously excessive” standing alone, should not be the product of passion or prejudice, and should be consistent with the amount awarded in similar cases. See Jackson v. U.S. Postal Serv., EEOC Appeal No. 01972555 (April 15, 1999) (citing Cygnar v. City of Chicago, 865 F.2d 827, 848 (7th Cir. 1989)).

Evidence from a health care provider or other expert is not a mandatory prerequisite for recovery of compensatory damages for emotional harm. See Lawrence v. U.S. Postal Service, EEOC Appeal No. 01952288 (Apr.18, 1996) (citing Carle v. Department of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993)). Objective evidence of compensatory damages can include statements from a complainant concerning emotional pain or suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character or reputation, injury to credit standing, loss of health, and any other non-pecuniary losses that are incurred as a result of the discriminatory conduct. Id.

The AJ awarded \$7,500 in compensatory nonpecuniary damages for the claims at issue. We conclude the award is appropriate and consistent with the amounts awarded in similar cases.

Here, Complainant submitted a separate statement on the emotional and physical harm she suffered from the Agency's retaliation. Specifically, Complainant stated that she suffered from “bouts of crying, depression, weight gain, and hair loss.” She also indicated that she withdrew from family and friends (including her husband), stopped attending her children's sports events, and she suffered from feelings of paranoia. As a result of these conditions, Complainant sought help through the Employee Assistance Program and as well as psychology visits.

Complainant submitted 2016 sworn statements from her husband, mother, and sister attesting to changes in her mood and personality due to the Agency's retaliation. Complainant's husband noted that Complainant used to be fun, loving, and an exciting individual. However, since October 2015, Complainant became despondent, discouraged, stressed, anxious, depresses, overly cautious, obese, and paranoid. Complainant's husband further noted that Complainant gained over thirty pounds, she stopped communicating with their children, and their marriage has suffered over a two-year period.

Complainant's mother and sister both reiterated that Complainant cried several days a week, gained weight, withdrew from family and friends due to paranoia, and she missed work due to stress and depression.

Finally, Complainant included a 2017 sworn statement from her Pastor explaining that from 2015 to 2016, Complainant's "demeanor and personality were slowly transitioning to that of pessimism and a loss of interest in her job, social/church events, and even family outings." The Pastor further indicated that he was continuing to provide spiritual support to Complainant, but Complainant was still "struggling immensely with trying to find herself – the self-motivated, career-oriented, family-centered young lady who has been consumed/overwhelmed because of an antagonistic work environment."

These statements along with Complainant's statement indicate that Complainant suffered emotional harm from an approximate two-year period from October 2015 through 2017. The record reflects that Complainant sustained this emotional harm from the Agency's retaliatory actions. We note that Complainant does not dispute, on appeal, the non-pecuniary compensatory damages award amount. Consequently, we find an award of \$7,500 is neither monstrously excessive nor the product of passion or prejudice and is consistent with prior EEOC precedent. See Miriam B. v. Dep't of Veterans Affairs, EEOC Appeal No. 0720150022 (Mar. 20, 2018) (awarding \$7,500 in non-pecuniary damages after complainant sustained emotional harm from agency's retaliatory actions occurring over a nine month period); see also Sullivan v. U.S. Postal Service, EEOC Appeal No. 01995775 (Dec. 12, 2001) (awarding \$7,500 in non-pecuniary damages after complaint sustained emotional harm the agency's retaliatory actions occurring over a three month period).

Attorney's Fees

Title VII and the Commission's regulations authorize the award of reasonable attorney's fees and costs to a prevailing complainant. 29 C.F.R. § 1614.501(e); see also EEO Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at 11-1 (Aug. 5, 2015). Fee awards are typically calculated by multiplying the number of hours reasonably expended times a reasonable hourly rate, an amount also known as a lodestar. See 29 C.F.R. § 1614.501(e)(ii)(B); Blum v. Stenson, 465 U.S. 886, 899 (1984); Hensley v. Eckerhart, 461 U.S. 424, 435 (1983).

