



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

[REDACTED]  
Lelah T.,<sup>1</sup>  
Complainant,

v.

Alejandro N. Mayorkas,  
Secretary,  
Department of Homeland Security  
(Customs and Border Protection),  
Agency.

Appeal No. 2021001401

Agency No. HS-CBP-01678-2017

**DECISION**

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's November 23, 2020 final decision awarding Complainant attorney's fees/costs and compensatory damages.

**BACKGROUND**

During the period at issue, Complainant worked for the Agency as a Customs and Border Protection (CBP) Officer in Buffalo, New York.

On May 23, 2017, Complainant initiated EEO contact. On August 31, 2017, Complainant filed a formal EEO complaint based on sex and reprisal (reporting allegations of sexual harassment). On September 25, 2017, the Agency accepted the formal complaint for investigation and determined that it was comprised of the following claims:

1. Beginning on November 29, 2016-continuing, Complainant was subjected to harassment with regard to incidents 1a-1e and issues (2) and (3) below:
  - a. On November 30, 2016, a co-worker (CW-1) pulled down his pants to reveal his camouflage boxer shorts.

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<sup>1</sup> 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.

- b. On March 5, 2017, co-worker 2 (CW-2) called Complainant's name so she would turn her head and look at CW-1 exposing his genitals to her.
  - c. In August 2016, CW-1 and co-worker 3 (CW-3) had conversations in the office about pulling out their genitals in the office and having erections during work and training sessions, and CW-1 said he "worked up a chub" and "put it on the desk" for CW-3 to look at.
  - d. On August 19, 2017, CW-1 told Complainant he was upset that he was investigated by the Office of Inspector General (OIG) regarding her accusations that he was trying to intimidate, threaten, and discourage her from pursuing her complaints after management issued CW-1 a "cease and desist" memorandum to stay away from Complainant, effective May 5, 2017.
  - e. Since September 1, 2017, CW-1 bought a large machete-style knife to work and frequently sharpened it at his desk to intimidate, threaten, and discourage Complainant from pursuing her complaints.
- 2. On or around June 14, 2017, the Supervisory CBP Officer-1 denied Complainant's request for scheduling accommodations, but granted the same accommodations to CW-1 and another co-worker (CW-4), who are male.
  - 3. In or around August 2017, Complainant was forced to remove herself from the Tactical Terrorist Response Team (TTRT) and enter the bargaining unit to bid on a new position due to the harassment by CW-1.

After an investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a final decision.

On February 24, 2020, the Agency issued a final decision on the merits of Complainant's complaint (hereinafter FAD-1).<sup>2</sup> FAD-1 found that Complainant established that she was subjected to a hostile work environment regarding claims 1a-1d and claim 3. However, FAD-1 found no discrimination regarding claims 1e and 2.

FAD-1 ordered the Agency to take various actions including, but not limited to, issuing a decision regarding Complainant's entitlement to compensatory damages and attorney's fees and costs. Specifically, FAD-1 set forth that Complainant should submit evidence in support of her request for compensatory damages and attorney's fees and costs, within a specified time. FAD-1 provided the Agency a specified period of time to submit a rebuttal/response to Complainant's request.

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<sup>2</sup> The record reflects that FAD-1 was reissued on April 20, 2020. Complainant's attorney asserts she received FAD-1 on April 21, 2020.

FAD-1 indicated that once the Agency submitted its response to the Agency's EEO office, that the record will then close with respects to the matters of compensatory damages and attorney's fees and costs.

On May 20, 2020, Complainant, through her attorney, submitted a request for compensatory damages. Complainant sought \$125,000 in non-pecuniary compensatory damages.

On May 20, 2020, Complainant, though her attorney, also submitted her petition for attorney's fees and costs. Therein, Complainant requested a total of \$23,531.55 for attorneys' fees and \$52.60 in costs. Specifically, Complainant sought \$14,321.05 in attorneys' fees for her prior counsel (Law Firm 1) and \$9,210.50 for attorneys' fees and costs for her current counsel (Law Firm 2).

