



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

[REDACTED]
Zonia C.,¹
Complainant,

v.

Merrick B. Garland,
Attorney General,
Department of Justice
(Federal Bureau of Prisons),
Agency.

Appeal No. 2021001326

Hearing No. 451-2015-00150X

Agency No. BOP-2014-0576

DECISION

On November 14, 2018, 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 October 26, 2018, 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Human Resources Specialist, GS-9, at the Agency's Federal Correctional Institution (FCI) in Three Rivers, Texas. Complainant began working with the Agency in February 2014, and had no prior experience working with a Human Resources Department within the federal government.

Complainant stated that during the first few weeks on the job, she observed her first-line supervisor, the Human Resources Manager (African-American/Black) (Supervisor), make a racial slur directed toward White members of the FCI Three Rivers staff.

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.

Specifically, Complainant stated that the Supervisor called her into her office and told her that “African-American people needed to stick together because other staff members do not like African-American people, and they are against [the Supervisor] because she is the only African-American female manager at FCI Three Rivers.” Complainant averred that a few weeks later, the Supervisor called her into her office and stated, “You remember what I was telling you earlier. Look how they announced my daddy’s death and look how they announced [named co-worker’s] daddy’s death. You see how these crackers do me.” Complainant stated that she observed that the Supervisor was under the impression that other members of the FCI Three Rivers staff were prejudiced against the Supervisor because of her race. Complainant added that during a conversation with a Staff Psychologist (African-American, Black, unknown EEO activity), they discussed the Supervisor and the colleague indicated that the Supervisor said something to the effect of trying to make her “feel like the Blacks against the Whites.”

Complainant requested a meeting with the Warden (unknown race, color, and protected activity) to discuss what she described as a hostile work environment. At that meeting, Complainant presented the Warden with a memo detailing her allegations of the alleged hostile work environment. In that memo, Complainant described her early interactions with the Supervisor, including a conversation where the Supervisor made racial comments to her regarding management staff. Complainant never reported to management that she was the target of any racial slurs by any FCI Three Rivers staff member, or that she was the subject of a specific threat of physical violence by the Supervisor. However, the Warden stated that once he was aware of the alleged racial slur, he assembled a Threat Assessment Committee to gather facts regarding the incident. The Threat Assessment Committee confirmed that the Supervisor’s comments were not directed to Complainant and determined that the subject of the alleged comments “did not feel threatened nor did she feel that she worked in a hostile work environment.” The Threat Assessment Committee concluded that a threat did not exist to the individual Complainant had indicated.

Following the May 2014 meeting, the Associate Warden took a more significant role in daily management of the Human Resource Department. Specifically, on June 2, 2014, each staff member was instructed to route all interoffice communication and leave requests through the Associate Warden.

In June 2014, Complainant informed the Warden about an issue with obtaining leave approval from the Supervisor. The Warden stated that once he was aware of the issue, he authorized Complainant to take leave and addressed Complainant’s allegations with the Supervisor. Complainant’s time and attendance records do not reflect leave denials or that Complainant was charged with Absence Without Leave (AWOL).

Complainant alleged that there was also an issue with her SF-50 and that the Supervisor threatened her status as a permanent employee.

The Warden stated that once he became aware of the issue, Complainant was reassured that the Supervisor was not authorized to remove Complainant and the Associate Warden was instructed to counsel the Supervisor regarding the alleged removal statements. The Associate Warden indicated that he spoke with the Supervisor and the Supervisor denied making the alleged comments to Complainant.

Complainant further raised concerns regarding the timeliness of her performance evaluation. The Associate Warden reported that he followed up with the Supervisor and Complainant's prior employer. He stated that the delay was due to the transmittal of paperwork from Complainant's prior institution, but ultimately, Complainant received her evaluation.