Here, the record includes a summary of fees submitted by Complainant's attorney for a total of 23.75 hours totaling \$13,251.75 in attorney's fees. Neither Complainant nor the Agency disputed the hourly rate of Complainant's attorney. Rather, the Agency argues that eight of the 23.75 hours should not have been billed, and/or the award amount should be reduced because Complainant did not prevail on all claims in her complaint.

Consequently, in the September 25, 2020 Final Order on Damages and Attorney's Fees, AJ2 reduced the total attorney's fees amount by 33 percent to \$8,878.67.

AJ2 reasoned that the 33 percent reduction was reasonable because (1) Complainant prevailed on two of her three essential claims,² and (2) Complainant only prevailed on the basis of reprisal but not on race or sex. We agree that AJ2's 33 percent reduction in attorney's fees was reasonable and appropriate and find no basis to disturb this determination.

We acknowledge the Agency's argument that the Commission should exclude the eight billable hours worked before Complainant's attorney filed the September 20, 2017 Notice of Appearance. Our review of the record indicates that the Attorney Time Sheet states that between April 13, 2017 and September 15, 2017, the attorney received and reviewed Complainant's case file and called Complainant on September 15, 2017, to notify Complainant of acceptance of her case. Although this period occurred before the attorney filed the September 20, 2017 Notice of Appearance, we find that the period in question was a "reasonable period" "performed in reaching a determination to represent the complainant," and consequently, payment for these hours is permissible. See 29 C.F.R. § 1614.501(e)(1)(iv). Therefore, we find that AJ2 did not err when he included the eight hours between April 2017 and September 15, 2017 in the total 23.75 billable hours.

We note that Complainant on appeal, requests an additional \$5,801.25 in attorney's fees covering 9.75 hours billed from October 23, 2020 through December 4, 2020 for the processing of the instant appeal. Complainant is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. See 29 C.F.R. § 1614.501(e). However, Complainant must file a verified statement of fees to the Agency, not the Commission, within thirty (30) days of the date of this decision.

CONCLUSION

Accordingly, we REVERSE the Agency's final order partially rejecting the AJ's partial findings of discrimination with respect to Complainant's placement under investigation. We AFFIRM the AJ's order as stated in our Order below. We REMAND this matter to the Agency in accordance with the ORDER below.

ORDER

To the extent it has not already done so, the Agency is ORDERED to take the following actions:

1. Within sixty (60) calendar days from the date this decision is issued, the Agency shall pay Complainant \$7,500 in non-pecuniary compensatory damages and \$8,878.67 in attorney's fees.

² We note that AJ1 determined in his notice of intent that Complainant's formal complaint consisted of a hostile work environment claims (claims 1 – 6), a *per se* reprisal claim (claim 2), and discriminatory acts of alleged disparate treatment (claims 3 – 6).

2. The Agency shall take appropriate preventive steps to ensure that Complainant is not retaliated against based on this EEO complaint, and that no employee is subject to retaliation and to ensure that appropriate steps are taken immediately after Agency management is notified of any such retaliation allegation.
3. Within sixty (60) days from the date this decision is issued, the Agency shall provide a minimum of one hour of training to all management employees (Warden, Associate Wardens, Assistant Wardens) at its Aliceville, Alabama facilities on the prohibition against reprisal enforced by the EEOC.
4. Within in sixty (60) days from the date this decision is issued, the Agency shall post copies of the Notice attached to this decision, after being signed by the Agency's duly authorized representative, in conspicuous places for sixty (60) consecutive days, in its Aliceville, Alabama facilities, including all places where notices to employees are customarily posted; the Agency shall take steps to ensure that said Notices are not altered, defaced, or covered.

POSTING ORDER (G0617)

The Agency is ordered to post at its Aliceville, Alabama facilities 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).

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/he 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).

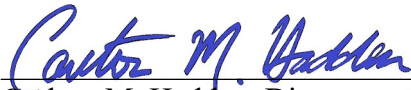
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. **Filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

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

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

September 9, 2021

Date