



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Gloria D.,<sup>1</sup>  
Complainant,

v.

Thomas J. Vilsack,  
Secretary,  
Department of Agriculture  
(Rural Development),  
Agency.

Appeal No. 2021002321

Hearing No. 430-2019-00232X

Agency No. RD-2018-00563

**DECISION**

Following its March 11, 2021, final order, the Agency filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) pursuant to 29 C.F.R. § 1614.403(a). On appeal, the Agency requests that the Commission affirm its rejection of an EEOC Administrative Judge's (AJ) finding of discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. The Agency also requests that the Commission affirm its rejection of the relief ordered by the AJ.

At the time of events giving rise to this complaint, Complainant worked as a Loan and Grant Technician, GS-1101-09, in the Agency's Rural Development, Rural Utilities Service, Portfolio Management and Risk Assessment Division, located in Washington, D.C. On June 6, 2018, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of disability (chronic lower back pain and sciatica) and reprisal (prior protected EEO activity) when: (1) on March 5, 2018, a Labor Relations Specialist (LRS), shared her confidential medical documentation and diagnosis with her supervisor; and (2) on March 5, 2018, her supervisor (S1) failed to engage her in the interactive process and ultimately partially denied her requested accommodation.

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

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC AJ. Complainant timely requested a hearing. On March 17, 2020, the AJ assigned to the matter granted partial summary judgment to the Agency (MSJ Decision). In the MSJ Decision, regarding claim (1), the AJ determined that Complainant submitted her request for a reasonable accommodation to the Employee and Labor Relations Specialist, but she expressed a concern over her supervisor (S1) being informed of the request. Complainant alleged that LRS then improperly shared her confidential medical information with S1. The AJ noted that while LRS was the reasonable accommodation coordinator, he was not responsible for approving or denying accommodations as an employee's supervisor was in the best position to grant or deny the request. S1 therefore had a "need to know" regarding Complainant's medical condition and specific accommodation requests and LRS's actions did not violate the Rehabilitation Act.

Next, as for claim (2), the AJ determined that Complainant submitted her reasonable accommodation request on March 5, 2018, and that it contained three components: (1) she needed to be able to telework three days per week; (2) she needed an adjustable sit-to-stand desk; and (3) she needed a supportive (ergonomic) chair. The Agency granted parts (2) and (3). In addition, Agency management granted approval for an ambulatory scooter. The record showed that the same day Complainant submitted her request, S1 contacted the Agency's Ergonomics Program Manager to arrange for the chair and sit-to-stand desk. The Program Manager advised S1 that Complainant would have to set up an ergonomic assessment and provided the weblink for Complainant to do so. Later that day, S1 forwarded the link to Complainant and followed up with Complainant a few days later. S1 also notified Complainant that Agency staff would be removing the hutch from her desk in order to make her workspace compatible for the adjustable desk, and he asked her to choose a date for the staff to do so. The AJ found that there was no evidence that Complainant ever responded to any of S1's e-mails. As a result, the AJ concluded that it was Complainant who failed to engage in the interactive process to help the Agency implement the chair and desk. Thus, the AJ found that the Agency was entitled to summary judgment on that claim as well.

The AJ concluded that there remained a material factual dispute concerning the Agency's denial of Complainant's request for telework. The AJ held a hearing on January 21, 2021 and issued a decision on February 2, 2021. In the decision, the AJ concluded that although granting Complainant the three days of telework that she requested would have resulted in an undue burden on the Agency, the Agency's failure to grant Complainant two days of telework was in fact a denial of a reasonable accommodation and a violation of the Rehabilitation Act.<sup>2</sup> To remedy the violation, the AJ ordered the Agency to pay Complainant \$10,000 in non-pecuniary compensatory damages; restore 24 hours of sick leave Complainant used on three dates; provide training to Complainant's second-level supervisor (S2) and to S1; and to post a notice.

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<sup>2</sup> The AJ also concluded that the preponderance of the evidence did not establish a finding of reprisal.