Formal Complaint

On August 15, 2014, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (African-American), color (Black), and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 when: from February 2014 through August 6, 2014, she was subjected to a hostile work environment by being exposed to racial slurs, lack of guidance and training, delayed approvals of leave requests, not receiving work appraisals, threats regarding being removed from her position, threats of physical violence, and being pressured not to write a memo reporting alleged harassment by the Supervisor. Complainant also alleged that management failed to act on her reports of a hostile work environment.

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). Complainant timely requested a hearing. Over Complainant's objections, the AJ assigned to the case granted the Agency's November 25, 2015, motion for a decision without a hearing and issued a decision without a hearing on September 11, 2018.

AJ's Decision

In the decision, the AJ determined that Complainant failed to state a claim because the alleged incidents were not of sufficient severity or pervasiveness to constitute an actionable claim. The AJ further noted that the record evidence failed to support a showing that Complainant was subjected to an adverse employment action. She explained that the underlying facts of Complainant's allegations were not in dispute and Complainant did not suffer a harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy.

The AJ found that even if Complainant could state a proper claim of discrimination, the record evidence is insufficient to show that Complainant was subjected to disparate treatment compared to similarly situated individuals outside her protected class. Moreover, Complainant cannot establish a prima facie case of reprisal because she conceded that she did not engage in any prior EEO activity.

As for a hostile work environment, the AJ found that not only is the record evidence insufficient to support the claim of a hostile work environment, but it is further insufficient to show that the alleged harassment was based on Complainant's protected classes. The AJ noted that the undisputed record does not support Complainant's claims that her work performance was unreasonably interfered with or that any conditions of her employment were altered.

The AJ further determined that Complainant's allegations of discrimination were directly contradicted by the undisputed record evidence. Specifically, the AJ found that the record established that Complainant's leave requests were approved; Complainant was never charged with AWOL; the appraisal was delayed because of Complainant's prior employer; and Complainant received training. Regarding threats of removal, the AJ found that the Supervisor was not authorized or empowered to remove Complainant and once Complainant apprised management of concerns, Complainant was assured that the Supervisor had no authority to do so and took action to convert Complainant to a permanent posting. As for racial slurs, the AJ found that the racial slur was not directed to a particular staff member and was reviewed by a Threat Assessment Committee. Moreover, Complainant did not report to management that she was the subject of a specific physical threat by the Supervisor.

The AJ found that Complainant proffered nothing to suggest that the Supervisor's actions were a result of Complainant's race. Rather, Complainant portrayed the Supervisor as wanting Complainant to be prejudiced along with her. The AJ concluded that even assuming all of Complainant's allegations are true, the Supervisor's alleged mistreatment of Complainant was based on Complainant's failure to support the Supervisor's prejudice in the workplace, which the AJ stated is not a protected class under Title VII and does not support a race-based claim of discrimination. Further, by Complainant's own admission, management officials were responsive to her concerns when raised. Therefore, the AJ determined that the Agency articulated non-discriminatory reasons for its actions along with evidence that it took prompt corrective remedial action. Finally, the AJ found that Complainant proffered no evidence to show that the Agency's legitimate, non-discriminatory reasons were pretextual.

The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged. However, in the final order, the Agency "strongly urge[d]" Complainant to appeal the AJ's decision. The Agency asserted that there were serious issues with the AJ's findings and conclusions. Specifically, the Agency argued that the AJ applied an erroneous legal standard for assessing a claim of harassment.

The Agency stated that the AJ incorrectly concluded that Complainant had not established a claim of discrimination because she proffered nothing to suggest the Supervisor's actions directed at Complainant were a result of Complainant's race. In support, the Agency argued that the AJ failed to grasp the basis of Complainant's race discrimination claim; failed to recognize that racial slurs, in and of themselves, as described in the record, may be sufficiently severe to constitute a hostile work environment even if the derogatory comments were not aimed at Complainant or at a person of Complainant's protected class; and erroneously determined that because Complainant was not the target of the Supervisor's racial animus, she could not be

