



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

[REDACTED]
Vernie M.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Pacific Area),
Agency.

Appeal No. 2020004103

Agency No. 4F-900-0245-19

DECISION

On July 3, 2020, 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 1, 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. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, we MODIFY the Agency's final order, in part, and REMAND the complaint for further processing.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Full-Time City Carrier at the Agency's Foy Station in Los Angeles, California.

On September 10, 2019, Complainant filed an EEO complaint alleging discrimination and harassment by the Agency on the bases of religion (Protestant), disability (physical), and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 when:

1. In March 2019, Complainant was forced to sign special route check papers;

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 May 28, 2019, Complainant was not allowed to conduct a religious meeting in an unused room;
3. On June 1, 2019, Complainant was given a direct order to move her vehicle from the handicap parking space and she was required to park at the Beacon Hill parking lot;
4. On June 3, 2019, management denied having Complainant's medical documentation;
5. On June 10, 2019, Complainant was humiliated by management in front of her coworkers;
6. On June 12, 2019, Complainant was denied auxiliary assistance and later in the day Complainant was yelled at when she called the station requesting additional time to complete deliveries;
7. On June 12, 2019, management took away the two-ton vehicle assigned to Complainant's route and even though she notified them she needed it because of her knees, she was not accommodated;
8. On October 12, 2019, Complainant was not scheduled to work despite signing the holiday volunteer list;
9. On October 17, 2019, Complainant's request to change her day off was denied; and
10. On November 15, 2019, and December 17, 2019, Complainant was denied accommodation when her supervisor (Supervisor) refused her medical documentation and sent Complainant home.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The Agency concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

With respect to reprisal as a basis, the Agency found that Complainant failed to establish that management officials were aware of Complainant's protected EEO activity because it could find no documentary or third-party evidence corroborating Complainant's allegation that management had knowledge of Complainant's testimony in a co-worker's EEO complaint. The Agency concluded that there was no direct evidence establishing a causal connection between the alleged adverse actions and Complainant's prior EEO activity. Likewise, the Agency concluded that temporal proximity could not be established because Complainant's most recent prior EEO case occurred in 2017. The Agency further determined that Complainant failed to show that she was treated less favorably than similarly situated individuals who did not engage in EEO activity.

Moving to disability discrimination, the Agency found that Complainant failed to provide medical documentation substantiating her medical condition and management officials were not aware that Complainant suffered from a medical condition.

The Agency noted that only one management official received medical documentation from Complainant in November and December 2019, which ultimately indicated that Complainant could return to work on December 16, 2019, without restrictions. Subsequent medical documentation stated that Complainant was unable to perform her work duties from December 17, 2019, through January 5, 2020, and that Complainant could return to work without restrictions on January 6, 2020. Additionally, management officials denied observing Complainant with a limp. As a result, the Agency concluded that Complainant failed to establish that she had a physical impairment that substantially limited one or more major life activities and therefore that she was an individual with a disability.

Regarding the request for Complainant to move to the Beacon Hill parking lot, the Manager, Customer Services (Manager) testified that the lot was about two and a half blocks from the facility entrance while the Supervisor estimated the lot was four blocks away. Nevertheless, the Agency found that there was no medical documentation or testimony substantiating Complainant's inability to walk either distance. In support, the Agency asserted that Complainant's physician referenced Complainant's limited mobility with respect to discomfort in driving the long-life vehicle (LLV) and not Complainant's ability to walk.

The Agency determined that Complainant's request to drive the two-ton truck did not warrant a reasonable accommodation request referral because the truck was not necessary to enable Complainant to perform the essential functions of her position.

Regarding disparate treatment, the Agency found that management articulated legitimate, nondiscriminatory reasons for taking the two-ton vehicle; scheduling Complainant to work on a holiday; denying Complainant's request to change her day off; and sending Complainant home in lieu of accepting medical documentation. Specifically, Complainant's route did not require the two-ton vehicle because the mail volume dropped. Complainant was not scheduled on the holiday because a utility carrier was on her route and the Supervisor did not recall denying Complainant's schedule change request. Finally, Complainant's medical documentation was not accepted because it was an incomplete form; however, Complainant was not ordered to leave the premises as Complainant's physician indicated that she could return to work without limitations.

