



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Rosamaria F.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Appeal No. 2021004197

Agency No. 4K210011520

DECISION

On July 18, 2021, Complainant filed an appeal with the Equal Employment Opportunity Commission (“EEOC” or “Commission”), pursuant to 29 C.F.R. § 1614.403(a), from the Agency’s June 3, 2021 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier, Q-01, at the Brooklyn Curtis Bay Branch in Baltimore, Maryland.

On October 24, 2020, Complainant filed a formal EEO complaint alleging that the Agency subjected her to harassment/a hostile work environment against her on the bases of sex (female), disability, and reprisal for prior protected activity when:

1. On September 11, 2019, her manager reported fraud to the Office of Workers Compensation Program (“OWCP”) her injury and she was not paid Continuation of Pay,

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. On February 20 and May 20, 2020, as well as other dates to be specified, Management discussed her medical information and restrictions with others on the workroom floor,
3. On March 13, 2020 and other dates to be specified, Management threatened her, cursed at her, and made rude comments to her,
4. On March 26, 2020, she was issued discipline,
5. On May 27, 2020, Management called her a liar and disrespected her in front of coworkers,
6. On June 10, 2020, Management told her that she was “useless” and “a waste of time,”
7. On June 16, 2020, she was charged with 8 hours of Absent Without Leave (“AWOL”),
8. On July 6, 2020 and other dates to be specified, Management allowed other coworkers to bully her and did not take appropriate action,
9. On an ongoing basis, Management skipped over her while giving everyone else their daily assignments,
10. On dates to be specified, she was asked to go home early and to leave before the end of her tour,
11. On dates to be specified, Management input the incorrect leave for her absences,
12. On dates to be specified, she was told to only call the 1-800 number when calling for unscheduled absences while other coworkers could call the office directly or call the supervisor directly, and,
13. On a date to be specified, her manager showed threatening behavior when he chased her around the building.

On November 23, 2020, the Agency issued a “Notice of Partial Acceptance/Partial Dismissal of Formal Complaint” (“Partial Dismissal”) to Complainant, dismissing Claim 1 for failure to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1), and, dismissing Claim 4, to the extent that it raised a discrete act of discrimination, as untimely raised with an EEO counselor pursuant to 29 C.F.R. §1614.105(a)(1). Claims 2 through 13, including Claim 4, were accepted as allegations comprising a hostile work environment, and an EEO Investigator was assigned to the matter.

On December 1, 2020, Complainant signed a form entitled “Agreement to Extend the 180-Day EEO Investigative Process” (“Extension Form”) where she requested a 60-day extension to provide her affidavit and other evidence in support of her claims during the investigation.

On December 2, 2020, the EEO Investigator, mailed an affidavit request to Complainant, which, in addition to instructions on responding to the questions, informed Complainant that, “you, as the complainant, have the burden of proof regarding your allegations. If this affidavit is not returned (via mail) within 15 calendar days of receipt of this package, your complaint may be dismissed in accordance with 29 Code of Federal Regulations 1614.107(g).”

The EEO Investigator also sent an email on December 2, 2020, notifying Complainant that the affidavit request had been mailed and that Complainant’s extension request was approved for 30 days. She explained that she needed Complainant to submit her affidavit responses “as soon as possible,” in case she had to send a supplemental affidavit request based on Complainant’s responses. The EEO Investigator then stated, “I am attaching the affidavit questions in you packet so you can begin responding to the questions right away on your computer.” She asked Complainant to confirm receipt of the affidavit packet by email, and to keep her updated, “I will want to monitor to see if we need more time.” Complainant responded that she would.

On February 16, 2021, Complainant submitted another Extension Form, where she requested an additional 30 days to complete her affidavit responses. Complainant’s stated reason for the request was: “emergency issues delayed/death/medical.”

On March 25, 2021, the EEO Investigator emailed Complainant requesting a status update, as Complainant’s affidavit was “long past due,” and providing Complainant with another Extension Form. Complainant replied on March 31, 2021, thanking the EEO Investigator for her assistance, and explaining that her stepmother died the day before. Complainant confirmed that she signed the Extension Form and would submit her affidavit responses the following Monday or as soon as possible. The form, prepared by the EEO Counselor, and dated March 25, 2020, states, “I am requesting a 30-day extension for additional affidavit preparation.”

On or about May 21, 2021, the EEO Investigator submitted her report of investigation (“ROI”) to the Agency and Complainant. The Investigative Summary explained that Complainant did not provide responses to the EEO Investigator’s affidavit request, so only “general inquiries” could be made regarding many of Complainant’s allegations. The Investigative Summary also explained that for various reasons, most of the evidence Complainant previously submitted with her formal EEO complaint could not be considered.

