



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Clarine L.,¹
Complainant,

v.

Pete Buttigieg,
Secretary,
Department of Transportation
(Federal Aviation Administration),
Agency.

Appeal No. 2020005402

Hearing No. 570-2015-00166X

Agency No. 2014-25511-FAA-02

DECISION

The Agency filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.405(a). The Agency requests that the Commission affirm its action not to implement any part of the EEOC Administrative Judge's (AJ) decision which found discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Manager, FV801-J, for the Agency's Spectrum Engineering Services (Eastern Service Area), Spectrum Engineering Group, Southern Regional Office in College Park, Georgia.

On May 23, 2014, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of her race (African American) and sex (female) when, on December 18, 2013, Complainant learned that she was not selected for the position of Supervisory Aviation Technical Systems Specialist (SATSS), advertised under vacancy announcement AWA-AJW-13=PR57236-30920.

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.

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 (AJ). Complainant timely requested a hearing. A hearing was held on July 26, 2017 and, thereafter, the AJ issued a decision on August 14, 2020.

Specifically, the AJ found that Complainant established a prima facie case of discrimination and that the Agency articulated a legitimate nondiscriminatory reason for its action. Namely, the Agency explained that the Selectee's (White, male) interview performance was superior to that of Complainant. However, the AJ proceeded to find that the Agency's articulated reason was a pretext for discrimination. The AJ determined that the Agency preselected the Selectee, Complainant's objective qualifications for the SATSS position were vastly superior to those of the Selectee, the Agency's interview process was suspicious and subjective, and it failed to explain with specificity the reasons why Complainant's interview performance was inferior to that of the Selectee.

The AJ issued a separate decision, on the same day, addressing relief. The AJ ordered the Agency to retroactively promote Complainant to a SATTS position; pay back pay and benefits, plus interest; and pay \$93,414 in attorney's fees and \$1606.08 in costs. The AJ, however, declined to adjust the back pay award to allow for the negative tax consequences of a lump sum distribution. Additionally, the AJ ordered training for the responsible management officials.

The Agency issued a final order rejecting the AJ's findings and remedies and filed the instant appeal.

ANALYSIS AND FINDINGS

Standard of Review

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

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

Disparate Treatment

Where, as here, complainant does not have direct evidence of discrimination, a claim alleging disparate treatment is examined under the three-part test set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Under this analysis, a complainant initially must establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. See St Mary's Honor Center v. Hicks, 509 U.S. 502, 507 (1993); Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981); McDonnell Douglas 411 U.S. at 802. Next, in response, the agency must articulate a legitimate, nondiscriminatory reason for the challenged actions. See Burdine, 450 U.S. at 253-54; McDonnell Douglas, 411 U.S. at 802. Finally, it is complainant's burden to demonstrate by a preponderance of the evidence that the agency's action was based on prohibited considerations of discrimination, that is, its articulated reason for its action was not its true reason but a sham or pretext for discrimination. See Hicks, 509 U.S. at 511; Burdine, 450 U.S. at 252-53; McDonnell Douglas, 411 U.S. at 804.

Complainant may establish a prima facie case of discrimination in the nonselection context by showing that: (1) she is a member of a protected class; (2) she was qualified for the position; (3) she was not selected for the position; and (4) she was accorded treatment different from that given to persons otherwise similarly situated who are not members of her protected group. Williams v. Department of Education, EEOC Request No. 05970561 (Aug. 6, 1998); Enforcement Guidance on O'Connor v. Consolidated Coin Caterers Corp., EEOC Notice No. 915.002 (Sept. 18, 1996). Complainant may also set forth evidence of acts from which, if otherwise unexplained, an inference of discrimination can be drawn. Furnco Construction Corp. v. Waters, 438 U.S. 567, 576 (1978).

A review of the record shows that three applicants for the SATSS position were provided an interview: Complainant, the Selectee (White, male), and a third applicant ("Applicant") (Black, male). These three were deemed to be the best qualified based on their applications and resumes and were granted interviews. The Interview Panel consisted of three people: "IP1" (White, male), "IP2" (Black, female) and "IP3" (White, male). Each candidate was provided a one-hour interview and asked the same eight questions. Following the interviews, both IP1 and IP3 recommended Selectee for the position, while IP2 recommended Applicant. The Selecting Official ("SO") (White, male) concurred with the recommendations of IP1 and IP3 and chose the Selectee for the position, effective December 29, 2013.

Based on a review of the record, we find that Complainant successfully established a prima facie case since she was qualified for the position and a candidate outside of her protected class was selected while she was not. The burden next shifts to the Agency to articulate a legitimate, nondiscriminatory reason for the action. See Burdine.

