



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

[REDACTED]
Debbi V.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2021000890

Hearing No. 430-2017-00111X

Agency No. 2004-0652-2016100886

DECISION

Complainant appeals to the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's October 19, 2020, final order 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, the Commission MODIFIES the Agency's final order.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Physician at the Agency's McGuire VA Medical Center (Richmond VAMC) in Richmond, Virginia.

On March 11, 2016, Complainant filed an EEO complaint alleging that the Agency discriminated against her based on disability (visual impairment) when:

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.

1. Since 2014, the Agency failed to provide Complainant with the equipment necessary to reasonably accommodate her disability, which affected Complainant's ability to do her job; and
2. On or about October 7, 2015, Complainant received a rating of unsatisfactory on her Focused Professional Practice Evaluation (FPPE), which resulted in the suspension of her clinical privileges on or about November 18, 2015.

Complainant subsequently moved to amend the complaint to include the following claim, alleging that the Agency discriminated against her based on sex (female),² disability, and in reprisal for prior protected EEO activity when:

3. On or about December 3, 2017, she was removed from her employment with the Agency.

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 requested a hearing. The AJ held a hearing and subsequently issued a decision finding that the Agency had discriminated against Complainant based on disability³ when it failed to provide her reasonable accommodations, resulting in the unsatisfactory FPPE, the suspension of her clinical privileges, and her eventual termination.

Based on his findings of discrimination and his determination that the Agency had not acted in good faith when it failed to reasonably accommodate Complainant, the AJ awarded Complainant \$1,937.86 in pecuniary, compensatory damages,⁴ and \$62,750.00 in nonpecuniary, compensatory damages. In addition to compensatory damages, the AJ ordered the Agency to pay Complainant \$449,419.80 in attorney's fees, \$2,526.00 in expert witness fees, and \$2,646.50 in costs. The AJ also ordered various other forms of relief, including reinstatement to Complainant's position at the Richmond VAMC or a substantially equivalent position.

The Agency subsequently issued a final order fully implementing the AJ's finding that Complainant proved that the Agency subjected her to discrimination based on disability, as well as the AJ's ordered relief. In its final decision, the Agency also ordered forms of relief not awarded by the AJ. First, it ordered the Agency to commit to Complainant in writing that it will refrain from engaging in discriminatory practices, and second, it ordered the Agency to consider disciplining Complainant's former immediate supervisor, Chief of Spinal Cord Injury and Disorder Services, Richmond VAMC (hereinafter, Supervisor). Other changes the Agency made to the awarded relief were that it ordered the Agency to "*offer* to reinstate Complainant to her

² Complainant later withdrew her claim of sex-based discrimination.

³ The AJ concluded that Complainant had failed to prove her discrimination claims with respect to the basis of reprisal for prior protected EEO activity.

⁴ The AJ awarded Complainant past pecuniary, compensatory damages for expenses she incurred for mental health treatment related to the Agency's discriminatory acts (\$1,900) and for transportation/fuel costs incurred while job searching (\$37.86).

former position as a Staff Physician in the Richmond VAMC or a substantially equivalent position,” giving Complainant “60 calendar days to accept or decline the Agency’s offer” (emphasis added). The Agency also specified deadlines for those elements of relief for which the AJ did not order a specific timeframe. The instant appeal followed.

On appeal, Complainant challenges the AJ’s decision denying Complainant certain pecuniary, compensatory damages and attorney’s fees. Complainant argues that the AJ erred when he denied Complainant reimbursement for moving and job search expenses following her termination, totaling \$7,699.86. Complainant also argues that the AJ erred when he denied reimbursement for: (1) \$1,795.50 in attorney’s fees due to the time entries not being sufficiently detailed to demonstrate that they related to the matter; and (2) \$31,587.50 in attorney’s fees for work done after Complainant filed her EEO complaint but prior to the filing of her motion to amend the complaint before the AJ. Lastly, Complainant argues that in its final decision, the Agency improperly altered the AJ’s order that Complainant be reinstated, requiring instead that the Agency “offer” reinstatement to Complainant, and that the change should be rejected. She does not appear to dispute the other changes the Agency made in its final order.

About one month after the Agency submitted its response to Complainant’s brief on appeal, Complainant submitted an “Appeal for Enforcement,” arguing that the Agency had failed to comply with the ordered nonmonetary relief. The Agency argues that it was in compliance and provided a compliance report to show that the ordered relief was completed. Complainant argues, however, that the report was insufficient to show that the Agency had complied with the ordered nonmonetary relief.