On June 3, 2021, the Agency issued a final action dismissing Claims 2 through 13 pursuant to 29 C.F.R. § 1614.107(a)(7), for failure to cooperate with an Agency’s request for information, and reiterated its dismissals of Claims 1 and 4 in the November 23, 2020 Partial Dismissal. The instant appeal followed.

ANALYSIS AND FINDINGS

Claim 1: Failure to State a Claim – Collateral Attack

An agency shall dismiss a complaint that fails to state a claim. 29 C.F.R. § 1614.107(a)(1). The Commission has generally held that complaints involving other adjudicatory proceedings, including those involving OWCP's workers' compensation processes, fail to state a claim within the meaning of its regulations. See Wills v. Dep't of Defense, EEOC Request No. 05970596 (July 30, 1998). Rather, such claims are considered impermissible collateral attacks. *Id.* A claim that can be characterized as a collateral attack, by definition, involves a challenge to another forum's adjudicatory decision or proceedings. See Hogan v. Dep't of the Army, EEOC Request No. 05940407 (Sept. 29, 1994).

The Commission's rejection of such claims includes allegations similar to those in Claim 1, where the claim of harassment is based on the Agency's actions when reporting information related to the complainant's workers' compensation claim to OWCP. For instance, in Hogan v. Department of the Army, we reasoned that an allegation that agency officials provided misleading statements to OWCP was an attempt to lodge a collateral attack because reviewing such a claim would require the Commission to determine what workers' compensation benefits the complainant would likely have received, which is an OWCP process outside EEOC jurisdiction. See also Schneider v. United States Postal Serv., EEOC Request No. 05A01065 (Aug. 15, 2002) (rejecting the complainant's claim that the agency's delay in processing her OWCP paperwork constituted harassment). Likewise, claims where an agency management official, such as the supervisor referenced in Claim 1, allegedly submitted fraudulent or otherwise deficient documentation to OWCP, thereby contravening the complainant's workers' compensation claim constitute impermissible collateral attacks. Bell v. Dep't of Transportation, EEOC Appeal No. 01991806 (Jan. 11, 2001). Claim 1 was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(1).

Claim 4: Untimely EEO Contact

In relevant part, 29 C.F.R. § 1614.107(a)(2), provides that an agency shall dismiss a complaint or a portion of a complaint that fails to comply with the applicable time limits contained in § 1614.105, unless the Agency extends the time limits in accordance with § 1614.604(c). The regulation provided under 29 C.F.R. § 1614.105(a)(1), states that complaints of discrimination should be brought to the attention of the Equal Employment Opportunity Counselor within 45 calendar days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action.

For Claim 4, the only evidence in the ROI that a disciplinary action occurred is Complainant's March 28, 2020 signed rebuttal to the alleged disciplinary act. Based on the rebuttal, and because Complainant has not alleged otherwise, we presume that the disciplinary action referenced in Claim 4 became effective on March 26, 2020. Complainant's initial contact with an EEO Counselor occurred more than 45 days later, on June 28, 2020, making it untimely.

As Claim 4 was not timely raised, it cannot be accepted for review as a discrete act of discrimination. However, Claim 4, along with Complainant's remaining claims (apart from Claim 1) comprise a single allegation of an ongoing hostile work environment with at least one claim falling within the 45 day limitation period for EEO contact. Claim 4 is timely and may be considered with respect to Complainant's harassment/hostile work environment claim only.

Claims 2 – 13: Failure to Cooperate

The regulation set forth at 29 C.F.R. § 1614.107(a)(7) provides that an agency may dismiss a complaint for failure to cooperate, or alternatively, adjudicate the complaint if sufficient information for that purpose is available. The regulation is applicable under the following circumstances: (1) the agency has provided the complainant with a written request to provide relevant information or to otherwise proceed with the complaint; (2) the request included a notice of the proposed dismissal for failure to respond within 15 days of receipt of the request; and (3) the complainant either fails to respond to the request within 15 days of receipt or the complainant's response does not address the agency's request.

Historically, the Commission "has been reluctant to permit the use of this potent dismissal authority." Koch v. Sec. & Exchange Commission, EEOC Appeal Nos. 01A04600, 01A05012, & 01A01083 (Dec. 21, 2001) citing Card v. United States Postal Serv., EEOC Request No. 05970095 (Apr. 23, 1998) other citations omitted. Therefore, our guidance and precedence has thoroughly established that a dismissal of a complaint for failure to cooperate under 29 C.F.R. § 1614.107(a)(7), is only proper where there is sufficient evidence to support a conclusion that the complainant purposely engaged in delay or contumacious conduct, and there was insufficient information in the record to have permitted the agency to continue the investigation. See EEO Management Directive for 29 C.F.R. Part 1614 ("EEO-MD-110") Ch. 5 Sec. IV.B.2 (Aug. 5, 2015) citations omitted.