On June 26, 2020, the Agency issued a response to Complainant's request for compensatory damages and requested that her claim be denied in full. The Agency asserted that Complainant's request for \$125,000 is grossly excessive. The Agency initially asserts that Complainant is not entitled to compensatory damages because her initial EEO contact was untimely.

The Agency further asserts that Complainant did not submit a notarized statement. The Agency further asserts that the witness statements submitted by Complainant were not notarized. The Agency further asserts that these statements lack detail. The Agency asserts that the medical documentation provided by Complainant does not establish that her medical conditions were due to the Agency's discrimination.

On June 26, 2020, the Agency also issued a response to Complainant's petition for attorney's fees and costs. The Agency's states that attorney's fees should be denied for Law Firm 1 because no affidavit was provided regarding the hourly rate and that the entries do not contain a description of the services rendered. The Agency set forth that if reasonable attorney's fees are found warranted, Complainant should only be entitled to \$3,160.72 in attorney's fees and \$52.60 in costs for Law Firm 2. The Agency asserts that the record lacks information regarding whether the hourly rates are consistent within the prevailing legal community. The Agency also asserts that the billing record has redactions for various entries which result in various entries being vague. The Agency further asserted that there were hours billed (4.6 hours) regarding a separate issue before the Merits Systems Protection Board (MSPB) for which Complainant is not entitled. The Agency also asserts that there are other entries which are redundant and excessive. The Agency asserts that Complainant was not successful on all of her claims and that requested fees should be reduced across the board.

On November 18, 2020, the Agency issued a final decision pertaining to the issue of compensatory damages and attorney's fees and costs (hereinafter FAD-2). FAD-2 awarded Complainant \$40,000 in non-pecuniary compensatory damages. FAD-2 addressed the Agency's argument that Complainant failed to initiate timely EEO contact and thus her claim for compensatory damages should be denied.

Specifically, FAD-2 set forth that “in her formal complaint, Complainant did raise, within 45 days of the occurrence of the underlying incidents, claims 1d and 3, on which she prevailed, and which were part of the same course of harassment. Because at least one incident of the harassment was raised in a timely fashion, Complainant’s overall claim of harassment was timely.” FAD 2 at 9 n.5. In reaching the award of \$40,000, FAD-2 provided that this amount is not monstrously excessive and consistent with the amount awarded in similar cases.

The instant appeal followed. On appeal, Complainant, through her attorney, requests that we increase the amounts that FAD-2 awarded regarding both compensatory damages and attorney’s fees. Complainant asserts that attorney’s fees should be awarded for Law Firm-1 because, due to the pandemic and a New York ‘stay at home’ order, her ability to obtain information from her prior counsel was greatly impaired. Complainant states that she subsequently submitted additional invoices regarding the services rendered by Law Firm-1. Complainant also contests deductions by the Agency, in its final decision, regarding her attorney’s fees request for Law Firm-2. Complainant asserts that the Agency’s final decision improperly deducted matters from an MSPB case which concerned the removal of the harasser based on her sexual harassment complaint. Complainant also asserts that the Agency’s reduction of 10% was not proper.

Regarding the Agency’s award of \$40,000 in compensatory damages, Complainant asserts that the Agency improperly allowed Agency counsel to respond to her submission for compensatory damages and attorney’s fees and therefore improperly influenced the Agency’s final decision on these matters. Complainant also asserts that amount awarded in compensatory damages was “paltry” and does not properly compensate her for the harm endured.

In response, the Agency requests that we deny Complainant’s appeal in its entirety. The Agency reasserts many arguments raised below. The Agency reiterates that Complainant should not be entitled to compensatory damages because she did not initiate EEO contact in a timely manner. The Agency reiterates that Complainant’s request for \$125,000 in compensatory damages is grossly excessive. The Agency notes that Complainant failed to provide any personal statement concerning the alleged harm she experienced from the Agency’s discriminatory conduct. The Agency also asserts that the medical documentation does not reflect that Complainant’s medical condition were proximately caused by the Agency’s discrimination. The Agency states that some of the statements from friends and relatives submitted by Complainant in support of her damages request were not notarized and/or signed.