In terms of pretext, the Agency found that Complainant did not provide any direct or indirect evidence proving that management's actions were motivated by Complainant's EEO activity and/or medical condition.

Next, the Agency found that although a conflict existed in the testimony as to whether Complainant reported her perception of harassment to management, Complainant was not subjected to harassment and/or a hostile work environment. Because the Agency found that management acted in a nondiscriminatory manner regarding claims 7, 8, 9, and 10, the Agency noted that the claims could not form the basis of a hostile work environment. Similarly, for the remaining claims, the Agency accepted the explanations provided by management officials. For claim 1, management testified that Complainant was not forced to sign special route check papers, however, several employees did so voluntarily.

In claim 2, the Supervisor testified that religion and politics were not allowed to be discussed on the workroom floor, so she opened the door to where Complainant was meeting and instructed Complainant that she should not be in the room. The Agency concluded that Complainant was not treated differently than persons with different religions because management officials denied knowledge of Muslim employees using the room for prayer and it was not established that the management officials involved in the decision permitted any religious observance at the facility.

For claim 3, the Agency reiterated the Supervisor's testimony that all carriers were instructed to park at the Beacon Hill parking lot by the District. As for claim 4, the Manager affirmed that he told Complainant that he could not find her medical documentation and asked her to resubmit the documentation. In claim 5, the Supervisor denied speaking to Complainant in a hostile manner or yelling "just you" at Complainant. The Manager averred that he spoke with the Supervisor and she told him that Complainant was told that she needed to start working and not walking around. As for the requested auxiliary assistance in claim 6, the management official involved explained that she normally spoke loudly and did not yell at Complainant. She added that she questioned Complainant about waiting to call in after there was a power outage in the building.

The Agency concluded that except for claim 5, there was no third-party evidence to corroborate Complainant's allegations where they conflicted with management explanations. Further, Complainant failed to provide any direct or indirect evidence proving that management's actions were motivated by Complainant's protected classes. The Agency determined that not only did the totality of the evidence fail to support a finding that Complainant was subjected to unwelcome verbal or physical conduct, there was no evidence in the record that the conduct was sufficiently severe or pervasive. Likewise, the Agency found that the record failed to show that the conduct created a hostile, abusive, or offensive work environment, or unreasonably interfered with Complainant's work performance.

CONTENTIONS ON APPEAL

Complainant contends that the Investigator failed to properly investigate her reprisal claims. Complainant further contends that management officials were evasive and noncooperative during the investigation, as evidenced by statements such as "n/a" or "I don't recall." Complainant maintains that the Supervisor prohibited Complainant from parking her private vehicle in a disability parking space in the employee parking lot despite Complainant possessing a valid state-issued parking permit. Complainant argues that the Agency lacked authority to regulate parking spaces regulated by the States. Additionally, Complainant asserts that there was no need for her to request a disability accommodation to use a disability parking permit.

According to Complainant, the Agency's imposition of a blanket prohibition on religion supports a finding that the Agency subjected Complainant to religious discrimination. Complainant argues that the Agency was obligated to provide a religious accommodation and failed to advance a claim of undue hardship.

The Agency did not submit a response to Complainant's appeal.

ANALYSIS AND FINDINGS

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

Religious Accommodation (Claim 2)

Under Title VII, employers are required to accommodate the religious practices of their employees unless a requested accommodation is shown to impose an undue hardship. 42 U.S.C. § 2000e(j); 29 C.F.R. § 1605.2(b)(1). A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to comply with his religious beliefs. See Ian S. v. Dep't of the Treas., EEOC Appeal No. 0120160622 (Apr. 27, 2018); Complainant v. Dep't of Justice, EEOC Appeal No. 0120132112 (Apr. 17, 2015). The need for religious accommodation most frequently arises where an individual's religious beliefs, observances, or practices conflict with a specific task or requirement of the job. Id. The employer's duty to accommodate will usually entail making a special exception from, or adjustment to, the particular requirement so that the employee will be able to practice his religion. Id. When an employee's religious belief or practice conflicts with a particular task, appropriate accommodations may include relieving the employee of the task or transferring the employee to a different position or location that eliminates the conflict with the employee's religion. Id.

