



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

[REDACTED]
Felix R.,¹
Complainant,

v.

Steve Jurczyk,
Acting Administrator,
National Aeronautics and Space Administration,
Agency.

Appeal No. 2019002240

Agency No. NCN18HQ00001

DECISION

On February 28, 2019, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's February 12, 2019, final decision concerning his 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. For the following reasons, the Commission AFFIRMS in part and REVERSES in part the Agency's final decision.

ISSUE PRESENTED

The issue presented is whether Complainant established that the Agency subjected him to discrimination and hostile work environment harassment on the bases of race (White), sex (male and sexual orientation), disability (mental), or in reprisal for protected activity regarding his demotion and interactions with his supervisor.

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

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as Director, Program Planning and Evaluation (PPE) Division, ES-0260-00, at the Agency's Office of Diversity and Equal Opportunity (ODEO) facility in Washington, D.C. Complainant was appointed to a one-year probationary period beginning October 30, 2016.

On August 23, 2017, Complainant filed internal harassment allegations against his first-level supervisor (S1) pursuant to the Agency's anti-harassment procedures. Therein, Complainant stated that S1 created a difficult work environment for him and expressed concerns regarding S1's observations of his performance. Complainant asserted that he was concerned because of comments that S1 made related to his race, gender, and sexual orientation. Specifically, Complainant described attending an ODEO office retreat where S1, after going around the room sharing her past work experiences with each attendee, stated that "Complainant came out to me last week. I said, 'Oh really, Barry Manilow.'" Complainant stated that he found the interaction offensive, inappropriate, and homophobic because S1 took his words out of context and shared them with a whole room of people. As further evidence of harassing conduct, Complainant stated that S1 commented "these people" and cautioned him multiple times about favoring one group over another when the NASA LGBT group raised concerns that a LGBT Pride Month proclamation had not been issued. Complainant further reported that S1 told him on multiple occasions that she referred to him and other employees as the "gay mafia." In further support of his harassment allegations, Complainant reported that S1 stated "I guess you white guys'll do," in jest when Complainant and the Complaints Management Director were left in an acting role during her absence. Finally, Complainant reported that S1 pondered whether a candidate for a Civil Rights Analyst position was gay, stating "he's gay," as soon as he exited the room and later stating, "at least bi." Complainant concluded that S1's statements, taken together, created a hostile work environment for him.

On September 20, 2017, the Acting Deputy Administrator for ODEO followed up with Complainant regarding his harassment allegations in writing. She stated that, upon completing her inquiry into the allegations, she did not find that S1 violated the Agency's anti-harassment policy. The Acting Deputy Administrator asserted that she was concerned by some of the statements that were made, and she was working with senior management to address the issues. The Acting Deputy Administrator also informed S1 there had been no violation of the anti-harassment policies, however, S1 was cautioned that certain statements she made could be taken the wrong way by her subordinates.

On September 25, 2017, the Agency informed Complainant that he was being removed from his position during the probationary period. The Notice of Removal stated that Complainant had not demonstrated effective leadership in the areas of Leading People and Leading Change. Specifically, Complainant was described as tending to avoid situations involving friction and differing opinions, leading to difficulties with forming a cohesive team.

On January 2, 2018, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (Caucasian), sex (male, sexual orientation²), disability (mental), and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 when:

1. On September 27, 2017, during his probationary period, the Acting Associate Administrator removed him from his SES position and placed him in a GS-15 position within the ODEO Program, Planning and Evaluation Division at NASA Headquarters; and
2. Beginning March 6, 2017, he was subjected to a hostile work environment, including but not limited to:
 - a. On several unspecified dates during the summer of 2017, the Acting Associate Administrator referred to previous leadership within the ODEO, which included Complainant, as the “gay mafia”;
 - b. On an unspecified date in April 2017, the Acting Associate Administrator, during an office retreat, said “[Complainant] came out to me last week. I said, ‘Oh really Barry Manilow;’”
 - c. On an unspecified date in June 2017, the Acting Associate Administrator uttered “these people just won’t let it alone,” referring to NASA’s LGBT group inquiring about the President’s proclamation for LGBT Pride Month;
 - d. In late July 2017, the Acting Associate Administrator commented that she guessed “...you white guys’ll do,” in the acting position of Complaints Management Director, ODEO;
 - e. On an unspecified date, after receiving the outcome of the anti-harassment complaint that Complainant filed against the Acting Associate Administrator, she showed concerns regarding comments she made to Complainant which he believes were retaliatory based on his raising EEO concerns;
 - f. On an unspecified date in August 2017, after interviewing a white male candidate, the Acting Associate Administrator commented that the candidate was gay, and not a “good fit” for the organization because his personality was “too big for this office”; and

² In Bostock v. Clayton Cty., the Supreme Court held that discrimination based on sexual orientation or transgender status is prohibited under Title VII. 590 U.S. ___, 140 S. Ct. 1731 (2020); see also Baldwin v. Dep’t of Transp., EEOC Appeal No. 0120133080 (July 15, 2015) (an allegation of discrimination based on sexual orientation states a claim of sex discrimination under Title VII because sexual orientation is inherently a sex-based consideration).

