



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

[REDACTED]
Ashely H.,¹
Complainant,

v.

Robert L. Sumwalt,
Chairman,
National Transportation Safety Board,
Agency.

Appeal No. 2020002145

Agency No. NTSB201401

DECISION

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403, from the Agency's December 12, 2019, final decision on the issue of compensatory damages, concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., 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 MODIFIES the Agency's final decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a GS-12 Contract Specialist within the Agency's Acquisition and Lease Management Division at its Headquarters in Washington, D.C. Complainant primarily administered contracts and procured supplies and services to support the Agency's mission. Complainant filed an EEO complaint against the Agency alleging discrimination based on her sex and disability. The Agency issued a final decision finding no discrimination. While Complainant's appeal was pending, she applied and was approved for workers' compensation on April 14, 2017, and on July 17, 2018, she was removed from her position because she was medically unable to perform the essential duties.

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.

In Ashely H. v. National Transportation Safety Board, EEOC Appeal No. 0120180038 (Sep. 17, 2019), the Commission found that the Agency was liable for a coworker, C1, subjecting Complainant to sexual harassment (which included numerous sexually explicit remarks to Complainant by a coworker), which likely exacerbated her PTSD (Post Traumatic Stress Disorder),² and that it denied Complainant a reasonable accommodation for her disability. The Agency was directed to conduct a supplemental investigation on the issue of Complainant's entitlement to compensatory damages associated with her sexual harassment claim.³ Complainant was directed to cooperate in the Agency's efforts to compute the amount of compensatory damages and to provide all relevant information requested by the Agency.

In support of her request, Complainant submitted her own statement, a joint statement from her mother and father, and reports from two health care providers. In her statement, Complainant stated that as a result of the sexual harassment she encountered, she suffers from PTSD, major depression, severe anxiety, migraines, stress related back and neck pain, fatigue, and feelings of low self-worth. She stated that she also suffered from sleep loss, hostility, mistrust, suspicion, resentment and immense fear, pain, embarrassment, and humiliation from having panic attacks which has resulted in her urinating on herself in public. Complainant stated that she has inconvenienced her parents by calling them when she is suicidal and crying while having a nervous breakdown. She does not attend family functions or communicate with family members any more due to the shame she feels. She felt that her federal career and reputation have been negatively impacted due to her PTSD. Before the sexual harassment and the PTSD, she stated that she was mentally stable, but now has been rendered medically unable to perform the duties of her position, which led to her removal. Complainant stated that she became more suicidal after she was terminated and started calling family members asking them who wanted to read her obituary at her funeral. She stated that she was in financial ruin, destitute, and living in a "sober living facility" in California. Complainant noted that due to the sexual harassment she had to uproot her life, move across country, and leave everyone and everything behind.

Complainant's parents submitted a joint witness impact statement. They stated that before the sexual harassment Complainant was a happy, loving, and proud daughter, but after the sexual harassment she changed. She was unhappy and cried all the time. When they called her, she would tell them to go away or would not want to speak to them. They stated that she misses family functions because she feels ashamed about the sexual harassment and does not have the close family relationships she once had. They live in Massachusetts, and she lives in Maryland, but sometimes they must leave in the middle of the night and drive to Maryland because she has indicated that she wanted to kill herself. On a few occasions, they had to call the police in Maryland because she had a nervous breakdown, and they could not get her on the phone.

² Complainant was diagnosed with PTSD in December 2013, which she attributed to C1's conduct that she maintained began in 2011.

³ Because the Commission found that the Agency exercised good faith in trying to provide Complainant with a reasonable accommodation, she was determined to not be entitled to compensatory damages on this claim.

They noted that the years of sexual harassment have caused Complainant to have nervous breakdowns, panic attacks, fainting spells, migraines and high blood pressure. They also noted that Complainant previously enjoyed singing, writing, the park, museums, family activities and cooking, but she no longer does any of these activities.

Complainant submitted a report from her treating Psychiatrist, D1, from Westwind Recovery located in Los Angeles, California, dated November 11, 2019. He stated that Complainant was admitted for treatment of PTSD and alcohol abuse resulting from sexual harassment at work. He stated that Complainant informed him that the first symptoms of PTSD and alcohol abuse occurred in 2013, and that she continued to struggle with these symptoms for the past six years. He stated that upon admittance, Complainant exhibited hypervigilance, flashbacks and nightmares about her trauma, difficulty sleeping and focusing, panic attacks, isolation and self-destructive behavior. Complainant reported high suicidal ideation because of her continued distress and fear related to her sexual trauma. He opined that Complainant suffered from emotional and psychological injuries that were a direct result of the sexual harassment she experienced while working at the Agency. He felt that Complainant's trauma has had severe consequences on her physical and emotional well-being and that she would need to continue treatment for PTSD for the foreseeable future due to the severity of her symptoms.