Here, the record reflects that the EEO Investigator provided Complainant with multiple written requests to complete an affidavit in order provide relevant information to investigate her complaint. However, the Commission is not convinced that the Agency provided Complainant with written notice that failure to respond to the information request within 15 days of receipt of the request could result in dismissal. See, e.g. St. Louis v. Dep't of Homeland Sec., EEOC Appeal No. 0120110958 (Nov. 8, 2011) (dismissal for failure to cooperate improper where there was insufficient evidence that the complainant received the affidavit package, and the record contained sufficient information to adjudicate the claim), Carroll v. Dep't of Homeland Sec., EEOC Appeal No. 0120092572 (Sept. 21, 2009) (no evidence of "intentional delay" by a complainant who did not respond to the agency's mailed request for information where the agency failed to establish actual receipt by the complainant or that it attempted to follow up on its first request for information, and the agency's other mailed requests to the complainant regarding separate claims were returned unclaimed weeks later).

The regulations state that the time frames in 29 C.F.R. Part 1614 are to be calculated on actual receipt by a complainant when not represented by an attorney. The Commission has held that receipt of a document at a complainant's address of record, by a member of the complainant's family or household of suitable age and discretion creates a rebuttable presumption of constructive receipt. Fontanella v. Gen. Servs. Admin., EEOC Request No. 0519940131 (April 10, 1995). Where, as here, there is an issue of timeliness, "[a]n agency always bears the burden of obtaining sufficient information to support a reasoned determination as to timeliness." Guy, v. Dep't of Energy, EEOC Request No. 05930703 (Jan. 4, 1994) (quoting Williams v. Dep't of Def., EEOC Request No. 05920506 (Aug. 25, 1992)).

In the record, the only written notice that Complainant had 15 days to respond to the EEO Investigator's request for information, and that failure to do so could result in dismissal pursuant to 29 C.F.R. § 1614.107(a)(7), appears to be the December 2, 2020 letter that was physically mailed to Complainant, accompanying the affidavit questions. The Agency failed to provide evidence that Complainant actually received the December 2, 2020 letter. In the Investigative Summary, the EEO Investigator acknowledged that the ROI does not contain a signed confirmation of receipt: "Complainant's delivery confirmation...initially did not reflect delivery. After a lost claim was submitted to the Postal Service, the USPS confirmed that the package was delivered; however, the delivery scan did not occur." There is no indication that this letter was included when the EEO Investigator provided Complainant with the affidavit questions by email the same day.

Moreover, the EEO Investigator's subsequent emails to Complainant do not specify deadlines, but request the affidavit responses "as soon as possible." None of the EEO Investigator's emails specify that failure to provide the requested affidavit could result in dismissal. Likewise, the Extension Request Forms signed by Complainant do not advise that failure to adhere to the extended deadline could result in dismissal. Even if the Agency established that Complainant actually received the December 2, 2020 letter, a single notice that failure to timely respond to an EEO Investigator's information request could result in dismissal, is undermined by EEO Investigator's subsequent action of proactively offering extension forms to Complainant after not hearing from her for months after the deadline to submit the affidavit had passed.

Assuming, *arguendo*, that the Agency did provide Complainant with proper notice that her failure to respond to its requests within 15 days could result in the dismissal of her complaint, a dismissal pursuant to 29 C.F.R. § 1614.107(a)(7) is not warranted in this case. The record is sufficiently developed for adjudication on the merits of Complainant's allegations, and it is devoid of evidence of a "clear record of delay" or "contumacious conduct" by Complainant.

A person's conduct is contumacious when it is "willfully stubborn and disobedient." EEO-MD-110 Ch. 7 Sec. V.A.3 citing Black's Law Dictionary (6th ed. 1990). Such conduct "may include any unprofessional or disrespectful behavior; degrading, insulting, or threatening verbal remarks or conduct; the use of profanity; or conduct engaged in for the purpose of improperly delaying the hearing." MD-110 Ch. 7 Sec. V.A.3 citing Bradley v. United States Postal Serv., EEOC Appeal Nos. 01952244, 01963827 (Sept. 18, 1996).