- g. On April 30, 2018, Complainant became aware that the Acting Associate Administrator was selected for the position of Director, Program Planning Evaluation (PPE) Division, Office of Diversity and Equal Opportunity (ODEO), which is the position Complainant was placed into after his removal from his SES position.

At the conclusion of the investigation, 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 Administrative Judge (AJ). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The Agency concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

In the final Agency decision (FAD), the Agency determined that there was no direct evidence of discrimination based on the number of workplace remarks that related to Complainant's protected classes because the remarks did not relate to the employment decision at issue. Further, Complainant failed to meet his burden of establishing an intentional discrimination claim on the bases of race, sex, or disability. The Agency found that management officials had provided significant documentation showing that Complainant's leadership deficiencies were an issue for an extended period. The documentation revealed that Complainant had been aware of supervisory performance issues as early as his midterm review.

With respect to reprisal, the Agency found that documentary evidence showed that the decision to remove Complainant preceded the date of his filing the anti-harassment allegations on August 23, 2017. Specifically, Complainant's removal was initiated as early as July 27, 2017, and a draft removal letter was being circulated for review as early as August 18, 2017. Therefore, while Complainant established a prima face case of reprisal, the Agency articulated a legitimate, nondiscriminatory reason for Complainant's removal from the SES position.

Finally, regarding Complainant's harassment claim, the Agency determined that in view of the totality of the circumstances, the comments that S1 is alleged to have made over a five-month period do not represent the sort of constant or steady barrage typically required to be deemed pervasive. The Agency concluded that the conduct and comments complained of were not sufficiently severe or pervasive to alter the conditions of Complainant's employment and create an abusive working environment.

CONTENTIONS ON APPEAL

On appeal, Complainant recounts his version of the facts and reiterates that S1 subjected him to a "barrage of inappropriate and offensive statements and conduct, both publicly and privately" because of his protected classes. Complainant asserts that S1's conduct was severe and pervasive, and he adds that a reasonable person would consider S1's alleged comments at the retreat severe and based on sexual orientation. According to Complainant, the record is replete with statements indicating that he was subjected to a hostile work environment, which culminated in his demotion.

The Agency requests that the Commission affirm the FAD.

STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review “requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker,” and that EEOC “review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission’s own assessment of the record and its interpretation of the law”).

ANALYSIS AND FINDINGS

Hostile Work Environment – Claim 2

Complainant alleged that he was subjected to harassment and a hostile work environment when S1 made statements that he found insulting, humiliating, and embarrassing as evidenced by six incidents that included S1 referencing a “gay mafia”; S1 publicly stating that Complainant “came out” to her and providing her response; S1 complaining about Pride Month proclamation inquiries; S1 commenting that “...you white guys’ll do;” S1 showing concerns regarding comments she made to Complainant; and S1 commenting about a job candidate’s personality and sexual orientation. Complainant further alleged that S1’s selection to the position following his removal was further evidence of the hostile work environment.

To establish a claim of harassment, a complainant must show that: (1) he belongs to a statutorily protected class; (2) he was subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on his statutorily protected class; (4) the harassment affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982). Further, the incidents must have been “sufficiently severe or pervasive to alter the conditions of [complainant’s] employment and create an abusive working environment.” Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993).

After a review of the record, we conclude that Complainant was subjected to harassment based on his sex and race. Complainant clearly established that he is a member of the protected classes based on his sex and that he was subjected to unwelcome conduct. Regarding his sex, we find that Complainant was subjected to severe or pervasive comments which were premised on his sex and included sex-based preferences, assumptions, expectations, stereotypes or norms.