The AJ found that the responsible Agency officials articulated a legitimate nondiscriminatory reason for the selection based on the comments of the three Interview Panel members and SO. According to the AJ, IP1 averred that the interview answers provided by the Selectee:

[W]ere more crisp, he was more at ease, and his interview lasted approximately 50 minutes. [IPM1] stated that Complainant was “a person of few words,” she provided very short answers to questions, and her interview lasted only about 20 minutes even though she was reminded she had an hour to complete the interview.

In addition, IP3 averred that the Selectee:

[W]as confident in his answers and exhibited a thorough understanding of the position and the effort it required. [IP3] specifically highlighted [S]’s answer to question number 7 because he was the only candidate that discussed safety in his consideration of prioritizing work. He also noted that he discussed considering any delays the NAS might incur based on the reprioritization of a project. [IP3] also pointed out that [Selectee]’s responses were concise and “spot-on” and reflected someone who understood the SATSS position and what was required to be a successful manager. In contrast, [IP3] stated that Complainant’s interview lasted only 15 to 20 minutes and that panel members repeated questions because her responses were only one or two sentences long.

Finally, IP2 averred that:

[Applicant] performed the best during the interview because he demonstrated his superior technical knowledge and he was the only candidate that interjected new solutions and ideas to old processes. [IP2] also stated that [Applicant] would bring solutions and innovation to the organization and his responses to questions were very complete, insightful and showed he had thought about the position ahead of time. She explained that [Applicant]’s responses went way beyond direct answers to the questions and he expounded on his answers. . . . (citation to record omitted) In contrast, [IP2] noted that Complainant’s interview responses were shorter than the other candidates’ and she failed to answer questions in detail. She also explained that Complainant possessed the requisite experience, but she did not expound on it adequately during her interview.

Since the Agency articulated legitimate nondiscriminatory reasons for its action, the burden shifts back to Complainant to establish, by a preponderance of the evidence, that the Agency’s reasons were not its true reasons, but were pretext for discrimination. See Hicks; Burdine; McDonnell Douglas.

The AJ found that Complainant established that Selectee was pre-selected for the position. The record showed that, immediately preceding the vacancy at issue, another white male had been employed in the position as a Supervisory Electronics Engineer (“SSE”) for approximately 20 years. His retirement on January 3, 2013, triggered the need to fill the position.

A couple of weeks after SSE's retirement, a Management & Program Analyst (White, male) ("MPA") emailed his supervisor, SO², notifying him that SSE's position was:

[C]urrently an Electronics Engineer (0855) position. However, there are 3 [sic] people in the office that would not qualify as an engineering [sic] and therefore could not apply for the position. All 3 . . . [names omitted, including Selectee's] are Telecommunication System Specialists (0391). Do you want me to advertise for an Electronics Engineer and Telecommunications Specialist or keep it as engineer?

Subsequently, SO asked the Human Resources Office to advertise the position under the 855 Electronic Engineer, 801 General Engineer, and 391 Telecommunication Specialist series. A few days later, SO sent an email to his own supervisor, the Director of the Program (race not specified, female,) stating:

You limited the application to General Engineer. This would disqualify several of the possible candidates in Spectrum including [Selectee]. I expanded the Telecom/Electronic specialists position to include General Engineer to widen the field to ensure we considered without and within Spectrum. Do you just wish to proceed with General Engineer only?

A few days later, on February 10, 2013, MPA noncompetitively detailed Selectee into the vacant position. Selectee remained in the temporary detail position until he was offered the position on a permanent basis by SO, "in early September 2013", based on the Interview Panel recommendations. Noting these facts and that "no evidence was presented which proves that the duties [Selectee] performed in the . . . SATSS position differed from the duties [SEE] performed" in his position, the AJ agreed with Complainant that Selectee had been pre-selected for the position. Following a review of the record, we find that the AJ's finding in this regard is supported by substantial evidence. The Agency argues that even assuming *arguendo* that Selectee was preselected, "the EEOC has held that an agency may preselect a candidate as long as the preselection is not premised upon a prohibited basis." We note, however, that evidence of preselection is also evidence that the selection process was a sham and that Selectee would have been awarded the position irrespective of Complainant's interview performance. As such, it is evidence that the Agency's articulated reason for its action is pretextual.

We note that in non-selection cases, a complainant may demonstrate pretext by showing that her qualifications are demonstrably superior to the selectee's. Bauer v. Bailar, 647 F.2d 1037, 1048 (10th Cir. 1981). However, an employer has the discretion to choose among equally qualified candidates. Canham v. Oberlin College, 666 F.2d 1057, 1061 (6th Cir. 1981).

The AJ found that Complainant's qualifications were "vastly superior" or "plainly superior" to those of Selectee. Specifically, the AJ noted that record showed Complainant:

² SO was also Complainant's supervisor.