The Agency subsequently issued a final order rejecting the AJ's finding that Complainant proved that the Agency subjected her to discrimination as alleged. The instant appeal followed.

### CONTENTIONS ON APPEAL

On appeal the Agency argues that the AJ erred by: (1) concluding that the Agency failed to engage in the interactive process because that issue was previously disposed of on summary judgment; and (2) concluding that Complainant would have agreed to two days of telework had the parties engage in the interactive process. The Agency also asserts that the evidence shows that the one-day telework accommodation that it provided Complainant was in addition to the one-day of telework that she was already working in accordance with the Agency's telework policy. Accordingly, the Agency asserts that it met the two-day telework accommodation which the AJ found appropriate. Specifically, the Agency asserts that the AJ incorrectly found that the Agency was attempting to restrict Complainant to the single telework day policy, without evidence in the record to support this conclusion. Lastly, the Agency asserts that the AJ's damages ruling is unsupported and should be reversed. Accordingly, the Agency requests that the Commission affirm its final order rejecting the AJ's decision and the relief ordered.

### ANALYSIS AND FINDINGS

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

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

#### *Denial of Reasonable Accommodation*

Under the Commission's regulations, a federal agency may not discriminate against a qualified individual on the basis of disability and is required to make reasonable accommodations to the known physical and mental limitations of an otherwise qualified individual with a disability unless the Agency can show that reasonable accommodation would cause an undue hardship. See 29 C.F.R. § 1630.2(o), (p). To establish that she was denied a reasonable accommodation, Complainant must show that: (1) she is an individual with a disability, as defined by 29 C.F.R. § 1630.2(g); (2) she is a "qualified" individual with a disability pursuant to 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide her with a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue

Hardship under the Americans with Disabilities Act, EEOC Notice No. 915.002 (Oct. 17, 2002) (Enforcement Guidance on Reasonable Accommodation). An individual with a disability is “qualified” if he or she satisfies the requisite skill, experience, education, and other job-related requirements of the employment position that the individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position. 29 C.F.R. § 1630.2(m).

A reasonable accommodation must be effective. See U.S. Airways v. Barnett, 535 U.S. 391, 400 (2002) (the word ‘accommodation’ . . . conveys the need for effectiveness). That is, a reasonable accommodation should provide the individual with a disability with “an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment, as are available to the average similarly situated employee without a disability.” 29 C.F.R. Part 6130 app. § 1630.9. If more than one accommodation will enable an individual to perform the essential functions of his or her position, “the preference of the individual with a disability should be given primary consideration. However, the employer providing the accommodation has the ultimate discretion to choose between effective accommodations and may choose the less expensive accommodation or the accommodation that is easier for it to provide.” Id.; see also Enforcement Guidance on Reasonable Accommodation at Question 9. “The appropriate reasonable accommodation is best determined through a flexible, interactive process that involves both the employer and the individual with a disability.” 29 C.F.R. Part 6130 app. § 1630.9.

Allowing an employee to telework is a form of a reasonable accommodation. “An employer must modify its policy concerning where work is performed if such a change is needed as a reasonable accommodation, but only if this accommodation would be effective and would not cause an undue hardship.” An “undue hardship” is a significant difficulty or expense, in light of the agency's circumstances and resources. See 29 C.F.R. § 1630.2(p). The agency bears the burden of establishing, through case-specific evidence, that a reasonable accommodation would cause an undue hardship. U.S. Airways, Inc. v. Barnett, 535 U.S. at 402. “Generalized conclusions will not suffice to support a claim of undue hardship.” Enforcement Guidance on Reasonable Accommodation, “Undue Hardship Issues.” An employer may deny an employee's request to telework if it can show that an alternative accommodation would be effective or that telework would cause an undue hardship. Enforcement Guidance on Reasonable Accommodation, at Question 34. The agency has a burden of production to show that there is an effective alternative accommodation.

