



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

[REDACTED]
Nancey D.,¹
Complainant,

v.

Lloyd J. Austin III,
Secretary,
Department of Defense
(Department of Defense Education Activity),
Agency.

Appeal No. 2022000526

Hearing No. 570-2017-01460X

Agency No. EU-FY16-152

DECISION

Following its November 5, 2021 final order, the Agency filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) pursuant to 29 C.F.R. § 1614.403(a). On appeal, the Agency requests that the Commission affirm its rejection of an EEOC Administrative Judge's (AJ) finding of discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq.

The Agency also requests that the Commission affirm its rejection of portions of the relief ordered by the AJ. Specifically, the final order found the AJ's award of \$45,000 in nonpecuniary compensatory damages to be excessive and that an award of \$15,000 is more appropriate given the harm alleged by Complainant.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Teacher, Language Arts/Reading Special Education at the Agency's Middle-High School at Aviano Air Force Base, Italy.

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.

On November 15, 2016, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the basis of sex (female) when, during the school year of 2015 - 2016, Complainant was subjected to harassment by a coworker ("Coworker 1") (male) and when she complained, management did nothing.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). Complainant timely requested a hearing and the AJ held a hearing on May 10 - 13, 2021. In a September 29, 2021 decision, the AJ found that Complainant was subjected to ongoing sex-based (non-sexual) hostile work environment harassment sufficient to violate Title VII by Coworker 1 and, when Complainant complained to management, nothing was done and instead Complainant was made to feel like she was the problem. The AJ concluded that management failed to prevent Coworker 1's actions and that despite Complainant's complaints to them about such actions, also failed to conduct an investigation based on the faulty reasoning that Complainant had not specifically told management that she felt that Coworker 1's actions created a hostile work environment. As remedies for the unlawful harassment, the AJ ordered backpay for the school year 2016-17, entitlement to be transferred to a similar teaching position at another school, and nonpecuniary compensatory damages in the amount of \$45,000.00.

The Agency subsequently issued a final order rejecting the AJ's finding that Complainant proved that the Agency subjected her to discrimination as alleged.

The instant appeal from Complainant followed.

ANALYSIS AND FINDINGS

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

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

Hostile Work Environment

To prove her hostile work environment 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 a protected basis – in this case, her sex. Only if Complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993). See also, EEOC’s *Enforcement Guidance on Harris v. Forklift Systems Inc.*, EEOC Notice No. 915.002 (March 8, 1994).

Here, the evidence developed during the EEO investigation and subsequent hearing showed that during the 2015-2016 school year, Complainant and another coworker (“Coworker 2”) (female) led the facility’s professional leadership team and were the co-chairs for school improvement. The professional leadership team consisted of department chairs who represented the teachers of the various teaching departments. The team first held monthly, and later weekly, meetings which were also attended by the facility administration including the school principal (“Principal”) (male) and assistant principal (“Assistant Principal”) (male). Coworker 1 represented the science department. While Complainant attempted to lead the meetings, Coworker 1 often reacted angrily and would frequently interrupt her or cut her off during her presentations to the group. Coworker 1 would sometimes request clarification on certain topics, but would not accept a response from Complainant, directing his questions to the male administrators instead even though Complainant knew the answers while the administrators did not. On occasion, Coworker 1 would reject Complainant’s response and seek a response from the administrators, who then provided the same response Complainant had just provided, whereupon Coworker 1 would thank them for providing “the correct information.”

Both Complainant and her co-chair, Coworker 2, complained to the Principal and Assistant Principal on numerous occasions about Coworker 1’s behavior and specified that Coworker 1 treated women differently than men, but despite such complaints his behavior remained unchanged. On one occasion during a meeting that also involved staff from another school, Coworker 1 arrived late during a presentation by another female staff member and started badgering her about information that she had already gone over. Complainant began to answer his questions and Coworker 1 “got in [Complainant’s] face,” pointed at her, and shouted “you be quiet, I’m not talking to you. I asked her.” On September 23, 2016, during a professional development day, Complainant was scheduled to present and explain the school’s reading score data to the faculty, including the Principal and Assistant Principal. When it was Complainant’s turn to give her presentation, Coworker 1 and another teacher (“Coworker 3”) (male) ignored her and continued to talk between themselves. Complainant waited for them to finish talking and when they stopped, Complainant resumed her presentation only for them to begin talking again. Complainant approached them and said, “thank you for listening” whereupon Coworker 3 said “you’re welcome” and both of them broke out laughing and mimicked her.

