



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

[REDACTED]
Dewey R.,¹
Complainant,

v.

Carlos Del Toro,
Secretary,
Department of the Navy,
Agency.

Appeal No. 2020004294

Hearing No. 490-2019-00080X

Agency No. 18-62980-02501

DECISION

Complainant timely 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 final order concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission VACATES the Agency's final order.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Financial Management Analyst, GS-12, with the Naval Personnel Command (NPC), Financial Management Division (PERS-52), in Millington, Tennessee. Complaint Case File (Compl. File), at 8.²

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.

² The page numbers refer to the "Bates stamp" numbers on the bottom right of each page.

On May 1, 2018, the Director of Finance, GS-14, (the “Director”) (Caucasian, male) emailed prospective candidates a vacancy announcement for the position of Supervisory Financial Management Analyst, GS-13, within the Agency’s Financial Management Division, in Millington, Tennessee. Compl. File at 153.

The Agency’s Human Resources (HR) received applications for the position from nine prospective candidates, including an application from Complainant. The Agency’s HR then forwarded Complainant’s application along with the applications of seven other candidates to the Director and the Supervisory Financial Management Analyst (African American, male) who served as the only members of the selection panel. Id. at 599-600, 740. The Director and the Supervisory Financial Management Analyst then interviewed Complainant along with the seven other candidates for the position. Each candidate was asked the same five interview questions, and the Director and the Supervisory Financial Management Analyst separately scored the answers given by the respective candidates on a scale of 1-10 for each of the five questions asked. Complainant received a total interview score of 42.5 from the Director and a score of 46 from the Supervisory Financial Management Analyst for his answers regarding the five interview questions. Id. at 270

The Director, who also served as the selecting official, chose the selectee (Caucasian/Hispanic, female, under 40) after she received the highest interview scores from both him and the Supervisory Financial Management Analyst. Id. at 196. The Director and the Supervisory Financial Management Analyst provided the selectee with scores of 45 and 47, respectively, for her interview. Id. at 270. As such, Complainant received a total interview score of 88.5, while the selectee received a total score of 92. Id. While Complainant was ultimately not selected, he was chosen as the first alternate for the position. Id.

According to the Director, he scored the selectee higher than Complainant, in part, because she provided a more comprehensive response regarding the interview question about a most significant job contribution. Id. at 271. The Supervisory Financial Management Analyst additionally explained that Complainant could only emphasize how much he had trained employees but not how he intended on leading the organization from a management position. Id. at 281. The Supervisory Financial Management Analyst further stated that Complainant failed to elaborate on his interview responses until the very end of his interview when he asked if there was anything else Complainant wanted to add, and by that point, he had already determined that Complainant was not the best qualified for the position. Id. at 278. He further explained that what stood out for him was Complainant’s lack of response regarding the holding employees accountable interview question, while the selectee provided a specific answer to the question that left an impression on him that she was a better fit for the position. Id. at 280.

However, a former Supervisor, GS-13, who retired in the Fall of 2018 (“retired Supervisor”), who previously worked with the Director, Complainant, and the selectee, attested that the Director informed him that he had decided that the selectee would be chosen for the position even though the interviews were not completed and no formal decision had been made as to who

would fill the position. Id. at 1181-1184. The retired Supervisor believed that the Director did not follow the proper selection procedures and pre-selected the selectee. Id. at 1184.

On June 28, 2018, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (African-American), sex (male), and age (58) when on May 23, 2018, he was told he was not selected by the Director for the position of Supervisory Financial Management Analyst, GS-13, at the Navy Personnel Command (NPC), Financial Management Division, in Millington, Tennessee

Following 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). Complainant timely requested a hearing. Over Complainant's objections, the AJ assigned to the case granted the Agency's March 16, 2020, motion for a decision without a hearing and issued a decision without a hearing on June 14, 2020. The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

CONTENTIONS ON APPEAL

Complainant's Brief on Appeal

On appeal, Complainant, through his attorneys, assert that at the time of his non-selection there was only one African American employee in management at the GS-13 grade-level or above. Complainant notes that his resume reflects that he has 36 years of experience, and he was often called on to be a GS-13 supervisor in acting capacity. He maintains that he was the "go-to guy" when the GS-13 was absent because of his extensive training and experience. Complainant contends that the Director did not score the resumes of any of the candidates interviewed, and therefore his experience and extensive training record was not considered.