If an employee needs to use a workplace facility as a reasonable accommodation, for example use of a quiet area for prayer during break time, the employer should accommodate the request under Title VII unless it would pose an undue hardship. EEOC Compliance Manual Section 12, “Religious Discrimination” No. 915.863 (Jan. 15, 2021) (Religious Discrimination Compliance Manual).

The traditional framework for establishing a prima facie case of discrimination based on religious accommodation requires an employee to demonstrate that: (1) she has a bona fide religious belief, the practice of which conflicted with his employment; (2) she informed the agency of this belief and conflict; and (3) the agency nevertheless enforced its requirement against the employee. Heller v. EBB Auto Co., 8 F.3d 1433, 1438 (9th Cir. 1993); Turpen v. Missouri-Kansas-Texas R.R. Co., 736 F.2d 1022, 1026 (5th Cir. 1984).

The record reveals that Complainant has a bona fide religious belief, Christianity; the Agency was aware of her belief and desire to utilize an empty room for prayer; and the Agency enforced its requirement that employees not discuss religion in the workplace. Therefore, we find that Complainant establish a prima facie case of discrimination based on religious accommodation.

Once Complainant establishes a prima facie case, the Agency must show that it either accommodated Complainant's religious beliefs or that the request could not be granted without imposing an undue hardship on the Agency's operation.

Here, management officials affirmed that Complainant was not allowed to conduct a prayer meeting in an unoccupied room due to a prohibition on discussions about religion and politics in the Post Office. ROI at 209-10. We understand the Agency's desire to keep the workplace free from conflicts that may arise out of sensitive topics such as religion and politics; however, the Agency presented no argument that Complainant's use of the empty room for prayer posed an undue hardship. Likewise, the Agency provided no alternative accommodation nor discussed the matter with Complainant in order to determine if an alternative accommodation was available.

Therefore, we find that the Agency violated Title VII when Complainant's request for a religious accommodation was denied beginning May 28, 2019. Accordingly, we REVERSE the Agency's decision regarding this claim and ORDER the Agency to take further action in accordance with the Order below.

Disability Discrimination (Claims 3 and 4)

Under the Commission's regulations, an agency is required to make reasonable accommodation to the known physical and mental limitations of an otherwise qualified individual with a disability unless the Agency can show that accommodation would cause an undue hardship. 29 C.F.R. § 1630.9. In order to establish that Complainant was denied a reasonable accommodation, Complainant must show that: (1) she is an "individual with a disability," as defined by 29 C.F.R. § 1630.2(g); (2) she is a "qualified" individual with a disability pursuant to 29 C.F. R. § 1630.2(m); and (3) the Agency failed to provide a reasonable accommodation. See EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC No. 915.002 (Oct. 17, 2002) (Reasonable Accommodation Guidance).

An individual with a disability is one who: (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such impairment; or (3) is regarded as having such an impairment. 29 C.F.R. § 1630.2(g). Major life activities include such functions as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. 29 C.F.R. § 1630.2(i). Examples of other major life activities include, but are not limited to, sitting, standing, lifting, and reaching. 29 C.F.R. Part 1630 App. § 1630.2(i). They also include thinking, concentrating, interacting with others, and sleeping. See EEOC Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities, EEOC No. 915.002 (Mar. 25, 1997).

An impairment is substantially limiting when it prevents an individual from performing a major life activity or when it significantly restricts the condition, manner or duration under which an individual can perform a major life activity. 29 C.F.R. § 1630.2(j). The individual's ability to perform the major life activity must be restricted as compared to the ability of the average person in the general population to perform the activity. Id.

The record shows that Complainant reported that she has permanent mobility problems due to severe loss of cartilage in her knees and a metal plate in her ankle. Complainant averred that she walks with a notable limp although management officials testified that they were not aware of Complainant walking with a limp. ROI at 100, 103, 127. Upon review of the record, we are skeptical of management's assertions. The record includes testimony from Complainant's coworker affirming that Complainant walks with a limp. Specifically, Complainant's coworker testified that "it is common knowledge throughout the station that [Complainant] has difficulty walking and has a handicap placard." Appellant Rebuttal Document at 3. Additionally, Complainant's physician provided documentation affirming that Complainant experienced chronic knee and ankle pain resulting in limited mobility. ROI at 134. Therefore, based on the record before us, we find that Complainant has a medical condition which substantially limits her in the major life activity of walking.