Complainant also submitted copies of the letters forwarded to the Agency in 2014 by B1, a Licensed Clinical Social Worker. She initially diagnosed Complainant with major depression and PTSD and opined that it was a direct result of sexual harassment being committed by a coworker. She added that Complainant's symptoms included vomiting, severe headaches, nightmares, anxiety, difficulty focusing, avoidance, not being sociable, and a lack of concentration.

Based on Complainant's statement, the statement of her parents, and the statements of her medical providers, the Agency found that she suffered from PTSD and major depression with additional symptoms including severe headaches, vomiting, nightmares, anxiety, difficulty focusing, hypervigilance, flashbacks and nightmares, avoidance of social situations, suicidal ideation, difficulty sleeping, and panic attacks. Using our decision in EEOC Appeal No. 0120180038 as its benchmark, the Agency found, regarding the duration of the sexual harassment, that it began as early as August 17, 2011, and continued to January 2017, and entailed numerous inappropriate comments, incidents, and emails of a sexual nature. Given the nature and severity of the harm to Complainant and the duration or expected duration of the harm, the Agency concluded that an award of \$110,000 in nonpecuniary, compensatory damages was appropriate.

With respect to past pecuniary losses, Complainant requested \$51,450 (\$21,450 for medical expenses and \$30,000 for rental expenses incurred at Westwind Sober Living). The Agency found that Complainant submitted statements showing charges of \$25,050, but they also noted deductions totaling \$23,165.68 for apparent insurance payments. Also, the Westwind Sober Living lease indicated that it was for a residential dwelling, but the Agency maintained that there was no indication that it was for a treatment facility of any type.

Complainant, the Agency argued, provided no medical or other information that established a causal connection between the sexual harassment and her decision to execute the lease agreement with Westwind Sober Living. In addition, Complainant did not provide evidence, i.e. receipts, of the actual payments she made under the lease. Since she provided no proof that she made payments to Westwind, or the specific amounts, the Agency found that she did not demonstrate an entitlement to past pecuniary damages.

The Agency also noted that Complainant was approved for compensation benefits due to PTSD by the Office of Workers' Compensation Programs (OWCP) on July 18, 2017; therefore, her medical expenses after that date were the responsibility of OWCP. Complainant, according to the Agency, was given an extended time to submit documentation that clearly established her entitlement to payment for medical expenses not covered by OWCP, but she did not do so.

With respect to the airline bills that Complainant alleged were accumulated while traveling back and forth from Maryland to Los Angeles, the Agency found that she did not identify the amount of the expenses and provided no receipts or tickets to verify that she incurred the expenses.

Regarding her assertion that she accumulated 813 hours of Leave Without Pay (LWOP) as a result of the sexual harassment, the Agency noted that it was in the process of complying with the Commission's Order that it reimburse her for LWOP taken; consequently, reimbursement was not addressed in its final decision.

The Agency also addressed Complainant's assertion that she was entitled to \$1,500,000, in lost future earnings. According to Complainant, she is 46 years old with a severe and permanent mental condition. She maintained that it will be hard for her to find employment with a long-term prognosis of PTSD, a permanent and severe mental injury, and that she will require counseling for the rest of her life. Complainant argued that she would have received \$100,000 per year over a 15-year period until she reached the age of 65. The Agency found that although Complainant was approved for workers' compensation due to her PTSD, there was no medical evidence that indicated with a reasonable certainty or probability that she would not be able to return to work before she reached the age of 65. The Agency noted the statement of D1 that Complainant would need to continue treatment for PTSD for the foreseeable future, and that it was not in her best interest to work in her previous work environment, but that this was not evidence of the future earnings loss Complainant asserts had been sustained. Accordingly, the Agency denied Complainant's claim for loss of future earnings.

Complainant, in her January 2020, appeal of the Agency's final decision, focused on the Agency's nonpecuniary damage award and its determination that she did not establish an entitlement to future pecuniary damages or lost future earnings. Complainant offered a letter, dated January 3, 2020, from D2, a licensed physician who specialized in addiction medicine, and who was the Medical Director of Westwind Recovery. According to D2, he had been the attending treating physician for Complainant since she arrived in December 2018. D2 maintained that Complainant should continue in a structured long-term living environment, and not work in a high functioning job at any time in the future.

On February 22, 2020, Complainant also submitted a second statement that was entitled, “Equitable Relief and Reconsideration,” where she asked for \$110,150.64 in back pay; \$480,000.00 in front pay; \$76,548.00 for paralegal training; and \$6,768.75 in attorney’s fees that she paid in pursuing her EEO complaint. The total amount for these payments was \$673,467.39, but to account for the 37% increase in her federal and state tax liability from the lump sum payment, Complainant requested a total of \$922,650.18.

The Agency requests that we affirm its final decision, and that Complainant’s second statement not be considered because it was not in compliance with the Commission regulations.