Complainant further asserts that there was a conversation between the Director and Supervisory Financial Management Analyst, as to whether the selectee would accept the position due to a potential familial conflict. Complainant maintains that the Director attested that this conversation took place after the interviews, while the Supervisory Financial Management Analyst stated that the conversation took place prior to the interviews taking place. Complainant asserts, moreover, that his interview lasted closer to 30 minutes, while the selectee's interview lasted only 10 minutes, undermining the panel's contentions that he did not provide more detailed answers than the selectee during his interview.

Complainant further contends that the selectee, after her selection, would directly contact him for assistance with the position. Complainant asserts, additionally, that he had a conversation with the retired Supervisor who stated that the Director told him that the selectee would be receiving the position prior to the interviews being completed. Complainant states that the retired Supervisor recalled being surprised at the selectee's selection, believing that his (Complainant's) extensive expertise and training was a better fit for position.

Complainant maintains that the Director previously selected two Caucasian, male employees for permanent GS-13 positions, and he had selected candidates of different races, ages, and sexes for lower level positions.

Agency's Response

In response, the Agency maintains that it articulated legitimate, nondiscriminatory reasons for Complainant's non-selection, which Complainant did not establish were pretextual based on his protected classes. The Agency specifically asserts that each panel member separately scored the interviews of the candidates, and the selectee was the individual with the highest cumulative interview score. The Agency notes that the panel consistently scored Complainant lower than the selectee with regard to the interview questions asked, as he did not provide answers that were as comprehensive as the selectee. The Agency notes that the candidates' resumes were not reviewed, rated, or ranked by the panel, and the selectee's interview performance was the ultimate reason for her selection over Complainant. The Agency nevertheless argues that even a review of their respective resumes reflects that Complainant cannot establish that his qualifications were significantly superior to that of the selectee. The Agency notes that Complainant's resume reflected that he had 19 years of experience at the NPC as a Financial Management Analyst. While according to the selectee's resume, she had 10 years of experience as an Assistant Logistics officer, Comptroller, and Financial Management Analyst. The Agency further maintains that the selectee listed that she was a direct supervisor for up to 45 civilian and military personnel. The Agency asserts that the position at issue was a supervisory position, and the panel believed that the selectee would be a better fit for a supervisory role based on her interview answers. The Agency ultimately contends there is no evidence showing that any of Complainant's protected bases played a role in his non-selection.

STANDARD OF REVIEW

In rendering this appellate decision, we must scrutinize the AJ's legal and factual conclusions, and the Agency's final order adopting them, de novo. See 29 C.E.R. § 1614.405(a) (stating that a "decision on an appeal from an Agency's final action shall be based on a de novo review ..."); see also Equal Employment Opportunity Management Directive for 29 C.E.R. Part 1614 (EEO MD-110) at Chap. 9. § VI.B. (Aug. 5, 2015) (providing that an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed de novo). We are free to accept (if accurate) or reject (if erroneous) the AJ's, and Agency's, factual conclusions and legal analysis - including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. See id. at Chap. 9. § VI.A. (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

Summary Judgment

We must determine whether it was appropriate for the AJ to have issued a summary judgment decision on this record. The Commission's regulations allow an AJ to issue a decision without a hearing when he or she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g).

This regulation is patterned after the summary judgment procedure set forth in Rule 56 of the Federal Rules of Civil Procedure. The U.S. Supreme Court has held that summary judgment is appropriate where a court determines that, given the substantive legal and evidentiary standards that apply to the case, there exists no genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a motion for summary judgment, a court's function is not to weigh the evidence but rather to determine whether there are genuine issues for trial. Id. at 249. The evidence of the non-moving party must be believed at the summary judgment stage and all justifiable inferences must be drawn in the non-moving party's favor. Id. at 255. An issue of fact is "genuine" if the evidence is such that a reasonable fact finder could find in favor of the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A fact is "material" if it has the potential to affect the outcome of the case.

If a case can only be resolved by weighing conflicting evidence, issuing a decision without holding a hearing is not appropriate.

In the context of an administrative proceeding, an AJ may properly consider issuing a decision without holding a hearing only upon a determination that the record has been adequately developed for summary disposition. See Petty v. Dep't of Def., EEOC Appeal No. 01A24206 (July 11, 2003). Finally, an AJ should not rule in favor of one party without holding a hearing unless he or she ensures that the party opposing the ruling is given (1) ample notice of the proposal to issue a decision without a hearing, (2) a comprehensive statement of the allegedly undisputed material facts, (3) the opportunity to respond to such a statement, and (4) the chance to engage in discovery before responding, if necessary. According to the Supreme Court, Rule 56 itself precludes summary judgment "where the [party opposing summary judgment] has not had the opportunity to discover information that is essential to his opposition." Anderson, 477 U.S. at 250. In the hearing context, this means that the administrative judge must enable the parties to engage in the amount of discovery necessary to properly respond to any motion for a decision without a hearing. Cf. 29 C.F.R. § 1614.109(g)(2) (suggesting that an AJ could order discovery, if necessary, after receiving an opposition to a motion for a decision without a hearing).

