



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Leora R.,¹
Complainant,

v.

Xavier Becerra,
Secretary,
Department of Health and Human Services
(Indian Health Service),
Agency.

Appeal No. 2020004621

Agency No. HHSIHS03122016

DECISION

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 July 9, 2020, final decision 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. For the following reasons, the Commission MODIFIES the Agency's final decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Clinical Nurse at the Agency's Kayenta Health Center in Kayenta, Arizona. On June 21, 2016, Complainant filed an EEO complaint alleging that the Agency subjected her to discrimination and harassment based on race and color, and in reprisal for protected EEO activity.² 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 Administrative Judge.

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 Agency initially dismissed Complainant's complaint, but the Commission reversed the dismissal and remanded the complaint for investigation. Leora R. v. Dep't of Health and Human Serv., EEOC Appeal Not. 0120162701 (Oct. 27, 2016).

In accordance with Complainant's request, the Agency issued a final decision finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged. Complainant appealed the Agency's final decision.

On Aug. 30, 2019, the Commission found that Complainant was subjected to retaliation on December 3, 2015, when her supervisor reminded Complainant of her probationary status; told Complainant to essentially stop raising claims of race discrimination because her claims lacked merit; and told Complainant that her coworkers may file a complaint against her because they found her claims of race discrimination to be offensive. The record also showed that the supervisor's conduct had the effect of deterring Complainant from pursuing an EEO complaint at the time. However, the Commission found that Complainant did not establish that the Agency subjected her to discrimination or harassment for her other claims. As part of the remedies, the Commission ordered the Agency to conduct a supplemental investigation into Complainant's claim for compensatory damages. Leora R. v. Dep't of Health and Human Serv., EEOC Appeal No. 0120180736 (Aug. 30, 2019).

On July 9, 2020, the Agency issued a final decision awarding Complainant \$1,000.00 in non-pecuniary compensatory damages. The Agency found that Complainant failed to draw a direct linkage between her claimed medical conditions and the meeting with her supervisor on December 3, 2015. Specifically, the Agency noted that Complainant did not provide any information related to her prior medical conditions, which impeded its ability to accurately assess any impact on them, and Complainant failed to provide a direct link between the retaliatory incident and the long-term impact on her well-being and/or medical conditions. The Agency determined that the record supported that Complainant experienced stress from December 3, 2015, to January 12, 2016, and any adverse effects Complainant may have had from the December 3, 2015 situation subsided by April 4, 2016, totaling a maximum of four months. Specifically, the Agency noted that Complainant's medical documentation showed that by April 4, 2016, Complainant was no longer taking Prozac and her blood pressure and weight issues had leveled off. The Agency considered the awards in similar cases and found that Complainant was entitled to \$1000.00 in non-pecuniary compensatory damages.

In response to Complainant's request for \$10,154.00 in backpay and \$144,718.00 in future wage loss for denied jobs, the Agency noted that backpay and front pay or future wages are categorized as equitable relief and are not considered as compensatory damages. Thus, in order to be eligible for them, the EEOC decision had to specifically order equitable relief, which was not the case here. The Agency also denied Complainant's requests for \$117,124.00 for a loan repayment and \$4,539.00 in relocation expenses because they cannot be directly linked to the December 3, 2015 incident.

Complainant filed the instant appeal and submitted a brief in support of her appeal. The Agency opposed Complainant's appeal.

CONTENTIONS ON APPEAL

Complainant's Contentions

Through her attorney, Complainant requests that the Commission increase her award for non-pecuniary compensatory damages. In support of her request, Complainant cites to Cher B. v. Department of Veterans Affairs, EEOC Appeal No. 0120140445 (January 9, 2017), in which the complainant was awarded \$95,000.00 for “embarrassment, stress, loss of professional standing, one panic attack, and the exacerbation of her lupus symptoms” for approximately 18 months. Complainant argues that her award for non-pecuniary damages should be even higher because her suffering occurred over a 36-month period. Complainant also relies upon Complainant v. Department of Veterans Affairs, EEOC Appeal No. 0120113346 (March 21, 2014) in which the complainant was awarded \$65,000 in non-pecuniary damages where she provided evidence of a worsening medical condition via medical records and psychiatrist notes.