For instance, in Koch v. Sec. & Exchange Commission, the complainant, among other things, “repeatedly refused to respond either to agency or administrative judge orders for documents and testimony. Instead, he engaged in procedural wrangling with EEO personnel... [and] leveled personal attacks against both agency and EEOC employees, and even threatened such officials with professional and criminal retaliation.”

The Commission has previously found no evidence of “a clear record of delay” or “contumacious conduct” where the complainant responded to the EEO Investigator’s communications and their failure to provide an affidavit did not “substantially inhibit the Investigator’s ability to conduct an investigation into her complaint.” Helen G. v. United States Postal Serv., EEOC Appeal No. 2021005154 (Nov. 8, 2021) (as the Investigator “assessed numerous relevant documents” and was able to obtain five affidavits relevant to Complainant’s claims) citing Card, St. Louis, (dismissal improper where the complainant failed to provide affidavit, but the record contained sufficient information to adjudicate the claim, noting that “the EEO Counselor’s Report provides detailed information”), but see, Colon v. United States Postal Serv., EEOC Appeal No. 01997035 (Nov. 21, 2000) (affirming dismissal for failure to cooperate where the complainant was unresponsive to the EEO Counselor’s inquiry, and the EEO Investigator submitted three information requests over a period of 9 months to both the complainant and his representatives, where the final letter warned that failure to respond in 15 days could result in dismissal, and where complainant only responded to the final letter with a request for a one week extension, and failed to follow up after it was granted).

The Commission also takes into consideration whether the complainant’s failure to provide requested information was intentional. See, e.g. Rose v. United States Postal Serv., EEOC Appeal No. 0120102939 (Nov. 29, 2010) (dismissal for failure to cooperate was improper where, on appeal, the complainant “provided a brief statement that she did not respond to the agency’s information request in a timely manner, due to illness”), Fisher v. United States Postal Serv., EEOC Appeal No. 01A33258 (Mar. 12, 2004) (dismissal for failure to cooperate was improper, noting the complainant’s actions did not indicate that she was “deliberately engaging in delay tactics” where, on appeal, she persuasively explained that she failed to timely respond because she was unable to contact her representative and did not believe she could adequately respond without her representative’s assistance, noting the lengthy time between the filing of her complaint and the commencement of the investigation (nearly a year and a half), that she informed the EEO Investigator of her dilemma after the second notice, and that she provided evidence that her representative was undergoing surgery during the relevant time frame).

As of December 2, 2020, Complainant was in possession of the affidavit questions provided by the EEO Investigator, and that she needed to provide her responses “as soon as possible.” The record reflects that Complainant’s completed affidavit was initially due on or about January 18, 2021, based on the 30-day extension granted on December 2, 2021, and factoring in the initial 15 day filing period. Complainant’s next communication with the EEO Investigator appears not to have occurred for an additional 72 days, and only after the EEO Investigator contacted Complainant about her “long past due” affidavit.

Ultimately, based on additional extensions granted by the EEO Investigator (some retroactive, as Complainant failed to follow up), the final deadline for Complainant to submit the completed affidavit was on or about April 27, 2021.

On appeal, Complainant explains that during the time frame when she was asked to provide information requested by the EEO Investigator, she “dealt with COVID, being quarantined from work related case, lost several members of my family to include my stepmother, illness, and lost my questions after completing them on my computer before getting to print them out (over 100 answers).” As there were 150 questions, some with multiple parts, Complainant found it hard to start over, once the answers were “lost in the computer,” and due to the stress from medical and family concerns she experienced during the filing time frame.

With the exception of her March 31, 2021 email to the EEO Investigator, which referenced the death of her stepmother, Complainant did not convey these difficulties in the email exchanges with the EEO Investigator. Rather, Complainant’s responses to the EEO Investigator acknowledge the EEO Investigator’s sense of urgency to obtain the completed affidavit and assure her that she will submit the affidavit as soon as possible. There is no evidence that Complainant proactively requested the extensions, or took other measures to ensure that her affidavit was timely submitted, such as requesting official time to complete it, seeking advice from the Agency’s EEO Office or assistance from a Union representative.