After a careful review of the record, we find that the AJ's issuance of a decision without a hearing was not appropriate, as there are genuine issues of material fact, and the credibility of witnesses is at issue, as explained below.

Disparate Treatment

Complainant must satisfy a three-part evidentiary scheme to prevail on a claim of disparate treatment discrimination. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). First, Complainant must establish a prima facie case by demonstrating that he was subjected to an adverse employment action under circumstances that would support an inference of discrimination. McDonnell Douglas, 411 U.S. at 802; Furnco Constr. Co. v. Waters, 438 U.S. 567, 576 (1978). Second, the burden is on 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). Third, should the Agency carry its burden, Complainant must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the Agency were not its true reasons, but were a pretext for discrimination. McDonnell Douglas, 411 U.S. at 804; St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

Complainant may establish a prima facie case of discrimination in the non-selection context by showing that: (1) he is a member of a protected class; (2) he was qualified for the position; (3) he was not selected for the position; and (4) he was accorded treatment different from that given to persons otherwise similarly situated who are not members of his protected group, or in the case of age, who are considerably younger than him. Complainant v. Dep't of Justice, EEOC Appeal No. 01A04389 (May 16, 2002); Complainant v. Dep't of Educ., EEOC Request No. 05970561 (Aug. 6, 1998). Complainant may also set forth evidence of acts from which, if otherwise unexplained, an inference of discrimination can be drawn. Furnco Construction Corp. v. Waters, 438 U.S. 567, 576 (1978).

Here, the record reflects that the Agency selected a Caucasian, female candidate who was significantly younger than Complainant (under 40).³ There is no dispute that Complainant was qualified for the position, and we find that Complainant clearly has met prongs 1-4, as noted above. As such, we find that Complainant has established the relatively light burden of a prima facie case of discrimination based on his race, age and sex. See Complainant v. U.S. Postal Serv., EEOC Appeal No. 01A31036 (Mar. 18, 2004) (complainant established a prima facie case on the bases of race, age, and sex by demonstrating that a similarly situated person not of his race, age, and sex was treated more favorably than he when that person was selected for the position); Complainant v. U.S. Postal Serv., EEOC Appeal No. 07A30024 (Feb. 25, 2004) (complainant established a prima facie case based on sex simply by showing that male individuals were selected over her).

We further find that Complainant has established that there are genuine issues of material facts in dispute as to whether the Agency's legitimate, nondiscriminatory reason for his non-selection was pretext for discrimination based on his race, sex, and age.

³ The exact age of the selectee is not contained in the record. Complainant maintained that the selectee was in her early 30s at the time of her selection, and we note that the Agency does not dispute that the selectee was under the age of 40.

In so finding, we note that the Director and the Supervisory Financial Management Analyst both attested that the selectee was chosen over Complainant because her performance during the five-question interview was superior to Complainant's performance. However, the Supervisory Financial Management Analyst averred that he had discussions with the Director about the selectee and whether she would accept the position prior to the interviews taking place. The Supervisory Final Management Analyst answered as follows:

Q: When did this conversation happen?

A: I mean, like I said, it was before the posting in the system.

Compl. File, at 795.

We also note that the retired Supervisor also commented that the Director discussed with him that he decided on the selectee for the position even though interviews were not completed. The retired Supervisor explained:

In 2018, [the Director] came into my office to inform me that even though interviews were not completed (for the PERS-523 GS-13 position), and no formal decision had been made as to who would fill the position, that he (the Director) had already decided the candidate who would be promoted to the PERS-523 GS-13 position – [Complainant] . . . a much younger, light-complexioned female.

Id. at 1183.

Moreover, the Director and the Supervisory Financial Management Analyst attested that Complainant failed to elaborate on his interview responses during his interview as well as the selectee did. Yet the selectee's interview reportedly may have lasted less than 15 minutes, while Complainant's interview apparently lasted closer to 30 minutes. Id. at 18, 1223.