Complainant also argues that she is entitled to \$117,348.96 in pecuniary compensatory damages. Complainant specifies that, “as a result of her transfer,” she incurred storage fees of \$117.48 and \$107.48. Complainant asserts that the Agency’s retaliation prompted her transfer. Complainant also renews her request for \$117,124.00 in loan repayment assistance, which was denied due to her transfer. In sum, Complainant requests \$300,000.00 in non-pecuniary compensatory damages; pecuniary compensatory damages of \$224.96 for storage fees and \$117,124.00 in loan repayment assistance; and attorney’s fees.³

Agency's Contentions

In response, the Agency requests that the Commission affirm its final decision. The Agency asserts that Complainant is not entitled to storage fees related to her transfer because she did not establish that the storage fees were caused by the discriminatory retaliation she endured. The Agency notes that, while Complainant argued that the Agency’s act of discrimination caused her to move to Oklahoma and the storage fees were connected to her move, there is no explanation for why she needed storage in Toledo, Ohio when she worked in Kayenta, Arizona. The Agency asserts that evidence suggests that her use of storage was connected to a personal visit to Ohio, and any connection between the self-storage rental fees to the discriminatory act is attenuated.

Regarding the \$117,124.00 loan repayment, the Agency argues that Complainant failed to substantiate the loss because she did not prove that the Agency’s discriminatory act was the cause of her denial of her request for the loan repayment. Even assuming that Complainant’s transfer was related to the retaliatory act, Complainant did not present any evidence that the Agency approved her loan forgiveness application and subsequently denied her application due to her job transfer to another Agency facility.

³ Complainant attached an attorney’s fees petition to her appeal brief. However, Complainant is directed to submit her fee petition and supporting documentation to the Agency, in accordance with the order in the instant decision.

As such, Complainant presented only speculative pecuniary losses and failed to produce proof of actual past losses. Further, there was no evidence in the record showing that Complainant was prohibited from reapplying to the Agency's loan forgiveness program.

For Complainant's request for non-pecuniary compensatory damages, the Agency asserts that Complainant failed to show a causal connection between the Agency's retaliation and her alleged harm. The Agency notes that Complainant claimed harm to her health and emotional well-being as a result of the retaliatory act, but she did not show that the Agency's action was the direct cause of the harm. For example, Complainant's claim of emotional harm based on her increased blood pressure and weight gain is undermined because the onset of symptoms preceded the Agency's act of discrimination. In addition, Complainant did not clearly indicate that the Agency directly or proximately caused the harm related to her blood pressure and her increased weight.

Complainant contends that her loss of health is evidenced by her prescription to Prozac, as documented by an increased dosage prescribed on January 7, 2016. However, the Agency argues that Complainant did not provide medical documentation showing the original justification for her Prozac prescription. Further, the refill for Prozac on November 1, 2016, was due to her job at a different Agency facility, and not the Agency's retaliation. The Agency also notes that the evidence showed that Complainant's condition improved within five days after her January 7, 2016 visit to her doctor, who subsequently noted that Complainant reported that she was "doing much better." The Agency contends that, based on Complainant's statement and viewing all of her submitted medical evidence, Complainant fails to show that she is entitled to an increase in non-pecuniary compensatory damages.

The Agency claims that the award of \$1,000.00 is consistent with the amounts awarded by the Commission in similar cases, such as West v. United States Postal Service, EEOC Appeal No. 07A30129 (September 30, 2004) where \$1,000.00 was awarded to compensate the complainant for her pain resulting from the agency's retaliation when the complainant suffered stress, fear, and worry due to the agency's retaliatory action; and Degbeh v. United States Postal Service, EEOC Appeal No. 01A03387 (August 26, 2002) when the complainant was awarded \$600.00 for emotional distress, which included marital strain, loss of hair, hypertension, isolation from her family, sleeplessness, depression, irritability, anxiety, and fatigue. The Agency asserts that Complainant is not entitled to additional non-pecuniary compensatory damages and the Agency's award should be affirmed.

ANALYSIS AND FINDINGS

Standard of Review

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review "requires that the Commission examine the record without regard to the factual and legal

determinations of the previous decision maker,” and that EEOC “review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission’s own assessment of the record and its interpretation of the law”).

As an initial matter, we note that the Commission has the discretion to review only those issues specifically raised in an appeal. *See id.*, at Chap. 9, § IV.A.3 (Aug. 5, 2015). On appeal, Complainant did not contest the Agency’s decision regarding her requests for backpay, front pay, or other relocation expenses aside from the storage fees; as such, we will not address these issues in the instant decision.