Complainant said she felt so humiliated by being treated so disrespectfully in front of colleagues, and let down by management's failure to act, that she felt unable to continue with her presentation.

Following the presentations, two female teachers ("Coworker 4 and 5") complained to the Principal and Assistant Principal about the incident and about how Coworker 1 treats women differently than men. Additionally, Complainant separately met with the Principal later that day to complain about Coworker 1's behavior, only for the Principal to imply that Complainant was at fault for not being able to deal with difficult people like Coworker 1 and further say that she should not let people like him get to her. The record shows that the Principal did conduct an informal inquiry into the incident but only interviewed Coworker 1 and 3, not Complainant or any of the female teachers who had complained. Following the inquiry, the Principal's conclusion was that it was Complainant who responded in a less than professional manner, not Coworkers 1 and 3. The Principal further averred that he did not consider Complainant to be alleging harassment because she did not use the words "harassment" or "hostile work environment" in describing Coworker 1's behavior. According to the Principal, for behavior to constitute harassment, it must be ongoing, and because this particular incident occurred just once, he did not consider it to be harassment.

Complainant further referenced additional incidents by Coworker 1 where he would "shadow" her, by sitting next to her in the cafeteria even though there were other places for him to sit, or by joining her group during staff development sessions and, according to Complainant, "using proximity to make me feel uncomfortable." Complainant averred that sometimes when no other witnesses were around, Coworker 1 would walk behind her and sarcastically whistle the tune "Always Look On the Bright Side of Life" or sing "Won't You be My Neighbor."

In considering whether any of the above actions, whether individually or collectively, constitute harassment, the Commission notes that in Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993), the Supreme Court reaffirmed the holding of Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986), that harassment is actionable if it is sufficiently severe or pervasive that it results in an alteration of the conditions of the complainant's employment. See EEOC Notice No. 915.002 (March 8, 1994), Enforcement Guidance on Harris v. Forklift Systems, Inc. at 3. In assessing whether the complainant has set forth an actionable claim of harassment, the conduct at issue must be viewed in the context of the totality of the circumstances, considering, inter alia, the nature and frequency of offensive encounters and the span of time over which the encounters occurred. See 29 C.F.R. § 1604.11(b); EEOC Policy Guidance on Current Issues of Sexual Harassment, N 915 050, No. 137 (March 19, 1990); Cobb v. Department of the Treasury, Request No. 05970077 (March 13, 1997). However, as noted by the Supreme Court in Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998): "simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the 'terms and conditions of employment.'" The Court noted that such conduct "must be both objectively and subjectively offensive, [such] that a reasonable person would find [the work environment to be] hostile or abusive, and . . . that the victim in fact did perceive to be so." Id.

See also Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 752 (1998); Clark County School Dist. v. Breeden, 532 U.S. 268 (2001).

Following a review of the record, we conclude that substantial evidence supports the AJ's conclusion that Complainant established that she was subjected to harassment based on sex in violation of Title VII, and that there is a basis for imputing liability to the Agency. The Agency argues that the actions complained of were insufficiently severe to constitute harassment. We note, however, that under Harris, the test is whether the behavior is severe *or* pervasive. While each individual incident described by Complainant may not seem particularly severe, Complainant and other witnesses described ongoing behavior that occurred on virtually a weekly basis over the course of an entire school year and beyond. While some of the behavior occurred when there were no other witnesses present, Complainant described numerous incidents that occurred in front of many of Complainant's colleagues as well as in front of management. Additionally, many female colleagues observed Coworker 1's behavior towards Complainant, and also noted similar condescending or sexist behavior by Coworker 1 towards themselves or other female faculty and even female parents of students. As such, we find that the record shows that Coworker 1's behavior was pervasive enough to meet the Harris standard. We further note in this regard that Complainant felt compelled by Coworker 1's behavior to resign from three extra-duty compensation positions, demonstrating that his actions altered the conditions of her employment.

