



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

[REDACTED]
Lacy R.,¹
Complainant,

v.

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

Appeal No. 2021001454

Hearing No. 410-2018-00273X

Agency No. 200I-005-2017103743

DECISION

JURISDICTION

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 December 3, 2020 final order concerning an equal employment opportunity (EEO) complaint claiming employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

BACKGROUND

During the period at issue, Complainant worked as a Network Administrator, GS-12, at the Agency's Atlanta Regional Office in Decatur, Georgia.²

¹ This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

² The record indicates that Complainant lived in Lilburn, Georgia and commuted to the office in Decatur, Georgia.

On September 21, 2017, Complainant filed a formal EEO complaint claiming that the Agency discriminated against him based on disability when, from September 2016 and ongoing, Complainant was subjected to a hostile work environment regarding the following allegations:

1. Complainant was not provided information and appropriate guidance, concerning the Reasonable Accommodation process, and leave under the Family and Medical Leave Act (FMLA).
2. On February 15, 2017, until March 30, 2017, the Chief Information Officer (CIO) failed to address Complainant's request for an interim accommodation (to telework full time during the period February 15, 2017 to March 30, 2017), and thereby the request was denied.
3. During February and March 2017, the CIO instructed Complainant that prior to returning to work he must provide a "medical waiver with a new release date."
4. From April 2017 and ongoing, Complainant was denied a Reasonable Accommodation to telework when he experiences medical flair-ups that prevent him from traveling to work.
5. On May 31, 2017, the Human Resources Officer (HRO) refused to process Complainant's FMLA request.

After an investigation, the Agency provided Complainant with a copy of the report of investigation and notice of right to request a hearing before an Equal Employment Opportunity Commission (EEOC or Commission) Administrative Judge (AJ). Complainant timely requested a hearing. On October 2, 2019, the Agency filed a motion for summary judgment. Thereafter, Complainant submitted an opposition.

Following an August 5, 2020 Status Conference, on August 6, 2020, the AJ issued an Order to Produce and an Order for Supplemental Briefing. In pertinent part, the Order permitted the Agency to supplement its motion for summary judgment and it permitted Complainant to supplement his response to the Agency's motion. Although neither party supplemented their dispositive pleadings, the AJ issued a November 4, 2020 Order to Produce instructing the Agency to provide additional documentation. The Agency complied with the AJ's order.

On November 30, 2020, the AJ issued a decision by summary judgment, over Complainant's objection, in favor of the Agency. The AJ determined that, pursuant to 29 C.F.R. § 1614.109(e)(3), there were no genuine issues of material fact regarding the Agency's denial of Complainant's reasonable accommodation and interim accommodation requests and his related discriminatory and harassment claims. The AJ explained that the record reflected that Complainant had sustained a work-related injury in September 2016 that required him to undergo hernia surgery in February 2017. The AJ determined that Complainant requested a reasonable accommodation on February 9, 2016, for temporary full-time telework from February

13, 2017 through April 13, 2017. However, the AJ noted that Complainant's medical documentation indicated that Complainant was unable to work (in the office or at home) until March 27, 2017, but Complainant later provided medical documentation clarifying that he could not work from February 13, 2017 through February 27, 2017, but he could engage in modified activity from February 28, 2017 through March 22, 2017.

Thereafter, the AJ indicated that the Local Reasonable Accommodation Coordinator (LRAC) contacted Complainant on March 11, 2017 and requested that Complainant submit medical documentation regarding his request to telework through April 13, 2017. Ultimately, the AJ determined that the Agency, on or about March 14, 2017, approved Complainant's interim accommodation to telework through March 23, 2017, pending Complainant's submission of the required medical documentation. The AJ noted that Complainant had submitted a request to extend his telework accommodation around the time the interim accommodation was about to terminate. However, Complainant failed to submit the requested medical documentation, and on July 20, 2017, the Agency administratively closed Complainant's accommodation request.