Compensatory Damages

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 non-pecuniary losses (e.g., pain and suffering, mental anguish) as part of this “make whole” relief. 42 U.S.C. § 1981a(b)(3).

Pecuniary Compensatory Damages

In a claim for pecuniary compensatory damages, a complainant must demonstrate, through appropriate evidence and documentation, the harm suffered because of the agency’s discriminatory action. Objective evidence in support of a claim for pecuniary damages includes documentation showing actual out-of-pocket expenses with an explanation of the expenditure. The agency is only responsible for those damages that are clearly shown to be caused by the agency’s discriminatory conduct. To recover damages, a complainant must prove that the employer’s discriminatory actions were the cause of the pecuniary loss. EEO MD-110, at Chap. 11, VII.B.2.

Here, Complainant requests pecuniary compensatory damages of \$224.96 storage fees and \$117,124.00 in loan repayment assistance. However, we find that Complainant did not establish that the Agency’s discrimination was related to these costs. Complainant argued that the storage fees were the result of her transfer to a different position, but she did not show a connection between her transfer and the Agency’s retaliation.⁴ In addition, we find that there is no evidence between Complainant’s request for \$117,124.00 in loan repayment assistance to the Agency’s retaliation. In Complainant’s statement, she noted that the denial of the loan repayment occurred in “2015/2016,” but she provided no evidence to prove that the denial was clearly caused by the Agency’s discriminatory conduct. Supplemental Report of Investigation (SROI) at 33. As such, we AFFIRM the Agency’s decision to not award pecuniary compensatory damages.

⁴ We note that Complainant did not include her transfer as a claim in her complaint alleging discrimination and retaliation.

Non-Pecuniary Compensatory Damages

Non-pecuniary losses are losses that are not subject to precise quantification, i.e., emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, injury to credit standing, and loss of health. See EEOC Notice No. 915.302, Enforcement Guidance on Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, 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 non-pecuniary compensatory damages are designed to remedy the harm caused by the discriminatory event rather than to punish the agency for the discriminatory action. Furthermore, compensatory damages should not be motivated by passion or prejudice or be “monstrously excessive” standing alone but should be consistent with the amounts awarded in similar cases. See Ward-Jenkins v. Dep't of the Interior, EEOC Appeal No. 01961483 (Mar. 4, 1999).

Evidence from a health care provider or other expert is not a mandatory prerequisite for recovery of compensatory damages for emotional harm. See Lawrence v. U.S. Postal Serv., EEOC Appeal No. 01952288 (Apr. 18, 1996) (citing Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993)). Objective evidence of compensatory damages can include statements from Complainant concerning her emotional pain or suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character or reputation, injury to credit standing, loss of health, and any other non-pecuniary losses that are incurred as a result of the discriminatory conduct. Id.

Statements from others including family members, friends, health care providers, other counselors (including clergy) could address the outward manifestations or physical consequences of emotional distress, including sleeplessness, anxiety, stress, depression, marital strain, humiliation, emotional distress, loss of self-esteem, excessive fatigue, or a nervous breakdown. Id. Complainant's own testimony, along with the circumstances of a particular case, can suffice to sustain her burden in this regard. Id. The more inherently degrading or humiliating the defendant's action is, the more reasonable it is to infer that a person would suffer humiliation or distress from that action. Id. The absence of supporting evidence, however, may affect the amount of damages appropriate in specific cases. Id.

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

As an initial matter, we note that Complainant asserted that she was “retraumatized” during the EEO process. However, compensatory damages are not available for stress from pursuing an EEO complaint. See Appleby v. Dep’t of the Army, EEOC Appeal No. 01933897 (Mar. 4, 1994). As such, any award for non-pecuniary compensatory damages is limited to the timeframe of the harm caused by the Agency’s retaliation, and not by any “trauma” for the processing of her EEO complaint.

In addition, while Complainant asserts that her harm lasted three years, we find that this is not supported by the record. Complainant also stated that she suffered harm due to the Agency’s discrimination and harassment, including body and hair shaming. SROI at 33. However, we note that the Commission only found that the Agency retaliated against Complainant for the supervisor’s comments on December 3, 2015. Complainant’s broad statements make it difficult to isolate the harms suffered by the December 3, 2015 incident, but the evidence shows that Complainant suffered some harm due to the Agency’s retaliation.