ANALYSIS AND FINDINGS

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. NLRB, 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 (EEO MD-110), Chapter 9, at § VI.B. (Aug. 5, 2015).

Pecuniary, Compensatory Damages

When discrimination is found, an agency must provide the complainant with a remedy that constitutes full, make-whole relief to restore her as nearly as possible to the position she would

have occupied absent the discrimination. See, e.g., Franks v. Bowman Transp. Co., 424 U.S. 747, 764 (1976); Albemarle Paper Co. v. Moody, 422 U.S. 405, 418-19 (1975); Adesanya v. U.S. Postal Serv., EEOC Appeal No. 01933395 (July 21, 1994). Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes unlawful intentional discrimination under Title VII and the Rehabilitation Act may receive compensatory damages for past and future pecuniary losses (i.e., out-of-pocket expenses) and nonpecuniary losses (e.g., pain and suffering, mental anguish) as part of make-whole relief. 42 U.S.C. § 1981a(b)(3). Compensatory damages do not include backpay, interest on backpay, or any other type of equitable relief. 42 U.S.C. § 1981a(b)(2). In West v. Gibson, 527 U.S. 212 (1999), the Supreme Court held that Congress afforded the Commission the authority to award compensatory damages in the administrative process.

Pecuniary losses are out-of-pocket expenses incurred because of the agency's unlawful action, including job-hunting expenses, moving expenses, medical expenses, psychiatric expenses, physical therapy expenses, and other quantifiable out-of-pocket expenses. Past pecuniary losses are losses incurred prior to the resolution of a complaint through a finding of discrimination, or a voluntary settlement. EEO MD-110, Chapter 11, at § VII.B.2 (internal citations omitted). Future pecuniary damages are losses likely to occur after the resolution of the complaint.

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. Id. (citations omitted).

Here, the AJ awarded Complainant \$1,937.86 in past pecuniary, compensatory damages but denied Complainant's requests for additional past, pecuniary compensatory damages for moving and travel expenses, furniture storage, and most job-search costs. The AJ denied these expenses because he reasoned that Complainant moved to reduce her housing costs in Richmond, Virginia, which she would have incurred regardless of the Agency's discrimination. Complainant argues, however, that her testimony shows she moved to Ohio from Richmond because, at the time the Agency discriminatorily fired her, she had only an Ohio medical license and could only practice in that state or for the federal government. Complainant on appeal also requests future pecuniary, compensatory damages for continuing monthly furniture storage costs and for her upcoming move from her current residence back to Richmond, or wherever her new position with the Agency is located.

We find that Complainant's losses based on the move from Virginia to Ohio, where she did not have a prospective job awaiting her, are speculative in nature and not compensable; the additional job-search costs she combined with the move and the furniture storage costs are also denied for the same reason. We also find Complainant's requested future pecuniary, compensatory damages are too remote and speculative for recovery.

Attorney's Fees

By federal regulation, the Agency is required to award attorney's fees for the successful processing of an EEO complaint in accordance with existing case law and regulatory standards. 29 C.F.R. § 1614.501(e)(1)(H).

To determine the proper amount of the fee, a lodestar amount is reached by calculating the numbers of hours reasonably expended by the attorney on the complaint multiplied by a reasonable hourly rate. Blum v. Stenson, 465 U.S. 886 (1984); Hensley v. Eckerhart, 461 U.S. 424 (1983).

All hours reasonably spent in processing the complaint are compensable. Fees shall be paid for services performed by an attorney after the filing of a written complaint, provided that the attorney provides reasonable notice of representation to the agency, AJ, or the Commission, except that fees are allowable for a reasonable period of time prior to the notification of representation for any services performed in reaching a determination to represent the complainant. 29 C.F.R. § 1614.501(e)(1)(iv).

Attorney's fees may not be recovered for work on unsuccessful claims. Hensley, 461 U.S. at 434. Courts have held that fee applicants should exclude time expended on "truly fractionable" claims or issues on which they did not prevail. See Nat'l Ass'n of Concerned Veterans v. Sec'y of Def., 675 F.2d 1319, 1327 n.13 (D.C. Cir. 1982). Claims are fractionable or unrelated when they involve distinctly different claims for relief that are based on different facts and legal theories. Hensley, 461 U.S. at 435. However, in cases where a claim for relief involves "a common core of facts or will be based on related legal theories," a fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit. Id. "The hours spent on unsuccessful claims should be excluded in considering the amount of a reasonable fee only where the unsuccessful claims are distinct in all respects from the successful claims." See EEO MD-110, Chapter 11, at § VI.A.7 (citation omitted).