We note that, under the Rehabilitation Act, it is anticipated that, to the extent necessary, the employer will engage in the interactive process with the individual requesting accommodation to clarify the individual's needs and identify the appropriate reasonable accommodation. 29 C.F.R. § 1630.2(o)(3). However, failure to engage in the interactive process does not constitute a violation of the Rehabilitation Act.

Employer liability depends on a finding that, had a good faith interactive process occurred, the parties could have found a reasonable accommodation that would enable the individual with a disability to perform the essential functions of the job. Broussard v. U.S. Postal Serv., EEOC Appeal No. 01997106 (Sept. 13, 2002) (although agency cannot be held liable solely for failure to engage in interactive process, it can be held liable where failure to engage in process resulted in failure to provide reasonable accommodation), req. to reconsid. den'd, EEOC Request No. 05A30114 (Jan. 9, 2003). Similarly, employer liability may be avoided where failure of the requesting individual to engage in the interactive process results in the parties being unable to identify an effective accommodation. See Estate of William K. Taylor, Jr. v. Dep't of Homeland Sec., EEOC Appeal No. 0120090482 (June 20, 2013) (complainant's failure to provide requested documentation caused failure to receive possible accommodation), req. for reconsid. den'd, EEOC Request No. 0520130591 (Jan. 16, 2014).

As an initial matter, we find substantial record evidence supports the AJ's determination that S1 (in addition to other Agency witnesses) was not a credible witness. We do not find S1's testimony that he went to Complainant's office on March 5, 2018 to discuss her accommodation request to be credible for reasons noted by the AJ in his decision. We also find that S1 and other Agency witnesses gave testimony at the hearing that was contradictory to their previous affidavit testimony with respect to their understanding of whether the approved telework accommodation added an additional day of telework (for a total of two telework days) or kept Complainant at a one-telework-day-a-week schedule.<sup>3</sup>

In this case, the parties have stipulated that Complainant is a qualified individual with a disability. The record also establishes that Complainant requested a total of three telework days per week as a reasonable accommodation and provided medical documentation in support of her request. While the record shows that permitting Complainant three telework days per week would have resulted in an undue hardship on the Agency, she should have been given the option of working a total of two telework days per week which the record shows would not have been an undue burden on the Agency.<sup>4</sup>

While the record establishes that Complainant did not engage in the interactive process, we note that this is not a typical case where the failure to engage in the interactive process, caused a lack of effective accommodation where one could have been found. See Alonso T. v. U.S. Equal Employment Opp. Comm., EEOC Appeal No. 0120162340, (Jan. 15, 2020). Rather, the Agency here had information from Complainant's medical provider identifying what was, in his opinion, the effective accommodation for Complainant's disability.

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<sup>3</sup> We agree with the Agency that the issue of whether S1 failed to engage in the interactive process should not have been before the AJ. However, we find the AJ's conclusions on this issue (at best) amount to harmless error.

<sup>4</sup> We note that the undisputed record shows that prior to a change in the Agency's telework policy, Complainant had been teleworking two days each week and receiving satisfactory performance appraisals.

The record reflects that the Agency did not request additional information from Complainant's medical provider addressing, whether one day of telework per week might provide an effective accommodation. We therefore conclude (as in Alonso T.) that the Agency's ability to provide an effective accommodation was not hindered by Complainant's failure to engage in the interactive process. Certainly, it would have been preferable for Complainant to engage in a conversation with S1 or S2 after learning that she was approved for only one day of telework per week. It would also have been preferable if Complainant felt comfortable communicating with her supervisors. That Complainant did not engage with them, however, does not release the Agency from its obligation to provide Complainant with an effective, reasonable accommodation absent undue hardship, especially here where the Agency had sufficient medical information. Thus, as discussed above, we find substantial record evidence supports the AJ's determination that the Agency did not meet its obligation under the Rehabilitation Act.