Finding that Complainant is an individual with a disability, we further note that the record demonstrates that Complainant could perform the essential functions of her job with an effective and reasonable accommodation. Now, we turn to the issue of Complainant's request for a reasonable accommodation in the form of a parking space. The record indicated that in June 2019, Complainant was asked to move from a disability parking space and Complainant subsequently requested to utilize the parking space with her state-issued parking placard due to her mobility issues. Complainant reported that she has held the state-issued parking placard, which required certification of a disability by a physician, since 2007 and her previous supervisor allowed her to park with the placard as an accommodation. ROI at 19, 100, 136.

Complainant did not have documentation of her prior accommodation. While the Agency has not acknowledged Complainant's previous accommodation, the Agency has not contested the existence of her previous reasonable accommodation. In fact, the Manager affirmed that Complainant informed him that she had previously submitted a medical note to her former supervisor and upon calling her former supervisor, it was confirmed that the former supervisor left notes in a folder. ROI at 298. Therefore, we find that the Supervisor essentially removed the effective accommodation that her former supervisor had previously provided to her and the Manager advised Complainant to submit additional documentation. Faustino M. v. U.S. Postal Serv., EEOC Appeal No. 0120160319 (Feb. 25, 2016) (finding a violation when a new manager revoked a previously approved accommodation without sufficient explanation).

Nevertheless, according to Complainant, she provided medical documentation to the Manager, but on June 3, 2019, the Manager told Complainant that he lost the medical documentation and could not approve use of the parking spot.² Notably, the Manager did not deny that Complainant submitted medical documentation to him or that he did not read the medical documentation that Complainant submitted. Rather, the Manager simply stated that he could not find the documentation. The Manager testified that he initially told Complainant that she could use the parking spot and verified that he requested for Complainant to resubmit medical documentation that he could not find. ROI at 298. However, he spoke with the Supervisor who informed him that too many employees would want to utilize the parking spot. ROI at 297. The Supervisor affirmed that all carriers were instructed to park at the Beacon Hill parking lot but acknowledged that two other carriers would use the parking spot prior to moving their vehicles to the Beacon Hill parking lot. Id. at 217-218.

Based on the record before us, we find that the Supervisor and the Agency failed to provide Complainant with a reasonable accommodation. Complainant requested easier access to the building via a closer parking spot, an accommodation that she previously had in place with her former supervisor. Despite the previous ability to accommodate Complainant, the Agency denied Complainant's request. The Supervisor failed to consider more accessible parking for Complainant although she admitted that other employees used the space. Instead, Complainant's request for accommodation was not addressed even though she was in possession of a state-issued placard and the Agency required Complainant to walk from a farther parking lot. Therefore, we conclude that the Agency violated the Rehabilitation Act when it failed to provide Complainant with a reasonable accommodation for her disability in the form of a designated parking space with easy access to the building.

The Agency was obligated to provide Complainant with an effective reasonable accommodation unless the Agency can show that to provide the accommodation would have been an undue hardship. The only argument the Agency put forth regarding Complainant's request was that allowing Complainant to utilize the parking space would create a conflict among other carriers that wanted to utilize the space. We find the Agency failed to provide case-specific evidence proving that reasonable accommodation would cause an undue hardship in the particular circumstances. See U.S. Airways, Inc. v. Barnett, 535 U.S. 391 (2002).

² While Complainant does not raise the issue, we remind the Agency of its obligation to safeguard confidential medical information as required by the Rehabilitation Act. The Commission's regulations implementing the Rehabilitation Act provide for the confidentiality of employee medical records. 29 C.F.R. §1630.14(c)(1) provides, in pertinent part, that: "Information obtained . . . regarding the medical condition or history of any employee shall . . . be treated as a confidential medical record." Here, although the record does not indicate that the Agency improperly stored or disclosed Complainant's confidential medical records, we find it concerning that Complainant's medical documentation was "lost" and management provided no additional information regarding the whereabouts of the medical documentation.