An employer like the Agency is liable for co-worker harassment when it "knows or should have known of the conduct, unless the Agency can show that it took immediate and appropriate corrective action." See 29 C.F.R. § 1604.11(d). Whether the Agency's action is appropriate depends upon "the severity and persistence of the harassment and the effectiveness of any initial remedial steps." Taylor v. Dep't of the Air Force, EEOC Appeal No. 05920194 (July 8, 1992). The appropriateness of the Agency's conduct in response to harassment depends upon "the particular facts of the case-the severity and persistence of the harassment, and the effectiveness of any initial remedial steps." Owens v. Dep't of Transp., EEOC Appeal No. 05940824 (Sept. 5, 1996). Appropriate corrective action is a response that is reasonably calculated to stop the harassment.

Again, substantial evidence of record supports the AJ's conclusion that because Complainant and other female employees repeatedly complained to management about Coworker 1's behavior and some of the behavior occurred in front of management, management was fully aware of the harassment. While the Principal maintains that neither Complainant nor any of the others complaining against Coworker 1 used the words "harassment" or "hostile work environment" in describing his behavior, the record is clear that Complainant and other female employees did tell the Principal that Coworker 1's behavior was based on sex and that he treated women differently than he treated men. While the Principal indicated he felt that Coworker 1's behavior on September 23, 2016, was not harassment because it occurred just once, the record shows that Complainant and other female employees repeatedly complained that Coworker 1 treated females differently than males, and yet instead of ensuring that Coworker 1 cease such behavior, Complainant was told that she needed to learn to get along with difficult colleagues.

We find that such a response by management was not reasonably calculated to stop any harassment. These factors fully support the AJ's conclusion that the Agency is liable for the harassment because its management failed to take immediate and appropriate corrective action.

Based on the above we find the AJ's findings to be supported by substantial evidence and we discern no basis to disturb the AJ's ultimate finding – that Complainant was subjected to harassment based on sex and that liability can be imputed to the Agency.

Remedies

The AJ awarded Complainant entitlement to backpay for her school year 2016-2017 contract as the CSI Leader (Teacher Team Leader) and entitlement to be transferred to an Agency school in the United Kingdom or a mutually agreeable location and a position that is comparable to the grade level of her current position. The AJ further ordered that the responsible management officials be required to take at least eight hours of Title VII training, with an emphasis on harassment. With regard to attorney's fees, the AJ awarded \$50,950 in fees, \$665 for the attorney's paralegal, and \$ 2,184.04 in costs. On appeal, the Agency did not address any of these remedies and hence we summarily affirm the AJ concerning these remedial orders.

The AJ further awarded \$45,000 in nonpecuniary compensatory damages. On appeal, the Agency argues that an award of \$15,000 more accurately reflects the degree of pain and suffering claimed by Complainant.

When discrimination is found, the employer must provide a complainant with a remedy that constitutes full, make-whole relief to restore her as nearly as possible to the position she would have occupied absent the discrimination. See, e.g., Franks v. Bowman Transp. Co., 424 U.S. 747, 764 (1976); Albemarle Paper Co. v. Moody, 422 U.S. 405, 418-19 (1975); Complainant v. U.S. Postal Service, EEOC Appeal No. 01933395 (July 21, 1994). Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes unlawful intentional discrimination under either Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. §2000e et seq., may receive compensatory damages for past and future pecuniary losses (i.e., out-of-pocket expenses) and nonpecuniary losses (e.g., pain and suffering, mental anguish) as part of 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.

Nonpecuniary losses are losses that are not subject to precise quantification, i.e., emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, injury to credit standing, and loss of health. See EEOC Enforcement Guidance: Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.002, at II.A.2 (July 14, 1992) (Compensatory Damages Guidance). There is no precise formula for determining the amount of damages for nonpecuniary losses except that the award should reflect the nature and severity of the harm and the duration or expected duration of the harm.