Specifically, we note that S1 made multiple comments that were based on Complainant's sexual orientation. With respect to the "Barry Manilow" comment, the incident occurred at an office-wide retreat and S1 singled out Complainant specifically regarding his sexual orientation. When going around the room, S1 made professional comments about everyone except Complainant. With Complainant, S1 chose to publicly disclose that Complainant "came out" to her. We further note that S1's "gay mafia" comments, especially in her capacity as a supervisor, perpetuate an environment in which slights based on sexual orientation are normalized. Witness testimony corroborates Complainant's allegations and indicates that the term travelled through the office rumor mill. Furthermore, multiple witnesses affirmed that they heard S1's comments related to Complainant's sexual orientation and race and the treatment directed at Complainant, which witnesses described as more contentious than S1's treatment of others. Accordingly, we find that the nature of S1's remarks were of such magnitude that it created an intimidating, hostile, or offensive work environment for Complainant. We, therefore, find that Complainant has established the fourth prong of the prima facie case of a hostile work environment.

With respect to the fifth prong of a harassment claim, an agency is subject to vicarious liability for harassment when it is created by a supervisor with immediate (or successively higher) authority over the employee. See Burlington Industries, Inc., v. Ellerth, 524 U.S. 742 (1998); Faragher v. City of Boca Raton, 524 U.S. 775 (1998); Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors, EEOC Notice No. 915.002 (June 18, 1999).

We find that Complainant has met his burden of establishing that the Agency was liable for the harassment because it was committed by his supervisor. When the harassment does not result in a tangible employment action being taken against the employee, the employer may raise an affirmative defense to liability. The Agency can meet this defense, which is subject to proof by a preponderance of the evidence, by demonstrating: (a) that it exercised reasonable care to prevent and correct promptly any harassing behavior; and (b) that Complainant unreasonably failed to take advantage of any preventive or corrective opportunities provided by the Agency or to avoid harm otherwise. Burlington Industries, Inc., v. Ellerth, 118 S.Ct. at 2270; Faragher v. City of Boca Raton, 118 S.Ct. at 2293; Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors, EEOC Notice No. 915.002 (June 18, 1999). This defense is not available when the harassment results in a tangible employment action being taken against the employee.

Here, the harassing conduct did not coincide with a tangible employment action. However, the Agency has not raised an affirmative defense, either in its final decision or on appeal. Therefore, we find that the Agency is liable for S1's harassment and any compensatory damages that Complainant may be entitled to for that harassment. Even if the Agency had raised an affirmative defense, we find that the Agency failed to demonstrate that it exercised reasonable care to prevent and promptly correct S1's behavior. Reasonable care generally requires an employer to establish, disseminate, and enforce an anti-harassment policy and complaint procedure, and to take reasonable steps to prevent and correct harassment. See Rosamaria F. v. Dep't of the Navy, EEOC Appeal No. 0120181068 (Feb. 14, 2020).

While the Agency issued a Policy Statement on Anti-Harassment on May 1, 2014, outlining its obligation to prevent harassment, the record lacks evidence of the most recent dissemination of the policy or when Complainant received the policy.³ Further, the Agency failed to promptly correct S1's behavior when Complainant complained about the harassment. S1 provided an email response during an investigation into Complainant's allegations, which did not deny her actions. Rather, S1 alleged that Complainant "initiated conversations, laughed, responded and was otherwise fully engaged in the joking back and forth" and pointed out deficiencies that she felt Complainant demonstrated in his work. Following the investigation, S1's behavior was addressed with a letter simply stating, "as we discussed at the conclusion of the interview process, certain statements you made could be taken the wrong way by your subordinates." Complainant was issued a vague notice that management was concerned about the allegations and was working with senior management to address them without providing any further details. The record does not indicate that any additional action or follow-up occurred. S1 was not disciplined or warned that discipline would result from additional comments. Contrary to management officials' assertions, we find that S1's statements were inappropriate regardless of whether they could be "taken the wrong way." Furthermore, when Complainant informed management officials of S1's conduct, the Agency officials failed to take the appropriate action. Therefore, we find that Complainant has established that he was subjected to a hostile work environment and that the Agency is liable for the harassment by S1.

Disparate Treatment – Claim 1

Generally, claims of disparate treatment are examined under the analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Hochstadt v. Worcester Found. for Experimental Biology, Inc., 425 F. Supp. 318, 324 (D. Mass.), *aff'd*, 545 F.2d 222 (1st Cir. 1976). For Complainant to prevail, he 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 Constr. Corp. v. Waters, 438 U.S. 567 (1978). Once Complainant has established a *prima facie* case, the burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). If the Agency is successful, the burden reverts back to Complainant to demonstrate by a preponderance of the evidence that the Agency's reason(s) for its action was a pretext for discrimination. At all times, Complainant retains the burden of persuasion, and it is his obligation to show by a preponderance of the evidence that the Agency acted on the basis of a prohibited reason. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993); U.S. Postal Serv. v. Aikens, 460 U.S. 711, 715-716 (1983).