considered aggrieved. The Agency noted that there is no dispute that a third party, such as Complainant, who is subjected to statements and epithets that denigrate another person of a race other than that of the third party may legitimately raise a claim of race harassment and may also raise a claim of retaliation for opposing such statements. The Agency stated that by limiting the analysis of a race-based claim to exclude third parties, the AJ failed to examine the actual impact of the Supervisor's racial comments on Complainant and if Complainant's multiple exposures to derogatory remarks constitute severe or pervasive action by the Supervisor. The Agency added that the AJ failed to assess whether the racial slurs had the effect of poisoning the work environment and affecting third party individuals such as Complainant.

Despite its adoption of the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination, the Agency recommended remanding the matter for an administrative hearing. The Agency asserted that dates of reported incidents and management responses are missing from the record, which are important for assessing the promptness of management's responses. The Agency maintained that the record needed further development regarding management's response to Complainant's concerns and issues with the Supervisor's behavior. For example, the Agency failed to produce documentary evidence related to the threat assessment investigation. The Agency noted that further development is needed regarding Complainant's allegation that the Supervisor threatened her with physical harm while in a van pool and that the record contains contradictory accounts as to whether the Associate Warden dissuaded Complainant from submitting a memorandum to the Warden in which she planned to set out her complaints against the Supervisor.

Prior Appellate Decision

On September 22, 2020, the Commission issued an appellate decision ordering the Agency to conduct a supplemental investigation because it deemed the investigation insufficient. Zonia C. v. Dep't of Justice, EEOC Appeal No. 2019001854 (Sept. 22, 2020). Specifically, the Commission determined that the record was not adequately developed regarding: (1) the chronology of events; (2) whether a threat assessment took place; (3) alleged physical threats from Complainant's supervisor; and (4) whether the Associate Warden dissuaded Complainant from submitting a memorandum to the Warden regarding her issues with her supervisor. We further agreed that the AJ failed to consider that racial slurs, in and of themselves, may be sufficiently severe to constitute a hostile work environment, even if the derogatory comments were not aimed at Complainant.

The Commission ordered the Agency to:

- a) Further investigate the timeline of events pertaining to Complainant's reports of the Supervisor 's use of racial slurs in the workplace and any corrective action taken subsequent to management's knowledge of the alleged incidents;

- b) Obtain documentation relating to any threat assessment conducted by management officials, including relevant dates, findings, and any other relevant information relating to management officials' investigation into Complainant's harassment allegations;
- c) Provide documentary evidence (including race, color, and prior EEO activity) into the number and frequency of threat assessments, and the reasons for those investigations; and
- d) Obtain statements regarding the van pool incident, including management officials' knowledge of the incident, and any corrective action relating to this incident.

Supplemental Investigation

In accordance with the Order in EEOC Appeal No. 2019001854, the Agency conducted the supplemental investigation and provided a copy of the supplemental ROI to Complainant on December 1, 2020. The Investigator noted that many of the key witnesses, including Complainant, are no longer employed at the Agency. As a result, it was determined that the original ROI should be re-examined to determine if there was testimony or documentary evidence that might provide the information being sought. The supplemental investigation summary further noted that the Supervisor's use of racial slurs and the van pool incident were considered in the original investigation under the hostile work environment theory. However, the Investigator noted that it was a difficult question to answer when Complainant reported the Supervisor's use of racial slurs to management officials. Additionally, a threat assessment, which was conducted in response to Complainant's coworker (Coworker) reporting that she was in a hostile work environment and requesting to be removed from the Supervisor's leadership, was added to the record.

In response to the supplemental ROI, Complainant contends that the Agency provided the same ROI to respond to the supplemental investigation and that the Threat Assessment was the only additional evidence added to the record.

This appeal was docketed in order to address the AJ's summary judgment decision and the Agency's implementation of that decision finding that the Agency did not discriminate against Complainant, as alleged, now that the appellate record is complete.