Regarding attorney’s fees, the Agency reiterates that the hours involving the MSPB case should be disallowed. Specifically, the Agency states that these entries should be denied because they were not related to the processing of her EEO complaint, but rather relate to a separate matter involving an MSPB proceeding related to the removal of Complainant’s harasser. Finally, the Agency asserts that Complainant’s argument, that Agency counsel improperly influenced the Agency’s determination in FAD-2 by being allowed to submit a response to Complainant’s request for damages, is without merit.

### ANALYSIS AND FINDINGS

As an initial matter, we address the Agency appellate argument that Complainant did not timely initiate EEO contact regarding these matters. The Agency accepted the formal complaint for investigation, issued a final decision on the merits finding discrimination and ordered the Agency to take corrective action. Thus, the Agency is foreclosed from raising this procedural argument at this stage. Even assuming *arguendo* that the Agency was not foreclosed from raising this procedural argument, we find the Agency properly noted in FAD-2, as set forth above, that there were other incidents raised after Complainant's initial EEO contact that thus made the Complainant's initial EEO contact timely with respect to the entire hostile work environment claim.

Regarding Complainant's argument, through her counsel, that the Agency representative unduly interfered with the determination set forth in FAD-2, we disagree. FAD-1 provided an opportunity to both parties to submit arguments/documentation on the issue of compensatory damages and attorney's fees and costs. The record reflects that the Agency's EEO Office (Office of Civil Rights and Civil Liberties) considered the submissions by both parties and that the EEO Office issued FAD-2 and not the Agency's representative (Office of General Counsel). We do not find that the Agency's EEO Office was unduly influenced by Agency counsel with respect to the specific circumstances in the instant matter.

#### *Compensatory Damages*

Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes unlawful intentional discrimination under either Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. or Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. may receive compensatory damages for past and future pecuniary losses (i.e., out-of-pocket expenses) and non-pecuniary losses (e.g., pain and suffering, mental anguish) as part of this "make whole" relief. 42 U.S.C. § 1981a(b)(3). 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. For an employer with more than 500 employees, such as the Agency, the limit of liability for future pecuniary and non-pecuniary damages is \$300,000. 42 U.S.C. § 1981a(b)(3).

To receive an award of compensatory damages, a complainant must demonstrate that he or she has been harmed as a result of the agency's discriminatory action; the extent, nature, and severity of the harm; and the duration or expected duration of the harm. Rivera v. Dep't of the Navy, EEOC Appeal No. 01934157 (July 22, 1994), req. for recons. den., EEOC Request No. 05940927 (Dec. 11, 1995); Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.002 (July 14, 1992), at 11-12, 14.

We concur with FAD-2's award of \$40,000 in non-pecuniary damages. We find that FAD-2 properly addressed, in depth, Complainant's request for compensatory damages. We note that Complainant did submit several statements from friends and family in support of her request for compensatory damages which are referenced in FAD-2. As set forth by Agency counsel, some of these statements are not signed. Moreover, while Complainant's request for compensatory damages and brief in support of her appeal references an attachment to the containing Complainant's personal statement or testimony, the request for compensatory damages and brief in support of the appeal does not contain the attachment containing Complainant's personal testimony.<sup>3</sup> We consider these factors in weighing the evidence before us and determining Complainant's award for compensatory damages.

While the record does not contain the Complainant's testimony attached to her request for damages, as set forth above, the record does contain a letter from Complainant's attorney which appears to summarize Complainant's testimony. This letter states that Complainant experienced marital strain to the point of divorce in connection with the environment at work.<sup>4</sup> In addition, the letter provides that Complainant experienced insomnia, anxiety, exhaustion and was fearful to attend work functions.

In an attachment in her formal complaint and her declaration under penalty of perjury for the report of investigation, Complainant provides personal testimony regarding the harm she experienced with respect to the harassment. Specifically, in a signed attachment to her formal complaint, Complainant sets forth that she experienced extreme emotional distress and humiliation from the harassment. Report of Investigation (ROI) at 21. Complainant, in this attachment to her formal complaint, also set forth that that she felt humiliated and anxious as a result of the harassment. ROI at 17. Complainant, in her signed declaration, set forth that she was concerned for her overall health and safety. ROI at 43.