The AJ determined that the delays in approving Complainant's accommodation requests were attributed to the LRAC being out of the office on emergency leave and office training. Despite this delay, the AJ indicated that the Agency provided Complainant with an interim accommodation approximately 35 days after the Agency received Complainant's accommodation request. Additionally, the AJ reasoned that the Agency offered legitimate, nondiscriminatory reasons for administratively closing Complainant's reasonable accommodation request after Complainant failed to provide the necessary medical documentation. Moreover, the AJ determined that the alleged harassment claims were unrelated to Complainant's disability, and these claims were not severe or pervasive enough to support an actionable harassment claim.

On December 3, 2020, the Agency issued a final order implementing the AJ's decision.

The instant appeal followed. On appeal, Complainant argues, through counsel, that a decision by summary judgment was not appropriate. First, Complainant asserts that the AJ incorrectly issued a summary judgment decision on all claims, including Complainant's harassment claim, even though the Agency's motion for summary judgment omitted any discussion of Complainant's harassment claims. Consequently, Complainant reasons that the AJ failed to provide any notice of intent to issue a decision by summary judgment on these claims, and as a result, Complainant was denied an opportunity to respond before the AJ granted summary judgment.

Second, Complainant argues that there are genuine issues of material fact in dispute that required a hearing. Complainant notes that the AJ makes a finding of fact that the Agency provided Complainant an interim accommodation on or about March 14, 2017. However, Complainant explains that the Agency never mentions this "fact" in its motion for summary judgment.³

³ Complainant explains that the document indicating that the Agency had approved Complainant's interim accommodation was not included in the report of investigation and was

Additionally, Complainant asserts that he was never informed by the CIO or the LRAC about the status of his interim accommodation request, he never knew he was approved, which resulted in him entering a non-pay status from mid—February 2017 through March 2017 and April 2017 through June 2017. Complainant asserts, that there is no documentation in the record indicating that the LRAC or the CIO informed Complainant that his interim request was approved.

Third, Complainant asserts that the AJ incorrectly analyzed Complainant's disability discrimination claim under a disparate treatment analysis instead of applying a reasonable accommodation analysis to determine: (1) whether the Agency responded to Complainant's accommodation request in a reasonable manner; (2) whether the medical documentation Complainant provided on February 27, 2017, obligated the Agency to grant Complainant's reasonable accommodation on an ongoing or interim bases; and (3) whether the Agency had carried its burden of establishing that the granting of Complainant's reasonable accommodation request to telework would cause an undue hardship for the Agency.

Finally, Complainant argues that the AJ abused her discretion when she denied Complainant's request to consolidate the instant complaint with another complaint identified as Agency Case No. 200I-0005-2019101384 (Second Complaint) which was also pending. Complainant indicates that on May 9, 2019, he requested a hearing regarding his second complaint. Complainant explained that the Second Complaint involved identical legal issues, the same management officials, and the alleged conduct occurring at the same location as the instant complaint. Specifically, Complainant asserts that the Second Complaint concerned on the Agency's alleged continued failure to grant Complainant's accommodation request and continuation of the hostile work environment. Complainant acknowledges that the sole difference between the instant complaint and the Second Complaint is that the allegations in the Second Complaint occurred after the alleged incidents in the instant complaint. Complainant notes that the Agency did not object to his consolidation request.

ANALYSIS AND FINDINGS

The Commission's regulations allow an AJ to issue a decision without a hearing upon finding that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). The U.S. Supreme Court held summary judgment is appropriate where a judge determines no genuine issue of material fact exists under the legal and evidentiary standards. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a summary judgment motion, the judge is to determine whether there are genuine issues for trial, as opposed to weighing the evidence. Id. at 249. At the summary judgment stage, the judge must believe the non-moving party's evidence and must draw justifiable inferences in the non-moving party's favor. Id. at 255. A "genuine issue of fact" is one that a reasonable judge could find in favor for the non-moving party. Celotex v. Catrett,

only provided by the Agency *after* the Agency had filed its motion for summary judgment. Consequently, Complainant's counsel asserts that Complainant had not seen this document until the Agency produced it in response to Complainant's counsel's discovery requests.

477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A “material” fact has the potential to affect the outcome of a case.