ANALYSIS AND FINDINGS

The Commission's regulations allow an AJ to grant summary judgment when he or she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). An issue of fact is "genuine" if the evidence is such that a reasonable fact finder could find in favor of the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988).

A fact is “material” if it has the potential to affect the outcome of the case. In rendering this appellate decision, we must scrutinize the AJ’s legal and factual conclusions, and the Agency’s final order adopting them, de novo. See 29 C.F.R. § 1614.405(a)(stating that a “decision on an appeal from an Agency’s final action shall be based on a de novo review...”); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (Aug. 5, 2015) (providing that an administrative judge’s determination to issue a decision without a hearing, and the decision itself, will both be reviewed de novo).

Here, as the matter has been remanded for supplemental investigation and the Agency has indicated that many of the officials involved have left the Agency, we find that the matter is appropriate for summary judgment. As such, we shall review the determination by the AJ finding no discrimination or harassment.

Hostile Work Environment

To establish a claim of harassment a complainant must show that: (1) she belongs to a statutorily protected class; (2) she was subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on her statutorily protected class; (4) the harassment affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982). Further, the incidents must have been “sufficiently severe or pervasive to alter the conditions of [complainant’s] employment and create an abusive working environment.” Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993).

Therefore, to prove her harassment claim, Complainant must establish that she was subjected to conduct that was either so severe or so pervasive that a “reasonable person” in Complainant’s position would have found the conduct to be hostile or abusive. Complainant must also prove that the conduct was taken because of her protected classes. Only if Complainant establishes both of those elements, hostility and motive, will the question of Agency liability present itself.

We find that Complainant established that she is a member of a protected class based on her race and that she was subjected to unwelcomed conduct. Complainant asserted that based on her protected classes, the Supervisor subjected her to a hostile work environment, as evidenced by exposure to racial slurs, lack of guidance and training, delayed approvals of leave requests, lack of work appraisals, threats regarding being removed from her position, threats of physical violence, and being pressured not to write a memo reporting alleged harassment by her supervisor. Complainant also alleged that management failed to act on her reports of a hostile work environment.

With respect to the racial slurs, Complainant has established by a preponderance of evidence that the Supervisor made racially disparaging comments on multiple occasions.

For example, the record reveals that the Supervisor used the word “crackers” when speaking with Complainant about White employees and attempted to create a divisive atmosphere, which Complainant reported to multiple management officials. An Executive Assistant/Camp Administrator affirmed that she was told that the Supervisor called upper management “White Crackers.” ROI at 364. She further affirmed that Complainant reported that prior to starting, the Supervisor mentioned that “because they were both Black, they were going to have to stick together and stay away from the White people.” Id. at 365. The Executive Assistant/Camp Administrator stated that she went to the Warden with Complainant and he requested that Complainant document any information she had regarding the Supervisor. Id. When asked if there was any action by the Warden after receiving the memo from Complainant, the Executive Assistant/Camp Administrator responded, “not that I know of.” Id. Notably, the Executive Assistant/Camp Administrator affirmed that she believed that Complainant’s race and color were factors in the racial slurs made to Complainant. Id.

Coworker testified that Complainant told her that the Supervisor made comments about trying to stick together because “these people, these ‘Crackers’ actually, were against seeing Black females succeed.” ROI at 378. The Coworker agreed that Complainant’s race and color were a factor in the Supervisor’s actions toward Complainant. Similarly, a Staff Psychologist confirmed that the Supervisor used words like “these crackers” or “these White people.” The Staff Psychologist stated that she experienced the Supervisor make statements about “these people” and the Supervisor also informed the Staff Psychologist that she needed to watch out or watch her back with “these people” in reference to non-African American employees. Id.