The statements from family and friends set forth that Complainant has been in distress and experienced depression, anxiety, insomnia and negative eating habits. In addition, while Complainant submitted medical documentation in support of her request for non-pecuniary compensatory damages for various medical conditions, such as hemorrhoids, the documentation does not clearly reflect that these conditions were due to the discriminatory harassment.

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<sup>3</sup> FAD-2 set forth that Complainant's request for compensatory damages set forth that Complainant's testimonial affidavit was attached. However, "Complainant's testimonial affidavit was not found to be attached and the record does not contain the referenced 'testimonial affidavit'." Nevertheless, for purposes of this decision, this Office will consider Complainant's attorney's summarization of Complainant's statement as put forth by her attorney as having been presented in the aforementioned testimonial affidavit." FAD-2 at 2 n2.

<sup>4</sup> The record reflects that Complainant's husband at the time was a supervisor at the Agency.

We find that FAD-2's award of \$40,000 in non-pecuniary damages is not monstrously excessive and is consistent with the awards in similar cases. See Harris K. v. Dep't of Homeland Sec., EEOC Appeal No. 0120180595 (April 24, 2018) (complainant awarded \$40,000 in non-pecuniary compensatory damages for racial harassment that caused him depression, anxiety, difficulty sleeping, fatigue, changes in appetite, and losing trust in his colleagues. This complainant submitted letters from friends and family in support of his request for damages. In rendering this amount OFO noted that, complainant was not rendered totally incapacitated either for work or in his personal life).

### *Attorney's Fees*

Title VII authorizes the award of reasonable attorney's fees, including for an attorney's processing of a compensatory damages claim. 29 C.F.R. § 1614.501(e). The fee award is ordinarily determined by multiplying a reasonable number of hours expended on the case by a reasonable hourly rate, also known as a "lodestar." See 29 C.F.R. § 1614.501(e)(2)(ii)(B); Bernard v. Dep't of Veterans Affairs, EEOC Appeal No. 01966861 (July 17, 1998).

Complainant requested \$23,531.55 for attorney's fees and \$52.60 in costs for her prior counsel (hereinafter Law Firm-1) and current counsel (hereinafter Law Firm-2). Specifically, amounting to \$9210.5 for attorney's fees and \$52.60 costs for Law Firm 2 and \$14,321.05 for Law Firm 1.

#### A. Attorney's Fees Regarding Law Firm 1

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FAD-2 denied fees relating to services rendered by Law Firm 1. FAD-2 reasoned "Complainant submitted a one-page document listing fees for former attorneys in the amount of \$14,321.05 for work performed from June 30, 2017 through January 31, 2019 with each line item designated as Invoice with a date and amount. This Office find that Complainant's [fee petition] for her former attorneys...fails to meet the requirements of a verified fee statement." FAD-2 at 13.

Complainant's counsel requested to submit documentation to the Agency regarding the services rendered by Law Firm-1 after the specified time period due to challenges with the COVID-19 pandemic. The record reflects that on June 29, 2020, Complainant's counsel emailed the Agency requesting "ten (10) calendar days to provide a supplementary filing of [Law Firm-1's] billing invoices...to complete the record on attorney's fees. We are diligently working to obtain more detailed billing invoices from [Law Firm 1]...who represented [Complainant] in the informal and formal EEO complaint process back between 2017 and 2018, but the COVID-19 pandemic, with businesses in New York state under the stay-at home order from the Governor...has made it difficult to communicate and obtain documents outside of our firm." The Agency responded via email on June 30, 2020 that the record was considered closed and that Complainant would be given a final decision with appeal rights. On July 8, 2020, Complainant's counsel submitted additional invoices pertaining to services rendered by Law Firm-1 and requested that the Agency reconsider its decision to not allow them into the record.

We find that the Agency should have considered the supplemental invoices submitted by Complainant's counsel on July 8, 2020 regarding the services rendered by Law Firm 1. The record reflects that Complainant's counsel received FAD-1 on April 21, 2020 (during the beginning of the COVID-19 pandemic in the United States). Complainant's counsel has set forth the challenges involved in obtaining additional information from Law Firm 1 during this time. Based on these circumstances, we REMAND this matter to the Agency to consider the supplemental documents submitted by Complainant pertaining to services rendered by Law Firm-1 and to issue a new final decision on the issue of attorney's fees and costs regarding Law Firm-1 with appeal rights to the Commission.