ANALYSIS AND FINDINGS

At the outset, we note that the Commission has the discretion to review only those issues specifically raised in an appeal. Because Complainant does not specifically contest the Agency’s determinations regarding past pecuniary damages, airfare, and LWOP, we will not address these issues in this decision.⁴ See EEOC Management Directive for 29 C.F.R. Part 1614, (MD-110), Chap. 9, § IV.A. (Aug. 5, 2015) (“Although the Commission has the right to review all of the issues in a complaint on appeal, it also has the discretion to focus only on those issues specifically raised on appeal.”).

Also, generally, no new evidence will be considered on appeal unless there is an affirmative showing that the evidence was not reasonably available prior to or during the investigation. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), Ch. 9, § VI.A.3 (Aug. 5, 2015). Here, Complainant did not make such a showing regarding D2’s January 3, 2020, letter. Accordingly, we decline to consider this letter on appeal.

Finally, the record reflects that Complainant filed her notice of appeal on January 10, 2020 and included a statement in support of her appeal. Subsequently, on February 22, 2020, she filed a second statement entitled “Equitable Relief and Reconsideration,” which purports to be an appeal from a January 22, 2020, final Agency decision. We first note that the Agency’s final decision is dated December 10, 2019. To the extent that Complainant is filing a second statement in support of her appeal of the Agency’s final decision, we find that it is untimely. EEOC Regulation 29 C.F.R. § 1614.403(d) provides that any statement or brief filed on behalf of a complainant in support of the appeal must be submitted to the Office of Federal Operations within 30 days of filing the notice of appeal. Moreover, to the extent that Complainant is seeking reconsideration of EEOC Appeal No. 0120180038, we also find that she is untimely.

We further note that even if Complainant’s February 22, 2020, statement was timely submitted, she would not be entitled to the relief she is seeking.

⁴ We do note, however, that upon receipt of evidence indicating that the Agency paid Complainant for the LWOP that she took, the Commission, in July 2020, notified Complainant that the Agency had provided “[d]ocumentation sufficient to demonstrate that it has taken the corrective action(s) ordered in the Commission’s decision.”

Complainant did not file an EEO complaint regarding her removal; therefore, there has not been a finding of discrimination on this issue. Consequently, Complainant would not be entitled to back pay, front pay, or other forms of equitable relief. Finally, although Complainant was a prevailing party in EEOC Appeal No. 0120180038, and that decision awarded her attorney's fees, it appears that neither Complainant nor her former attorneys submitted a request for fees in accordance with our decision.⁵ Because the issue of attorney's fees is not properly before the Commission regarding this appeal, we take no position regarding the Agency's assertion that Complainant's request for fees is untimely. We do note, however, that Complainant is not represented by an attorney in the matter before us.

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 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 the 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").

Compensatory Damages

When discrimination is found, an agency must provide the complainant with a remedy that constitutes full, make-whole relief to restore her as nearly as possible to the position she would have occupied absent the discrimination. See, e.g., Franks v. Bowman Transp. Co., 424 U.S. 747, 764 (1976); Albemarle Paper Co. v. Moody, 422 U.S. 405, 418-19 (1975); Adesanya v. U.S. Postal Serv., EEOC Appeal No. 01933395 (July 21, 1994). Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes unlawful intentional discrimination under Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. may receive compensatory damages for past and future pecuniary losses (i.e., out-of-pocket expenses) and nonpecuniary losses (e.g., pain and suffering, mental anguish) as part of this

⁵ The September 17, 2019, decision indicated that:

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

(Emphasis added).

“make whole” relief. 42 U.S.C. § 1981a(b)(3). Compensatory damages do not include back pay, interest on back pay, or any other type of equitable relief. 42 U.S.C. § 1981a(b)(2). In West v. Gibson, 527 U.S. 212 (1999), the Supreme Court held that Congress afforded the Commission the authority to award compensatory damages in the administrative process.

To receive an award of compensatory damages, a complainant must demonstrate that he or she has been harmed as a result of the agency’s discriminatory action; the extent, nature, and severity of the harm; and the duration or expected duration of the harm. Rivera v. Dep’t of the Navy, EEOC Appeal No. 01934157 (July 22, 1994), req. for reconsideration denied, EEOC Request No. 05940927 (Dec. 11, 1995).

Nonpecuniary, Compensatory Damages

Nonpecuniary losses 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 EEOC Notice No. 915.302, Enforcement Guidance on Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991 (Enforcement Guidance), at 10 (July 14, 1992). There is no precise formula for determining the amount of damages for non-pecuniary losses except that the award should reflect the nature and severity of the harm, and the duration or expected duration of the harm. See Loving v. Dep’t of the Treasury, EEOC Appeal No. 01955789 (Aug. 29, 1997). Nonpecuniary, compensatory damages are designed to remedy the harm caused by the discriminatory event rather than to punish the Agency for the discriminatory action. Furthermore, compensatory damages should not be motivated by passion or prejudice or be “monstrously excessive” standing alone but should be consistent with the amounts awarded in similar cases. See Ward-Jenkins v. Dep’t of the Interior, EEOC Appeal No. 01961483 (Mar. 4, 1999).