[P]ossessed a BS in Electrical Engineering and [Selectee] did not possess an Engineering degree. I also find that Complainant's relevant work experience was vastly superior to the selectee because she was an Electrical Engineer, she worked four [sic] approximately five years as a Supervisor/Manager in Spectrum Engineering Services, and she possessed approximately twenty years of experience in Spectrum Engineering.

The AJ noted that while SSE, the former occupant of the position, also had an Engineering degree, while Selectee did not. Further, observed the AJ, the Agency did not show that the core duties of the position changed after SSE retired.

When Complainant's greater level of education, experience and training was raised with Interview Panel members, the AJ noted, and the record shows, that none of members disputed these facts. Indeed, IP3 conceded that Complainant possessed "vastly greater experience and education", while IP2 averred that "I also thought that Complainant has more experience than the Selectee. I think that is a good point." SO also did not challenge Complainant's superior experience, but instead averred that Complainant did not expound sufficiently about her experience during the interview and acknowledged "I know she is a good manager." We therefore find that the AJ's finding that Complainant's qualifications were "vastly" or "plainly" superior than those of Selectee is supported by substantial evidence.

Next, the AJ observed that IP1 and IP2's score sheets and interview notes were not included in the Report of Investigation or produced by the Agency during the hearing. Additionally, the AJ found that neither IP1 nor IP2 "provided a clear and detailed description of the specific responses Complainant and [Selectee] provided for each interview question." The AJ concluded that the:

Agency's reliance on the subjective interview as the sole basis for Complainant's non-selection is pretextual where it has failed to produce two panel members' interview notes and the interview scoring sheets, panel members failed to provide specific descriptions of the Complainant's and the selectee's responses to interview questions, Complainant is the only African-American female manager in the Spectrum Engineering Department, the White Male selectee was preselected for an 11-month non-competitive detail to the position at issue, and Complainant's education and Engineering and supervisory work experience is vastly superior to the selectee.

On appeal, the Agency argues that "the only notes from the interview panel were the emails exchanged between the panel and the SO wherein there [sic] recommendation was reflected." Such an argument merely supports the AJ's point that interview notes were not presented during the investigation or the hearing. The Agency further argues "The mere fact that the Agency did not retain the interview scoring sheets or the interview notes of panel members [IP1 and IP2], by itself, is insufficient to support a finding of pretext."

We note, however, that such an argument misrepresents the AJ's finding, which was that the absence of such scoring sheets and notes was one factor among many that established pretext, not simply one factor "by itself." Following a review of the record we find the AJ's finding to be supported by substantial evidence.

Next, the AJ noted that:

Complainant has also presented evidence showing that the two "best qualified" Engineers for the SATSS position were African-American, but the White Male selectee was unqualified because he was not an Engineer. Finally, as between the African-American candidates, Complainant presented evidence showing that she was the only woman candidate and that she possessed superior supervisory experience.

The AJ found that this evidence, in conjunction with the evidence of pretext, showed that "it was more likely than not that the Agency did not select Complainant for the SATSS position because of her race and/or sex." We discern no basis to disturb the AJ's finding.

Remedies

The AJ noted that Complainant was not seeking nonpecuniary compensatory damages, but instead requested: 1) retroactive promotion with back pay, benefits, and interest; 2) attorneys' fees; and 3) compensation for the tax consequences of the lump sum payment. The AJ therefore ordered that Complainant be retroactively promoted "to the date during the year 2013 she would have been selected for the SATSS position but for the discrimination." Additionally, the AJ found Complainant was entitled to back pay and associated benefits, as well as interest from the date Complainant would have received the 2013 promotion. With regard to attorney's fees, the AJ awarded \$93,414.00 in fees and \$1,606.08 in costs. The AJ ordered that the responsible management officials receive eight hours of training on race and sex-based discrimination.

We note that the Agency's appeal brief addressed the finding of discrimination, but did not address the remedies awarded. Therefore, find that the Agency is not appealing the AJ's finding with regard to remedies.

Finally, with respect to entitlement to compensation for the tax consequences of a lump-sum award, the AJ found that:

[O]ther than surmise that an adverse tax consequence will result from the lump sum, Complainant did not provide enough evidence to demonstrate that she will suffer harm. Specifically, Complainant failed to provide a method for how the AJ is supposed to calculate the tax consequences caused by her receipt of the lump sum. In fact, Complainant failed to provide any information showing the taxes she would have paid had she earned the SATSS salary between 2013 to date versus the taxes she will pay when she is awarded the lump sum.