B. Attorney's Fees Regarding Law Firm-2

We find that that FAD-2 properly awarded Complainant \$7,278.75 in attorney's fees and \$.60 in costs with respect to the services rendered by Law Firm-2. FAD-2 explained, in detail, its rationale for its various deductions from the amount Complainant was seeking regarding the services rendered by Law Firm 2 (\$9,210.50 in attorney's fees and costs).

We find that FAD-2 properly addressed the reasonable hourly rate for the various attorneys who worked on this matter from Law Firm-2. Specifically, FAD-2 provided, in pertinent part, that:

The petition...contained affidavits attesting to the qualifications of three attorneys who performed work on the case, along with standard hourly rates, ranging from \$175-\$375. The petition claimed work by two partners, who performed 0.2 and 1.3 hours of work at hourly rates of \$500 and \$375 respectively. One of the other attorneys attested to the fact that the partners are, in fact, partners at the firm; however, without the affidavits substantiating the reasonableness of \$500 rate for one of the partners, this Office has determined that it will apply the \$375 hourly rate substantiated for the other partners. Accordingly, the fee for the partner charging \$500 for 0.2 hours of work is reduced from \$100 to \$75. Based on Complainant's attorney's affidavits and the retainer agreement, this Office find that the other attorney's hourly rates are reasonable. FAD-2 at 11.

We further concur with FAD-2 in denying \$1,098 in attorney's fees involved in the MSPB proceeding relating to the removal of Complainant's harasser. We find that these fees are not associated with the processing of Complainant's EEO case but involve a different forum (MSPB).

We further concur with FAD-2 in reducing the remaining fees by ten percent due to various redacted entries in the invoice which are unexplained by Complainant. FAD-2 noted that some of these redacted entries are so vague that it cannot be determined whether the requested fees are reasonable. FAD-2 at 11.



Finally, we concur with FAD-2 award of \$.60 in costs for printing. We find FAD-2 properly denied \$52 in Lexis charges. The Commission has held that computerized legal research is considered overhead and is something that should already be captured by the attorney's reasonable hourly rate. See Alene S v. U.S. Postal Serv., EEOC Appeal No. 0720150038 (April 6, 2016). Based on the foregoing, we find that FAD-2 properly awarded \$7,278.75 in attorney's fees and \$.60 in costs for the services rendered by Law Firm-2.

Accordingly, we AFFIRM the Agency's award of \$40,000 in non-pecuniary compensatory damages. In addition, we AFFIRM the Agency's award as set forth in FAD-2 of \$7,278.75 in attorney's fees and \$.60 in costs with respect to the services provided by Law Firm-2. However, we REMAND this issue of attorney's fees and costs with respect to Law Firm-1 in accordance with the Order below.

### ORDER

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

1. Within sixty (60) calendar days from the date this decision is issued, the Agency shall pay Complainant \$40,000 in non-pecuniary compensatory damages.
2. Within sixty (60) calendar days from the date this decision is issued, the Agency shall pay Complainant \$7,278.75 in attorney's fees and \$.60 in costs related to the services rendered by Law Firm-1.
3. Within 45 calendar days from the date this decision is issued, the Agency shall issue a new final decision, with appeal rights to the Commission, on attorney's fees and costs regarding the services rendered by Law Firm-1 by considering the documentation submitted by Complainant's counsel to the Agency on July 8, 2020 as discussed herein. If the Agency's new final decision awards attorney's fees and costs regarding the services rendered by Law Firm-1, the Agency shall pay this amount to Complainant within sixty (60) calendar days of the Agency's final decision. In the event, the Agency awards attorney's fees and costs in its new final decision regarding the services rendered by Law Firm-1, Complainant shall have the opportunity to submit a verified statement of fees within thirty calendar days of receipt of the Agency's new final decision to the Agency (not the EEOC) for reasonable attorney's fees and costs associated with the processing of the successful portion of this appeal. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

The Agency shall also submit a report of compliance as set forth in the section below entitled "Implementation of the Commission's Decision."

### 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

August 16, 2022

Date