Our review of the record, including the parties’ statements on appeal, support Complainant’s arguments that summary judgment was not appropriate in this case because there are several genuine issues of material fact that require resolution through a hearing. These issues include: (1) whether the AJ provided Complainant notice of her intent to issue a decision by summary judgment on the harassment claims; (2) whether the Agency provided Complainant an interim accommodation on or about March 14, 2017; and (3) whether the Agency fulfilled its obligations under the Rehabilitation Act which requires that it timely respond to Complainant’s reasonable accommodation request and subsequent interim request. We address each of these issues separately.

Notice of Intent of Summary Judgment – Harassment Claims

Under the Commission’s regulations, an AJ is required to issue a Notice of Intent to issue a decision by summary judgment when the AJ determines, upon his or own initiative, that some or all facts are not in genuine dispute. See 29 C.F.R. § 1614.109(g)(3).

The record reflects that the Agency filed a motion for summary judgment on October 1, 2019.⁴ The AJ provided the Agency the opportunity to supplement its initial motion. However, the Agency elected not to do so. Our review of the Agency’s motion indicates that the Agency determined that there were no genuine issues of material fact regarding Complainant’s reasonable accommodation claims, and these claims could be adjudicated by the AJ without a hearing. Ultimately, the AJ agreed with the Agency’s motion and granted the motion after receiving a response from Complainant.

Further review of the Agency’s motion confirms that there is no analysis, mention, or discussion of Complainant’s harassment claims as being appropriate for adjudication by the AJ without a hearing. Here, the AJ, determined, upon her own initiative, that there were no genuine issues of material fact regarding all claims (including the harassment claims). Because the Agency did not include the harassment claims in its motion, the AJ was required to issue a notice of intent to issue a summary judgment decision regarding these claims since the AJ made the determination that summary judgment on the harassment claims was appropriate. The AJ failed to do so. Consequently, Complainant did not have an opportunity to respond, and Complainant’s harassment claims should now be remanded to the AJ for a hearing.

⁴ The certificate of service attached to the Agency’s motion states that it was sent to the AJ and Complainant on October 1, 2019.

Reasonable Accommodation

Under the Commission's regulations, a federal agency may not discriminate against a qualified individual based on disability, and is required to provide reasonable accommodations to the known physical and mental limitations of an otherwise qualified individual with a disability unless the Agency can show that reasonable accommodation would cause an undue hardship. See 29 C.F.R. § 1630.2(o), (p); EEOC's Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC Notice No. 915.002 (Oct. 17, 2002).

To establish that she was denied a reasonable accommodation, Complainant must show that: (1) she is an individual with a disability, as defined by 29 C.F.R. § 1630.2(g); (2) she is a "qualified" individual with a disability pursuant to 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide her with a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (Enforcement Guidance), EEOC Notice No. 915.002 (Oct. 17, 2002). A qualified person with a disability is an individual who can perform the essential functions of the position with or without an accommodation.

Our review of the record indicates that Complainant was diagnosed with Meniere's Disease and severe depression. Our review further indicates that Complainant sustained a work-related job injury in September 2016, and he was placed on light duty status. Ultimately, Complainant's work-related injury resulted in him having hernia surgery in February 2017.

Interim Accommodation

The AJ stated in her summary judgment decision that the Agency provided Complainant an interim accommodation on or before March 14, 2017. The AJ notes that the record includes a March 11, 2017 email from the RAC to the CIO strongly recommending that the CIO approve Complainant for an interim accommodation (temporary full-time telework until March 23, 2017) pending Complainant's submission of supporting medical records because Complainant had already had surgery. The record also includes a March 11, 2017 email from the CIO to the LRAC authorizing the LRAC to proceed with approving the interim request. Moreover, the record includes an Approval of Interim Accommodation confirming that Complainant was approved for temporary full time telework until March 23, 2017 on the condition that Complainant submit required medical documentation by March 23, 2017. The approval further indicates that Complainant's interim accommodation would expire if he did not submit the form by the stated deadline. The AJ used this evidence to support her finding that the Agency had provided Complainant an interim accommodation.