While an attorney is not required to record in detail the way each minute of her time was expended, the attorney does have the burden of identifying the subject matters on which she spent her time by submitting sufficiently detailed and contemporaneous time records to ensure that the time spent was accurately recorded. See Complainant v. Dep't of the Treasury, EEOC Appeal No. 07A10035 (May 6, 2003). The attorney requesting the fee award has the burden of proving, by specific evidence, entitlement to the requested fees and costs. Complainant v. U.S. Postal Serv., EEOC Request No. 05A20843 (Feb. 18, 2003).

With respect to the \$1,795.50 in attorney's fees the AJ denied, Complainant argues that the two entries in question are related to her EEO matter and that her attorney's entries are sufficiently detailed to confirm the work's relation to the case. One entry for 1.2 hours lists "Draft letter to [Deputy Assistant Secretary for the Agency's Office of Resolution Management (DAS-ORM)] re: mediation and privileges" and the other, for 1.5 hours, lists "Research status of summary suspension letter (1); draft e-mail to [DAS-ORM] re: same (.5)." Complainant contends that the

first entry relates to her attorney's efforts to resolve her EEO complaint by discussing with DAS-ORM the reopening of mediation with the Agency. The other entry relates to the Agency's "summary suspension" of Complainant's clinical privileges, which the Agency had not yet restored, and Complainant's attorney's efforts to restore them. We find that the first entry for 1.2 hours at the rate of \$665 is sufficiently detailed and related to Complainant's EEO matter. Complainant should therefore be awarded \$798.00 in attorney's fees. However, we find that the second entry was not related to the EEO process, but instead was related to internal Agency decisions regarding Complainant's clinical privileges and is therefore not recoverable.

The AJ also denied \$31,587.50 in attorney's fees for work done after Complainant filed her EEO complaint but before she filed her motion to amend the complaint in order to add the termination as a claim. The AJ found, "concerning [attorney] work addressing the issues that arose in 2017 that culminated in her removal, Complainant cannot recover the fees she incurred for such work that was performed prior to her filing a motion to amend in her complaint on November 30, 2017." The AJ appeared to reason that Complainant could not recover for her attorney's work done prior to the motion to amend for the same reasons pre-complaint work over two hours is generally unrecoverable. We disagree. Complainant had already filed her EEO complaint and had requested a hearing before an AJ when the Agency terminated her. At that point, rather than filing a new complaint, Complainant's attorneys filed a motion to amend to add the removal claim to her existing complaint, Complainant's motion was granted, and Complainant ultimately won on the added claim. Accordingly, Complainant can recover for work done in preparing the motion to amend, which includes the entry for 1 hour at a rate of \$665 listing "Draft, file Notice of Change of Address and Request to Amend." We therefore award Complainant \$665.00 in attorney's fees for work done drafting the motion to amend. We deny her request for the remaining fees, as those entries indicate that the attorney's work was related to internal Agency processes regarding Complainant's termination and was therefore outside of the EEO administrative process.

Thus, Complainant should receive a total award of \$450,882.80 in attorney's fees (\$449,419.80 + \$798.00 + \$665.00).

Remaining Issues

As to the change the Agency made in its final decision regarding Complainant's reinstatement, we find that whether the Agency was ordered to reinstate or to "offer" to reinstate Complainant makes no practical difference in this case.

Regarding the parties' submissions and briefing on Complainant's Appeal for Enforcement and the Agency's Compliance Report, we decline to address those matters here. Complainant argues that several elements of relief have not been completed, but we are ordering all prior-ordered relief in the instant case. To the extent the Agency does not comply with our Order here, Complainant may file a petition for enforcement with the Commission.

CONCLUSION

We MODIFY the Agency's final decision fully implementing the AJ's decision and REMAND the matter to the Agency for further action in accordance with the Order herein.