While agencies are obligated to provide reasonable accommodation to a qualified individual with disability, the Rehabilitation Act allows agencies to raise an affirmative defense that the accommodation would impose an undue hardship. See Preston v. U.S. Postal Serv., EEOC Appeal No. 0120054230 (Aug. 9, 2007); see also Enforcement Guidance on Reasonable Accommodation. Generalized conclusions will not suffice to support a claim of undue hardship.

Rather, a showing of undue hardship must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense. See Julius C. v. Dep't of the Air Force, EEOC Appeal No. 0120151295 (June 16, 2017); Enforcement Guidance on Reasonable Accommodation. The Agency should have considered and addressed with specificity how allowing Complainant to be assigned a closer parking space would have affected the Agency. They did not do so here. Moreover, as noted above, Complainant was previously provided a similar reasonable accommodation wherein she was enabled to utilize her parking placard in a space near the Foy Station; the Agency did not consider this accommodation or explain why continuing such an accommodation would be an undue hardship.

Aside from speculation and noting that other carriers would want to utilize the parking spot, the Agency did not provide any analysis or report that allowing Complainant to park in the space would pose undue hardship or pose a significant risk of substantial harm, either to Complainant or her peers. Rather, the Supervisor and the Manager simply stated that to allow Complainant to park violated the District policy and other carriers would want to utilize handicap placards as well. None of the management officials in their affidavits provided detailed reasoning or explanations regarding how Complainant requesting accommodation would create an undue hardship. Therefore, we find that the Agency has failed to establish its affirmative defense of undue hardship.

Based on the record, we find that the Agency's reasons for denying Complainant's request to park in a disability parking space near the Foy Station are insufficient and demonstrate that the Agency violated the Rehabilitation Act by failing to reasonably accommodate Complainant.

Accordingly, we REVERSE the Agency's decision regarding this claim and ORDER the Agency to take further action in accordance with the Order below.

Remaining Claims

Upon careful review of the Agency's decision and the evidence of record, we find that with respect to the remaining claims, the Agency correctly analyzed the facts and law of this case to determine that Complainant did not establish that the Agency subjected her to discrimination or harassment as alleged. Complainant alleged that she was subjected to harassment, as evidenced by a request to sign route check papers, denial of auxiliary assistance, schedule changes, and requests for medical documentation.

However, the record reflects that the alleged incidents were more likely the result of routine supervision, personality conflicts, and general workplace disputes and tribulations. Complainant has produced no evidence to establish that her religion, disability, or prior EEO activity were factors in any of these actions.

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. We REVERSE the Agency's decision on the claims related to a failure to provide a religious accommodation and reasonable accommodation and ORDER the Agency to take further action in accordance with the Order below. We AFFIRM the Agency's findings that Complainant did not establish that the Agency subjected her to discrimination or harassment based on disability or in reprisal for prior protected EEO activity.

ORDER

The Agency shall take the following actions:

1. Within **ninety (90) calendar days** of the date this decision is issued, the Agency shall complete a supplemental investigation concerning Complainant's entitlement to compensatory damages and determine the amount of compensatory damages due to Complainant in a final decision with appeal rights to the Commission. The Agency shall pay this amount to Complainant within **thirty (30) calendar days** of the date of the determination of the amount of compensatory damages. If there is a dispute regarding the exact amount of compensatory damages, the Agency shall issue a check to Complainant for the undisputed amount. Complainant may petition for enforcement or clarification of the amount in dispute. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."
2. Within **ninety (90) calendar days** of the date this decision is issued, the Agency shall provide eight hours of interactive EEO training to the Supervisor and the Manager. The required training shall address management's responsibilities with regard to providing religious accommodations and eliminating discrimination in the workplace.
3. Within **ninety (90) calendar days** of the date this decision is issued, the Agency shall consider taking disciplinary action against the Supervisor. The Commission does not consider training to be a disciplinary action. The Agency shall report its decision to the Commission and specify what, if any, action was taken. If the Agency decides not to take disciplinary action, then it shall set forth the reasons for its decision not to impose discipline.

4. The Agency shall post a notice in accordance with the paragraph entitled, "Posting Order."

The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation verifying that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at the Foy Station copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

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

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

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


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

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. **Filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

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

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

September 19, 2022
Date