To the extent that Complainant argues that she was unable to calculate the tax consequences until a damage award was granted, I find that the argument is misplaced. Complainant could have reasonably provided estimates of her tax liability for the tax years 2013 to present utilizing the Salary Schedule utilized by the DOT, FAA, for the corresponding years and providing an estimate of her back-pay. Consequently, I find that Complainant has failed to satisfy her burden of presenting evidence of an additional tax liability incurred that stems from the lump sum payment.

Complainant argues that, based on Commission precedent:

the AJ erred by requiring Complainant -- before she receives the back pay and before the AJ had even issued his order on relief -- to provide evidence or an estimate of her additional tax consequences. . . . (citation to record omitted). As . . . Commission precedent shows, the first step is for Complainant to receive the accrued back pay, which the Agency has not paid. The Agency also has not informed Complainant of the precise amount of the accrued back pay. Thus, Complainant cannot provide the required "exact and detailed" calculations, which typically are sent to the Agency and not the AJ. Estimates are not part of the process.

We agree and find the AJ erred in requiring that Complainant provide an estimate of her increased tax liability prior to receiving any payment. We reverse the AJ's finding with regard to entitlement to compensation for increased tax liability. Instead we find that, following receipt of the Agency back pay award, Complainant should submit detailed calculations showing the tax liability that she actually incurred for each year of the back-pay period, the tax liability that she would have incurred in each of those years if she had received the back pay in the form of a regular salary, and the tax liability that she suffered solely as a result of the lump-sum back-pay award. Following receipt of Complainant's claim and supporting documents, the Agency shall issue a decision on the tax-liability matter and reimburse Complainant accordingly.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we find that Complainant has established she was discriminated against based on race and sex when she was not selected for the SATSS position.

ORDER

The Agency, to the extent it has not already done so, is ORDERED to undertake the following remedial actions:

1. Within ninety (90) days from the date this decision is issued, the Agency shall promote Complainant to the position of SATSS retroactive to the date the position was filled during 2013 and provide the appropriate step increases, if any, Complainant would have earned between the selection date and the date she is placed in the position. Complainant shall have 15 days from receipt of the written offer to accept or decline the offer. Failure to accept the offer within the 15-day period will be considered a declination of the offer, unless Complainant can show that circumstances beyond her control prevented a response within the time limit.
2. Within sixty (60) days from the date this decision is issued, the Agency shall determine the appropriate amount of back-pay, including benefits and interest, due to Complainant. Complainant shall cooperate with the Agency in determining back pay, including providing responding to Agency request for documentation or complaint Agency forms. Complainant shall reply to any Agency requests for information within thirty (30) days. If Complainant declines the retroactive promotion, the Agency shall award Complainant a sum equal to the back pay she would have received, computed in the manner prescribed by 5 CFR 550.805, from the date she would have been appointed until the date the offer was declined. Interest on back pay shall be included in the back-pay computation. The agency shall inform Complainant in its offer of employment of the right to this award in the event the offer is declined. Payment of backpay to Complainant shall be completed in no more than 120 days from the date this decision is issued.
3. Within sixty (60) days of receipt of the back pay award, Complainant may submit detailed calculations showing the tax liability incurred for each year of the back-pay period, the tax liability that she would have incurred in each of those years if she had received the back pay in the form of a regular salary, and the tax liability that she incurred solely as a result of her receipt of the lump-sum back-pay award. Following receipt of Complainant's claim and supporting documents, within sixty (60) days, the Agency shall issue a decision on the tax-liability matter and reimburse Complainant accordingly.
4. Within sixty (60) days from the date this decision is issued, the Agency shall pay Complainant's attorney \$93,414.00 in attorney's fees and \$1606.08 in costs.
5. Within thirty (30) days of the date this decision is issued, the Agency shall post a notice in accordance with the statement below entitled "Posting Order."

6. Within ninety (90) days of the date this decision is issued, the Agency is ordered to provide eight (8) hours of training addressing the current state of the law on employment discrimination, in particular race and sex based disparate treatment discrimination, to the Agency officials identified as IP1, IP2, IP3, SO and MPA. If any of these officials have left the Agency's employment, the Agency shall provide an affidavit attesting to that fact.
7. Within one hundred and twenty (120) days of the date this decision is issued, the Agency shall consider discipline against IP1, IP2, IP3, SO and MPA. The Commission does not consider training to be a disciplinary action. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline

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).

POSTING ORDER (G0617)

The Agency is ordered to post at its Spectrum Engineering Services (Eastern Service Area), Spectrum Engineering Group, Southern Regional Office facility, in College Park, Georgia, 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 (K0617)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report within thirty (30) calendar days of the completion of all ordered corrective action. The report shall be in the digital format required by the Commission and submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. 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.

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 (S0610)

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. 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

July 28, 2022
Date