We therefore find that Complainant has established there is a genuine issue of material fact as to whether the Agency's reason, that the selectee performed better during her interview, is worthy of belief. The Supreme Court has held that a fact finder may find discrimination where the agency's articulated reasons are unworthy of belief. See Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133 (2000) (the Supreme Court held that a plaintiff may show pretext, by establishing a prima facie case and sufficient evidence to that defendant's explanation is unworthy of credence).

In addition, in a non-selection case, pretext may be found where the complainant's qualifications are demonstrably superior to the selectee's. Bauer v. Bailar, 647 F.2d 1037, 1048 (10th Cir. 1981). Here, there is no dispute that the resumes of the respective candidates were not considered and scored by the panel during the selection process, even though the resumes were provided to the panel by HR. Id. at 19, 570.

As such, the panel only considered and scored the interviews of the respective candidates, and did not consider awards or training, among other criteria with respect to the qualifications of the candidates during the selection process. We note that the retired Supervisor attested:

Although [the selectee] is a good employee . . . I do not believe [the selectee] was as well-informed on the subject area [Complainant] for the [sic] PERS-523 GS-13 position simply because she worked within a different set of financial processes in her GS-12 position and it would have been a more difficult transition for her to make versus [Complainant] (and likely would have required [Complainant's] help in executing certain job duties). Based on my experience as a supervisor, [Complainant] had more experience in the work that would need to be done by the GS-13 position and due to his historical knowledge while at PERS-52, he had acquired knowledge that you can only be acquired over a sustained period of time on the job.

Id. at 1182-1183

According to Complainant, he was asked to help and assist the selectee in the performance of her duties, as she was allegedly initially unfamiliar with the duties of her new GS-13 position. Id. at 525-527. As such, upon review, we find that Complainant has established there is also a genuine issue of material fact in dispute as to whether his qualifications were demonstrably superior to the selectee's.

We also consider that there were only two panel members here and the Director served as both a panel member and the selecting official who was in charge on the selection process. We note that the retired Supervisor believed that the Director did not follow the proper selection procedures and pre-selected the selectee. Id. at 1184.

We further consider that the Supervisory Financial Management Analyst subsequently stated that he “misspoke” about some of his answers given in the Report of Investigation regarding the interview of Complainant. Id. at 1331, 1336. We note, moreover, that the retired Supervisor also stated as follows:

When I arrived at [the Agency in] Millington, I opined that it was like stepping back in time forty (40) years, due to the lack of diversity in upper management (GS-14's and GS-15's were all mostly white), and the GS-13's other than me (I'm Hispanic) all appeared to be white and/or Caucasian. . . .

As a result of my own frustrations with [the Agency in] Millington (I learned I would not be promoted to permanent status as the GS-13), and along with the lack of diversity, I decided to take early retirement . . .

Id. at 1182, 1184.

In summary, there are simply too many unresolved issues which require further development of the record and an assessment as to the credibility of the Director, the Supervisory Financial Management Analyst, other witnesses, and Complainant himself.⁴ Finally, we note that the AJ fully adopted the Agency's motion for a decision without a hearing without any independent analysis or factual background. Therefore, we find that judgment as a matter of law for the Agency should not have been granted.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we VACATE the Agency's final order and we REMAND this matter in accordance with the Order below.

ORDER

The Agency is directed to submit a copy of the complaint file to the Hearings Unit of the EEOC's Memphis District Office within fifteen (15) calendar days of the date this decision is issued. The Agency shall provide written notification to the Compliance Officer at the address set forth below that the complaint file has been transmitted to the Hearings Unit. Thereafter, the Administrative Judge shall hold a hearing and issue a decision in accordance with 29 C.F.R. § 1614.109. The Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

The Agency is further directed to submit a compliance report in accordance with the statement entitled "Implementation of the Commission's Decision."

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).

⁴ We note that the hearing process is intended to be an extension of the investigative process, designed to ensure that the parties have "a fair and reasonable opportunity to explain and supplement the record and, in appropriate instances, to examine and cross-examine witnesses." See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), 7-1 (Aug. 5, 2015); see also 29 C.F.R. § 1614.109(e). "Truncation of this process, while material facts are still in dispute and the credibility of witnesses is still ripe for challenge, improperly deprives Complainant of a full and fair investigation of her claims." Bang v. U.S. Postal Serv., EEOC Appeal No. 01961575 (Mar.26, 1998). See also Peavley v. U.S. Postal Serv., EEOC Request No. 05950628 (Oct. 31, 1996); Chronister v. U.S. Postal Serv., EEOC Request No. 05940578 (Apr. 25, 1995).

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

February 7, 2022

Date