However, Complainant testified that he was never informed that the interim accommodation had been granted. Consequently, the record reflects that Complainant was on non-pay status from mid-February 2017 through March 2017 and April 2017 through June 2017. We note that there is no document in the record indicating that Complainant was notified that he was approved for

the interim accommodation. The LRAC's March 11, 2017 email to Complainant only requests that Complainant submit the required medical documentation to continue with the reasonable accommodation process.

Additional documentation in the record appears to support Complainant's assertion that he was unaware that the CIO had approved his interim request or that his interim request was ever approved contrary to the AJ's finding. In a March 14, 2017 email, the LRAC warned the CIO that approving Complainant's interim temporary full-time telework request would make it difficult for the CIO to deny future full-time telework requests from Complainant. In a March 15, 2017 email, the CIO responded to the LRAC's warning and indicated that allowing Complainant to telework on a full-time basis would put "an extra burden" on his staff. Similarly, the CIO testified that based on the LRAC's warning, "the interim work at home was not offered [because] it would be a severe burden on the office to have that position as a 100% work at home"⁵ (emphasis added). Therefore, our review reflects that there is sufficient documentation of record to create a genuine issue of fact as to whether Complainant was granted an interim accommodation on or about March 14, 2017.

Agency's Obligations Under Rehabilitation Act

An employer should respond expeditiously to a request for reasonable accommodation. Enforcement Guidance on Reasonable Accommodation at Question 10. If the employer and the individual with a disability need to engage in an interactive process, this too should proceed as quickly as possible. Id. Similarly, the employer should act promptly to provide the reasonable accommodation. Id. Unnecessary delays can result in a violation. Id. In determining whether there has been an unnecessary delay in responding to a request for reasonable accommodation, relevant factors include: (1) the reason(s) for delay, (2) the length of the delay, (3) how much the individual with a disability and the employer each contributed to the delay, (4) what the employer was doing during the delay, and (5) whether the required accommodation was simple or complex to provide.

In her decision, the AJ acknowledged that the LRAC had a delayed response in addressing Complainant's reasonable accommodation request. However, the AJ considered the AJ's issuance of an interim accommodation as a mitigating factor for the LRAC's failure. As previously discussed, we find that the record contains conflicting evidence as to whether Complainant was provided an interim accommodation. Additionally, our review of the record indicates that there is evidence in the record questioning whether the Agency fulfilled its obligation to actively engage in the interactive without unreasonable delay.

The record indicates that on February 9, 2017, Complainant submitted a memo to the CIO, dated February 7, 2017, and titled, "RA request due to surgery recovery." The letter stated that

⁵ The CIO further testified that Complainant's duties required that he be "hands on" with the users and the network equipment about 75% of the time. Consequently, Complainant's position was not suitable for full-time telework.

Complainant's hernia surgery was scheduled for February 13, 2017, and that his physician anticipated that he would be incapacitated for two to eight weeks. Complainant then requested a reasonable accommodation to work at home during recovery after he used his 40 hours of Sick Leave/Annual Leave until his physician authorized him to return to work.

Following instruction from the CIO, Complainant emailed his request to the LRAC and other Reasonable Accommodation Coordinator (RAC) on February 9, 2017. Complainant never received a response from the RAC, who testified that he was transitioning to another position within the Agency and was not advised to start any new reasonable accommodation cases. Instead, Complainant received an automated message from the LRAC indicating that he was out of the office until February 13, 2017. The LRAC's automated email instructed Complainant to submit a completed VA Form 0857a (Written Confirmation of Request for Accommodation) to the LRAC and the CIO. The email further instructed Complainant to have his physician complete VA Form 0857e (Request for Medical Documentation) and submit this form only to the LRAC.

On February 15, 2017, Complainant emailed the LRAC and the CIO a copy the Request for Medical Documentation form which Complainant, not Complainant's physician, completed. Nevertheless, Complainant did not receive a response from the LRAC even though the automated message indicated that the LRAC would have been in the office two days prior. After not hearing from the LRAC, Complainant emailed the LRAC's supervisor (SRAC) on February 21, 2017 inquiring about the status of his reasonable accommodation request. In his email, Complainant stated, in pertinent part,

I was able to check my email on the February 15th [2017] and attempted called [LRAC] for guidance as a follow up for the email I sent on February 9th [2017]. That is when I realized he was not in the office and spoke with you.