### REMEDIES

When discrimination is found, an agency must provide a complainant with a remedy that constitutes full, make-whole relief to restore the complainant 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); Lazaro G. v. Dep't of Commerce, EEOC Appeal No. 0120170802 (May 17, 2019), req. for reconsideration'd EEOC Request No. 2019004115 (Sept. 17, 2019); 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 either Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., or Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 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 "make whole" relief. 42 U.S.C. § 1981a(b)(3). In West v. Gibson, 119 S.Ct. 1906 (1999), the Supreme Court held that Congress afforded the Commission the authority to award compensatory damages in the administrative process. For an employer with more than 500 employees, such as the Agency, the limit of liability for future pecuniary and non-pecuniary damages is \$300,000. 42 U.S.C. § 1981a(b)(3).

#### *Non-Pecuniary 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 Enforcement Guidance: Compensatory and Punitive Damages Available under § 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.302 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).

The Commission notes that nonpecuniary, compensatory damages are designed to remedy the harm caused by the discriminatory event rather than 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 his 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.

Here, the AJ awarded Complainant \$10,000 in nonpecuniary compensatory damages based on Complainant's minimal testimony and evidence regarding the harm she experienced as a result of the Agency's failure to accommodate her. Complainant testified she had previously experienced lower back pain and pain from sciatica, but that Agency's actions resulted in exacerbation of the pain. In addition, Complainant testified that she experienced pain and burning in her lower back and legs and numbness in her feet due to prolonged sitting during her commute to work. Complainant was later diagnosed with degenerative disc disease, but Complainant failed to show a nexus between the Agency's failure to accommodate her and her diagnosis. Further, the AJ noted that the Agency failed to accommodate Complainant in March 2018, but she only remained in the position until April 21, 2018, when she accepted a new position.

We find that the AJ's award is supported by substantial record evidence. We find that this award is not “monstrously excessive” and consistent with prior Commission precedent. See Mica B. v. Gen. Servs. Admin., EEOC Appeal No. 2019000424 (Aug. 12, 2020) (\$10,000 awarded where complainant experienced decline in physical health but not fully supported by medical evidence submitted); Cleo S. v. U.S. Postal Serv., EEOC Appeal No. 2019003273 (Aug. 18, 2020) (\$10,000 awarded where harm Complainant experienced was partly attributable to the Agency's failure to respond to his request for reasonable accommodation); Dalton C. v. Dep't of Health & Human Servs., EEOC Appeal No. 0120170077 (Mar. 27, 2018) (\$15,000 awarded where complainant submitted limited medical evidence regarding the exacerbation of his preexisting conditions as a result of agency's failure to accommodate).

### CONCLUSION

Accordingly, based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency's final order and REMAND this matter to the Agency to take the corrective actions, as slightly modified, in accordance with the following Order.

### ORDER (C0618)

The Agency is ordered to take the following remedial action:

1. Within 60 days of the date this decision is issued, the Agency shall pay Complainant \$10,000.00 in non-pecuniary compensatory damages.
2. Within 60 days of the date this decision is issued, the Agency shall restore or compensate Complainant for 24 hours of sick leave Complainant used on March 9, March 23, and March 30, 2018.
3. Within 90 days of the date this decision is issued, the Agency shall provide four hours of training to the management officials identified as S1 and S2. The training shall emphasize the Rehabilitation Act's requirements, particularly, its requirement that management initiate an interactive process once an employee requests a reasonable accommodation, and the Agency's obligation to grant an effective reasonable accommodation.
4. Within 90 days of the date of this decision, the Agency shall consider taking appropriate disciplinary action against the management officials identified as S1 and S2, if still employed by the Agency. The Commission does not consider training to be disciplinary action. The Agency shall report its decision to the Compliance Officer referenced herein. 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 employment, the Agency shall furnish documentation of their departure date(s).

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 of the Agency's calculation of back pay and other benefits due Complainant, including evidence that the corrective action has been implemented.



POSTING ORDER (G0617)

The Agency is ordered to post at Rural Development, Rural Utilities Service, Portfolio Management and Risk Assessment Division facility in Washington, D.C. 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).

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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

November 4, 2021  
Date