³ We take administrative notice that the Agency updated its anti-harassment policy during the pendency of this matter in consultation with the EEOC, Office of Federal Operations, Federal Sector Programs (FSP). While the Agency updated its anti-harassment policy in accordance with its request for technical assistance from FSP, we remind the Agency of its obligation to disseminate the updated policy under MD-715 and EEOC's Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, Notice 915.002, June 18, 1999.

A complainant may establish a prima facie case of reprisal by showing that: (1) he or she engaged in protected activity; (2) the Agency was aware of the protected activity; (3) subsequently, he or she was subjected to adverse treatment by the Agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000). A nexus may be shown by evidence that the adverse treatment followed the protected activity within such a time and in such manner that a retaliatory motive may be inferred. See Clay v. Dep't of the Treasury, EEOC Appeal No. 01A35231 (Jan. 25, 2005); Dominica H. v. Dep't of Health and Human Serv., EEOC No. 0120150971 (Nov. 22, 2017).

Assuming, arguendo, that Complainant established a prima facie case of discrimination based on his race, sex, and disability, we find that the management officials articulated legitimate, nondiscriminatory reasons for their actions. Specifically, Complainant demonstrated deficiencies in the area of leadership, which was pertinent for the position because the office had a history of personnel issues and lack of supervision. With respect to reprisal, a review of the record reveals testimony and documentation indicating that Complainant's removal was initiated prior to his protected EEO activity. Further, the record shows that S1 had ongoing concerns about Complainant's performance in the area of leadership, which she had communicated to Complainant and offered opportunities for additional training. Moreover, the record indicates that Complainant acknowledged that he had "very significant challenges with each staff member, all of whom [he] inherited from [his] predecessor."

Complainant has failed to establish a nexus between the Agency's actions and his protected classes. Moreover, the preponderance of the evidence does not establish that the Agency's legitimate, nondiscriminatory reasons were pretextual regarding his demotion.

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 decision regarding Claim 1. However, we REVERSE the Agency's final decision regarding Claim 2 and REMAND the matter in accordance with the ORDER below.

ORDER

The Agency shall comply with the orders below within 120 calendar days of the date this decision is issued, unless otherwise specified.

1. Unless he expressly consents, Complainant shall no longer work in a supervisory chain involving S1. Complainant may be reassigned to a comparable position only with his consent. Otherwise, the Agency shall remove S1 from Complainant's chain of supervision.

2. The Agency will conduct a supplemental investigation on the issue of Complainant's entitlement to compensatory damages and will afford him an opportunity to establish a causal relationship between the harassment he endured and any pecuniary or non-pecuniary losses. Complainant will cooperate in the Agency's efforts to compute the amount of compensatory damages. 29 C.F.R. § 1614.110. The supplemental investigation and issuance of final decision will be completed within sixty (60) calendar days of the date this decision becomes final. A copy of the final decision must be submitted to the Compliance Officer, as referenced below.
3. To fulfill its legal obligation to effectively communicate EEO policies and procedures to all employees, the Agency shall disseminate its revised anti-harassment policy statement within thirty (30) calendar days of issuing the revised policy statement. Methods of dissemination include training, webinars, brochures, emails, or other types of written communication. Instructions to Federal Agencies for MD-715 Section I The Model EEO Program, Part I. Element A (B).
4. Within ninety (90) calendar days of the date this decision is issued, the Agency shall provide eight hours of in-person or interactive EEO training to the management officials involved in this matter, particularly addressing the parties' responsibilities with respect to eliminating harassment in the workplace.
5. Within sixty (60) calendar days of the date this decision is issued, the Agency shall consider taking appropriate disciplinary action against S1 and the management officials responsible for the established harassment. 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 any of the responsible management officials have left the Agency's employ, the agency shall furnish documentation of their departure date(s).
6. Within sixty (60) calendar days of the date this decision is issued, the Agency shall post a notice in accordance with the statement entitled "Posting Order."

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation verifying that corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Washington D.C. Office of Diversity and Equal Opportunity facility copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for

60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

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).

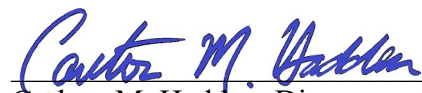
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

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 7, 2021

Date