Additionally, nothing in record supports a finding that Complainant was so incapacitated throughout December 2, 2020 and April 27, 2021 that she was rendered unable to complete her affidavit. While Complainant offers some medical documentation to support her appeal, it only covers a portion of the relevant time frame. See Fontenot v. United States Postal Serv., EEOC Request No. 05990216 (June 4, 1999) (evidence that the complainant was incapacitated for part of applicable period does not justify failure to file before or after period of incapacity). We note that Complainant did not offer evidence that she was ever tested or diagnosed with COVID. Rather, she provides a summary of a doctor visit on November 21, 2020, for a sore throat after exposure to an individual with COVID. See Galbreath v. Dep’t of the Navy, EEOC Request No. 05980927 (Nov. 4, 1999) (evidence that a complainant has sought treatment does not, without evidence of incapacity, justify an extension of time). While Complainant offers evidence that she was on leave without pay (“LWOP”) following this doctor visit, it appears she returned to work in early January 2021, indicating that she would also be capable of completing the affidavit by the initial extended deadline. The Commission is also unpersuaded that Complainant’s technical difficulties, (on an unspecified date) prevented her from completing the affidavit.

While her explanation on appeal was insufficient to warrant an extension of the deadline to submit her affidavit responses, considering the communications of record and the circumstances she described, we find no indication that her actions were “intentional delay tactics.” We also note that Complainant provided ample information through all prior stages of processing her complaint and responded to the EEO Investigator’s inquiries.

The EEO investigator obtained affidavit testimony from four of the five responding management officials (“RMOs”) Complainant identified in her Formal Complaint.² Among other things, the ROI also contains evidence related to Complainant’s attendance and leave allegations, including Complainant’s PS Forms 3972 (Absence Analysis) for 2020 and 2021, as well as the Pay Calendar for 2020 and 2021. In addition, Complainant’s supervisor submitted, along with her affidavit, reports generated by the Agency’s Time and Attendance Collection System (“TACS”) with comparative leave information for other city carriers charged with AWOL.

Significantly, the record contains multiple accounts of Complainant’s allegations in her own words, located in the EEO Counselor’s Report, several detailed EEO Contact Summaries within the EEO Alternative Dispute Resolution Specialist’s Inquiry Report, and in her Formal Complaint, which also includes a timeline of the alleged harassment spanning April 2019 through June 2020. Complainant’s March 28, 2020 rebuttal to the alleged disciplinary action also provides an account of the alleged discriminatory act from her perspective.

With her formal EEO complaint, Complainant enclosed supporting documents, including about 50 pages (large type) of lengthy text conversations between her and several RMOs.³ These texts are relevant to Complainant’s claims about being told to leave early and Management’s response to alleged coworker harassment. Complainant also provided complaints and grievances of several of her coworkers naming some of the same RMOs in the instant complaint. While largely irrelevant to the matter at hand, portions of these coworker grievances corroborate Complainant’s allegations of medical privacy violations that occurred on at least four specific instances.⁴ Some statements reference Complainant, providing relevant background information about RMO knowledge of Complainant’s prior protected EEO activity, and reprisal as a basis for the instant complaint.

We find, therefore, that the Agency should have allowed for a decision on the merits rather than dismissing the formal complaint for failure to cooperate.

CONCLUSION

The Agency’s dismissals of Claim 1 and Claim 4 (to the extent that Claim 4 alleges a discrete act) are AFFIRMED.

² The affidavit responses for S1 and S2 were received and added to the ROI after it was already submitted, so they are not discussed in the ROI’s investigative summary.

³ The EEO Investigator declined to include the text messages in her analysis as the dates of the texts did not include the year. However, Complainant references the year in one of the texts, and, the year for some texts can be surmised based on other accounts in the record, establishing that at least some of the texts occurred during and discuss actions related to the relevant time frame.

⁴ The EEO Investigator also excluded these documents in their entirety.

The Agency's dismissal of Complainant's hostile work environment claim, comprised of the incidents described in Claims 2 through 13, is REVERSED.

Claims 2 through 13 are hereby REMANDED for further processing in accordance with this Decision and the Order below.

ORDER (C0618)

Within **thirty (30) calendar days** of the date this decision is issued, the Agency shall issue Complainant its report of investigation and a notice of her right to request a hearing before an EEOC Administrative Judge or to request an immediate final decision from the Agency. The Agency shall notify Complainant that she has **thirty (30) calendar days** from the date she receives the notice to request a hearing or to request an immediate final decision. If Complainant requests a final decision without a hearing, *or if Complainant fails to respond to the notice*, the Agency shall issue a final decision with the appropriate appeal rights **within sixty (60) calendar days** of receipt of Complainant's request or, *in the event that Complainant fails to respond to the notice*, once the deadline for Complainant to respond passes.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and §1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0920)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.** A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files his or her request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the request for reconsideration.** The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

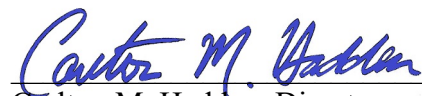
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

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

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

January 10, 2022

Date