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 Serv., EEOC Appeal No. 01952288 (Apr. 18, 1996) (citing Carle v. Dep’t of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993)). Objective evidence of compensatory damages can include statements from Complainant concerning her 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. Statements from others including family members, friends, health care providers, other counselors (including clergy) could address the outward manifestations or physical consequences of emotional distress, including sleeplessness, anxiety, stress, depression, marital strain, humiliation, emotional distress, loss of self-esteem, excessive fatigue, or a nervous breakdown. Id.

Moreover, the Commission has long held that a complainant’s own testimony, along with the circumstances of a case, can suffice to sustain the burden in recovering compensatory damages for emotional harm.

The more inherently degrading or humiliating the agency's action is, the more reasonable it is to infer that a person would suffer humiliation or distress from that action. Therefore, somewhat more conclusory evidence of emotional distress will be acceptable to support an award for emotional damages. See, e.g., Lawrence v. U.S. Postal Serv., EEOC Appeal No. 01952288 (Apr. 18, 1996).

An award of nonpecuniary, compensatory damages should reflect the extent to which the Agency's discriminatory action directly or proximately caused the harm, as well as the extent to which other factors also caused the harm. See Johnson v. Dep't of the Interior, EEOC Appeal No. 01961812 (June 18, 1998). It is Complainant's burden to provide objective evidence in support of her claim and proof linking the damages to the alleged discrimination. Papas v. U.S. Postal Serv., EEOC Appeal No. 01930547 (Mar. 17, 1994); Mims v. Dep't of the Navy, EEOC Appeal No. 01933956 (Nov. 23, 1993).

The Agency itself found that the harm in this case began as early as 2011, which encompassed a period of six years before she went on OWCP. The Agency did not contest D1's opinion that Complainant would need to continue treatment for PTSD for the foreseeable future due to the severity of her symptoms. Her symptoms included PTSD, major depression, severe headaches, vomiting, nightmares, anxiety, difficulty focusing, hypervigilance, flashbacks, nightmares, avoidance of social situations, suicidal ideation, difficulty sleeping, and panic attacks. Based on the above, we find that an award of \$175,000 is warranted in this case. Our award considers the severity of the harm suffered and its duration and is consistent with prior Commission precedent. See Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120141161 (Feb. 3, 2015)(\$150,000 in nonpecuniary damages awarded where due to discriminatory harassment, complainant experienced embarrassment, humiliation, panic attacks, anxiety, withdrawal from coworkers and family, and sleeping problems); Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120130887 (May 31, 2013) (\$175,000 in nonpecuniary damages awarded where discriminatory termination significantly worsened complainant's depressive disorder and caused complainant to experience poor sleep, stress, suicidal thoughts, and have trouble maintaining gainful employment); Complainant v. Dep't of Justice, EEOC Appeal No. 0720100040 (Nov. 23, 2011)(\$200,000 in nonpecuniary damages awarded where discriminatory conduct led to physical pain (from denial of a reasonable accommodation) and a loss of enjoyment of life that imperiled complainant's marriage and hindered her ability to care for her young child), denial of request for reconsideration, EEOC Request No. 0520120171 (April 24, 2013).

Future Pecuniary Damages and Loss of Future Earnings

Pecuniary losses include quantifiable out-of-pocket expenses that are incurred as a result of the discriminatory conduct. To recover damages, the complaining party must prove that the employer's discriminatory act or conduct was the cause of his loss. Enforcement Guidance at 8. The record reflects that Complainant did not submit evidence that established what her specific, out-of-pocket future costs will be that are directly related to the discrimination found in this case. Moreover, she provided no specific evidence that established a specific loss of future earnings.

We also note that Complainant requested \$76,548.00 so that she could receive paralegal training, which would appear to contradict her claim that that she could not work or work in a high-functioning environment. Accordingly, we agree with the Agency's determination that she did not establish an entitlement to future pecuniary damages to include a loss of future earnings.

CONCLUSION

We MODIFY the Agency's decision and remand this case to the Agency to take remedial action in accordance with the Order herein.

ORDER

Within 60 days of the date this decision is issued, to the extent it has not already done so, the Agency shall provide Complainant with a payment of \$175,000.00 in nonpecuniary, compensatory damages.

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).

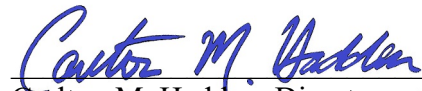
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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 7, 2021
Date