On February 22, 2017, Complainant emailed the CIO stating that the LRAC was "out of the office due to illness." However, Complainant had spoken to the SRAC, but he still had not received any formal notification as to how to continue to process his request to telework as an accommodation. Therefore, Complainant requested that "an interim approval to Telework effective immediately due to mitigating circumstances with the VA that are beyond [his] control." The record indicates that the CIO emailed the SRAC and LRAC on February 22, 2017 regarding a status update as Complainant had still not received a response from any of them. On February 23, 2017, Complainant again asked the CIO whether he had authority to approve the interim accommodation. The record indicates that the CIO responded that he did not think he could approve Complainant's request without documentation from Complainant's doctor stating that Complainant was released to perform the duties of his position. Nevertheless, the CIO again emailed the LRAC, SRAC, and RAC on February 28, 2017, requesting if any action had been taken on Complainant's interim accommodation request as Complainant had not received a response.

The record further indicates that on March 2, 2017, the Decision Review Officer/Union Vice President emailed the SRAC and other responsible officials stating,

As you are aware, [Complainant] has been working fervently at completing his request for Reasonable Accommodation. He has been waiting for a response to his request to his request for a reasonable period of time but has not heard from anyone to date. The prolonged wait is beginning to wear on [Complainant] and is proving to impact his recovery. We are therefore requesting an immediate response to his request in an effort to alleviate any continued complications to this employee.

Thereafter, the LRAC first emailed Complainant March 11, 2017. The LRAC stated that he was delayed in responding to Complainant's initial February 9, 2017 email because he had "been in and out of the office for training/emergency leave." However, there is no indication in the record why the SRAC was unable to respond to Complainant's request as Complainant had spoken to her and had copied her on his emails. The SRAC testified that she served as the reasonable accommodation coordinator for Complainant's request during the period the LRAC was detailed to another division – March 19, 2017 through May 23, 2017. However, there is no explanation why there was not another reasonable accommodation official to process Complainant's request from February 9, 2017 through March 11, 2017. Therefore, our review reflects that there is sufficient documentation of record to create a genuine issue of fact as to whether the Agency unreasonably delayed processing Complainant's February 9, 2017 reasonable accommodation request and subsequent interim accommodation request.

In sum, significant issues of material fact remain in dispute in this case, including whether Complainant received any notice of the AJ's intent to issue summary judgment on his harassment claims; whether Agency provided Complainant an interim accommodation on or about March 14, 2017; and whether the Agency unreasonably delayed processing Complainant's reasonable accommodation and interim accommodation requests. Therefore, we find that a decision by summary judgment should not have been granted in this case and a hearing is required.⁶

CONCLUSION

Therefore, after a careful review of the record, including Complainant's arguments on appeal and the Agency's response, and arguments and evidence not specifically discussed in this decision, the Commission REVERSES the AJ's summary judgment decision and REMANDS the matter to the Agency in accordance with this decision and the ORDER below.

⁶ We also note that while on appeal there has been significant focus on the merits of the complaint at issue, the AJ will have to decide whether to also consolidate Complainant's prior complaint (Agency Case No. 200I-0005-2019101384), if still pending, in the hearing.

ORDER

Within thirty (30) calendar days of the date this decision is issued, the Agency shall submit to the Hearings Unit of the EEOC's Atlanta District Office a renewed request for a hearing on this complaint on behalf of Complainant, the complete complaint file, and a copy of this appellate decision. The Agency shall provide written notification to the Compliance Officer at the address set forth below that the complaint file has been transmitted to the Hearings Unit. Thereafter, the Administrative Judge shall issue a decision in accordance with 29 C.F.R. § 1614.109 and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

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)

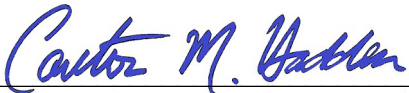
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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

July 21, 2022

Date