Upon review, we find that multiple Agency officials were aware of the Supervisor’s discriminatory animus. While testimony shows that the Supervisor’s “mentality is “Blacks have to stick together” and “it’s us against them,” the Supervisor was simply described as saying “a lot of crazy stuff sometimes.” ROI at 406, 408. In this instance, we find the comments in the present case were sufficiently severe and pervasive to alter the terms and conditions of Complainant’s employment and to create an abusive work environment. Specifically, we find that the Supervisor’s actions directed at Complainant were a result of Complainant’s race. Multiple witnesses agreed that Complainant was not provided with adequate training and support from the Supervisor with many concluding that it was because of race and color. Moreover, a review of the record shows that once Complainant failed to agree with the Supervisor’s perception that White employees were against Black employees, the Supervisor subjected Complainant to adverse treatment. Therefore, we determine that Complainant established that she was subjected to harassment based on her race.

The standard for employer liability for hostile work environment harassment depends typically on whether or not the harasser is the victim's supervisor. An employer is vicariously liable for a hostile work environment created by a supervisor. In Vance v. Ball State Univ., 133 S. Ct. 2434 (2013), the Supreme Court held that an employee is a “supervisor” if the employer has empowered that employee “to take tangible employment actions against the victim, i.e., to effect a “significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant

change in benefits.” The Court stated that an employer is liable for hostile work environment harassment by employees who are not supervisors if the employer was “negligent in failing to prevent harassment from taking place.” In assessing such negligence, the Court explained, “the nature and degree of authority wielded by the harasser is an important factor to be considered in determining whether the employer was negligent.”

Also relevant is “[e]vidence that an employer did not monitor the workplace, failed to respond to complaints, failed to provide a system for registering complaints, or effectively discouraged complaints from being filed.” See Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisor, Notice No. 915.002 (June 18, 1999) (updated Notice Concerning the Supreme Court’s Decision in Vance v. Ball State University, 133 S. Ct. 2434 (2013)). Here, we note that in addition to discouraging Complainant from noting her harassment concerns², management officials failed to adequately address the hostile work environment created by the Supervisor.

We find that considered as a whole, the instant record establishes that Complainant was subjected to harassment based on race. The alleged harassment also clearly affected the terms and conditions of her employment as the Supervisor created difficulties when it came to requesting leave, threatened Complainant’s position, threatened Complainant with violence, and failed to evaluate Complainant. We further find that these incidents of harassment are sufficiently severe to constitute a hostile work environment. The Supervisor was responsible for the race-based harassment which included tangible employment actions, and as Complainant’s supervisor, the Agency is vicariously liable. Although the Warden reported that a threat assessment was conducted in response to Complainant’s report of a hostile work environment, the only threat assessment provided by the Agency during the period at issue shows that it was conducted following reports from another employee that she could not work under the Supervisor’s leadership. Supplemental ROI at 43.

Based on the foregoing, we find, contrary to the AJ’s decision, that Complainant has established that she was subjected to harassment for which the Agency is liable.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency’s finding of no discrimination. The matter is REMANDED to the Agency for further processing in accordance with this decision and the Order herein.

² Complainant’s coworker corroborated Complainant’s allegation that the Associate Warden made the remark, “y’all know if you write that it is just going to make it worse.” ROI at 387.

ORDER

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

1. Within ninety (90) days from the date that this decision is issued, the Agency shall complete a supplemental investigation in order to determine Complainant's entitlement to compensatory damages. The Agency shall afford Complainant the opportunity to submit evidence in support of her claim for damages within the 90-day time frame, and Complainant shall cooperate with any additional evidentiary requests made by the Agency. Within thirty (30) days of the date that the Agency determines the amount of compensatory damages owed Complainant, the Agency shall pay that amount;
2. Within ninety (90) days from the date this decision is issued, the Agency shall provide a minimum of eight hours of in-person or interactive training to all of its managers and supervisors at the Three Rivers facility regarding their obligations to prevent unlawful harassment under federal EEO statutes.

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 Federal Correctional Institution (FCI) in Three Rivers, Texas, 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.

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 (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 20, 2022

Date