In support of her claim for \$300,000.00 in non-pecuniary compensatory damages, Complainant provided her own statement and medical documentation. Complainant averred that she experienced depression, anxiety, loss of self-esteem, indecisiveness, hypertension, weight gain, sexual and reproductive dysfunction (unable to have children during that time), loss of enjoyment of life, and dental problems (grinding her teeth at night). *Id.* However, we find that the evidence does not support that all her claimed harms were connected to the Agency’s retaliation. For example, Complainant’s medical documentation shows that she suffered from uterine bleeding in November 2015, which was prior to the Agency’s retaliatory conduct on December 3, 2015. SROI at 35, 38-9. As such, we find that any harms related to Complainant’s sexual and reproductive dysfunction should be excluded.

Complainant’s medical documentation shows that she sought care for emotional harms approximately one month following the retaliation in December. On January 7, 2016, Complainant complained of work-related stress, anxiety, panic attacks, feelings of hopelessness and dread, and she was diagnosed with depression and prescribed an increased dosage of Prozac. Complainant’s physician also noted that Complainant was transferring out the state in a few weeks. SROI at 45. On January 12, 2016, Complainant’s physician noted that Complainant was “doing much better,” with less anxiety and better sleep. Complainant was also seen for hypertension on January 12, 2016, but the doctor noted her other risk factors, such as high salt intake, inactive lifestyle, and obesity. The doctor stated that he discussed with Complainant her need to reduce her weight, eat a low-salt diet, and engage in daily physical activity. SROI at 48, 49-50.

Complainant provided medical documentation from January 28, 2016, April 4, 2016, and August 17, 2016, showing that she was treated for migraines and high blood pressure. However, there is no mention of any other issues, such as depression. ROI at 52-7. On November 1, 2016, Complainant’s physician refilled Complainant’s prescription for Prozac, which Complainant “started six weeks ago” for situational depression related to her current job requirements. SROI at 58.

We note that Complainant did not provide any evidence that her prescription to Prozac was refilled between January 7, 2016, and late September 2016. As such, we find that Complainant's renewed prescription for Prozac was due to the demands of her new position, and there was no connection to the Agency's retaliation. Based on the submitted medical documentation, we find that the Agency reasonably determined that Complainant's harms lasted four months, until April 4, 2016.

Complainant cites to Cher B., *supra*, to support her request for an increased non-pecuniary compensatory damages award. However, as noted by Complainant, the harm in that case lasted 18 months, which is much greater than the four months here. Regarding Complainant, *supra*, we find that the harms suffered by the complainant were more severe with respect to the nature and duration. Specifically, the complainant testified that her medical conditions worsened following the agency's retaliation when she suffered a series of strokes, which resulted in a loss of strength on the right side of her body; and she also experienced constant issues with her blood pressure and she suffered from insomnia, anxiety, and depression. We further note that the harm occurred starting March 2007; and the complainant suffered a stroke as recently as December 31, 2010. As such, we find that this case is not comparable to Complainant's case. We also find that the cases that the Agency relies upon on appeal were not similar to Complainant's case since they do not specify the duration of the harms suffered.

We find that an award of \$10,000.00 in non-pecuniary compensatory damages is more appropriate based on the nature, severity, and duration of Complainant's harms. See e.g. Humberto P. v. U. S. Postal Serv., Appeal No. 0120161742 (Sept. 7, 2018) (complainant awarded \$10,000.00 in non-pecuniary compensatory damages for depression, anxiety, and exacerbation of his hearing condition for the duration of four months suffered as a direct result of the Agency's discriminatory conduct); Complainant v. Department of Labor, EEOC Appeal No. 0120080937 (October 22, 2010) (complainant awarded \$10,000 in non-pecuniary compensatory damages for harm of five months of insomnia, nightmares, and grinding of teeth). Accordingly, we MODIFY the Agency's award for non-pecuniary compensatory damages to \$10,000.00.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we MODIFY the Agency's final decision to increase the non-pecuniary compensatory damages to \$10,000.00, and we AFFIRM the Agency's final decision awarding no pecuniary compensatory damages.

ORDER

The Agency is ordered to take the following remedial action:

- I. Within 60 calendar days of the date this decision is issued, the Agency shall pay Complainant \$10,000.00 in non-pecuniary compensatory damages.

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.

ATTORNEY'S FEES (H1019)

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

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

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

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

If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated. See 29 C.F.R. § 1614.409.

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

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0920)

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

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

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

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at

<https://publicportal.eeoc.gov/Portal/Login.aspx>

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

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

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


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

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

RIGHT TO REQUEST COUNSEL (Z0815)

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

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

April 11, 2022
Date