ORDER

To the extent it has not already done so, the Agency shall take the following actions:

1. Within 60 days from the date this decision is issued, the Agency shall reinstate Complainant to her former position as a Staff Physician in the Richmond VAMC or a substantially equivalent position. Should Complainant decline the position, then the date she declines shall be the end date for any backpay due to Complainant.
2. Within 60 days from the date this decision is issued, the Agency shall award Complainant backpay, with interest, for the period beginning on December 3, 2017, through the date the Agency reinstates Complainant to the position she held at the Richmond VAMC or a substantially equivalent position. The backpay shall be computed in the manner prescribed by 5 C.F.R. § 550.805. The Agency shall also award and restore all other fringe benefits (*i.e.*, sick and annual leave, health and life insurance) that Complainant would have earned during the backpay period. If Complainant opts to have her health benefits coverage restored pursuant to 5 U.S.C. § 8908(a), then the Agency shall ensure the payments Complainant made for health benefits that were available to her under the Consolidated Omnibus Budget Reconciliation Act (COBRA) are refunded to her. The Complainant shall cooperate in the Agency's efforts to compute the amount of backpay and benefits due, and shall provide all relevant information requested by the Agency. If there is a dispute regarding the exact amount of backpay and/or benefits, the Agency shall issue a check to Complainant for the undisputed amount within 60 days of the date the Agency determines the amount it believes to be due. 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."
3. The Agency shall reimburse Complainant for any tax penalties she incurs as a result of the one-time, lump sum remuneration of her backpay. Complainant is also entitled to any fees incurred to obtain such calculation, such as an accountant's or tax preparer's fees. Within 90 days of the end of the tax year in which the Agency completes its payment of the backpay due to Complainant, Complainant shall provide the Agency with her calculation of the additional taxes and fees she incurs as a result of the one-time lump sum backpay award. Within 90 days of receiving such information from Complainant, the Agency shall

compensate her for the established adverse tax consequences of her lump sum backpay award.

4. Within 60 days from the date this decision is issued, the Agency shall commit to Complainant in writing the following: It will cease from engaging in the unlawful employment practice found in this case, namely, discrimination based on disability; it will not engage in similar unlawful employment practices; it will provide her with a workplace that effectively accommodates her disability, free from hostility, offensive conduct or abuse; and no reprisal will be taken against her for filing and pursuing this or any other complaint under federal EEO law.
5. Within 60 days from the date this decision is issued, the Agency shall void the report concerning Complainant that it sent to the National Practitioner Data Bank on or about December 13, 2018, and shall also remove from Complainant's employment records the proposal to remove Complainant from her employment with the Agency issued on November 3, 2017; the decision to terminate her employment, issued November 28, 2017; any documents indicating that her clinical privileges were suspended or revoked; and all FPPE, Ongoing Professional Practice Evaluations (OPPE), and Proficiency Reports that indicate Complainant's performance at any time from June 29, 2014, through December 3, 2017, was less than satisfactory.
6. Within 60 days from the date this decision is issued, the Agency shall pay Complainant \$1,937.86 in pecuniary compensatory damages and \$62,750.00 in nonpecuniary compensatory damages.
7. Within 60 days from the date this decision is issued, the Agency shall pay Complainant \$450,882.80 in attorney's fees, \$2,526.00 in expert witness fees, and \$2,646.50 in costs.
8. Within 90 days from the date this decision is issued, the Agency shall provide at least eight hours of EEO training to Supervisor. The training shall place special emphasis on disability discrimination. The Agency shall also provide four hours of EEO training with a focus on disability discrimination to former Richmond VAMC Director, Richmond VAMC Chief of Staff, and any other individuals who were members of the Medical Practice Standards Board (MPSB) at any of the following times: (1) when the MPSB recommended suspension of Complainant's clinical privileges that went into effect on November 18, 2015; (2) when the MPSB recommended the suspension of Complainant's clinical privileges that went into effect on September 13, 2017; and (3) when the MPSB recommended the removal of Complainant from her employment with the Agency. If these officials are no longer employed, the Agency shall provide documentation of their departure dates.

9. Within 60 days from the date the decision is issued, the Agency shall consider disciplining Supervisor. The Commission does not consider training to be disciplinary action. The Agency shall report its decision to the Compliance Officer. 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.

POSTING ORDER (G0617)

The Agency is ordered to post at its Richmond VAMC facility (also known as Hunter Holmes McGuire Hospital) 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).

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)

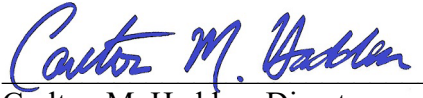
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from 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

July 25, 2022

Date