See Complainant v. Dep't of the Treasury, EEOC Appeal No. 01955789 (Aug. 29, 1997). The Commission notes that nonpecuniary, compensatory damages are designed to remedy the harm caused by the discriminatory event rather than punish the agency for the discriminatory action. Further, compensatory damages should not be “monstrously excessive” standing alone, should not be the product of passion or prejudice, and should be consistent with the amounts awarded in similar cases. See Complainant v. Dep't of the Interior, EEOC Appeal No. 01961483 (Mar. 4, 1999) (citing Cyngar v. City of Chicago, 865 F.2d 827, 848 (7th Cir. 1989)).

Complainant averred that the Agency’s discriminatory actions “broke me. It shook me . . . took my confidence [and made me feel like I am no longer] part of the whole faculty,” it took away the pride she felt in being a valuable resource to the faculty and left her with feelings of paranoia and “always looking over my shoulder.” Complainant further averred that the harassment “puts me on edge constantly at school. I don’t feel safe there,” explaining that she no longer goes into work on weekends out of fear of coming across Coworker 1 with no other witnesses present. Complainant’s sister averred that Complainant had been “a very secure, confident woman,” but that after Coworker 1’s harassment Complainant was unable to get her mail from the post office on base because Coworker 1 was there. The sister averred that “that is just not like [Complainant]. And she became tearful several times during that visit. So she was very stressed . . . [Coworker 1’s] manipulative tendencies were causing a lot of stress for her.” Complainant’s sister further recalled an incident when Complainant suddenly broke down in tears in the middle of the day, which the sister averred was very unusual for her.

Based on this evidence, we conclude that the AJ’s award of \$45,000 takes into account the severity of the harm suffered, is not “monstrously excessive” standing alone, is not the product of passion or prejudice, and is consistent with the amount awarded in similar cases. See Leggett, Sturgeon, Brunjes, Laign-Robbins, Whitmore, French, and Marshall, Complainants v. USPS, EEOC Appeal Nos. 0720110039, 0720120014, 0720120015, 0720120016, 0720120017, 0720120018 & 0720120019 (July 12, 2012) (affirmed AJ award of \$45,000 for sexual harassment of complainant that caused her to feel threatened and to experience nausea, severe headaches, queasiness, sleeplessness, muscle spasms in the back, shoulder, and neck, irritability, bouts of crying, moodiness, and strain with family members); Complainant v. Department of the Navy, EEOC Appeal No. 0120161600 (September 18, 2018) (increased an Agency’s award from \$23,000 to \$45,000 for sexual harassment resulting in emotional distress, fear, depression, sleep disturbance, aggravation of several pre-existing conditions, and injuries to her professional standing and credit rating); Complainant v. Department of Labor, EEOC Appeal No. 2021001028 (May 4, 2022) (affirmed an AJ’s award of \$45,000 for racial harassment that undermined Complainant’s self-worth, caused her to question her value and purpose, lose trust in others, and become resentful).

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the final order and direct the Agency to implement the following corrective action in accordance with the ORDER below.

ORDER

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

1. Within ninety (90) calendar days of the date of this decision, the Agency shall determine the appropriate amount of back pay plus interest and other benefits (including lost Thrift Savings Plan benefits, retirement contributions and the loss of bonuses, etc., if any) due to Complainant for her role as the CSI Leader (Teacher Team Leader) for school year 2016-2017 pursuant to 29 C.F.R. § 1614.501 and 5 C.F.R. 550.805. Complainant shall cooperate with the Agency's efforts to compute the amount of back pay and benefits due and shall provide all relevant information requested by the Agency. If there is a dispute regarding the exact amount of back pay, the Agency shall issue a check to Complainant for the undisputed amount within 30 days of the date this Decision becomes final. Complainant may contest the Agency's back pay award in accordance with the appellate procedures outlined in the Notice of Rights that will accompany the Agency's final order.
2. The Agency shall cooperate with Complainant's efforts to transfer her to a school in the United Kingdom, or a mutually agreeable location. Both parties must work cooperatively and in good faith in identifying positions and locations to which Complainant may be transferred. In the absence of vacancies in Complainant's job series or grade in the United Kingdom, the Agency must identify other vacant positions within the United Kingdom and in other schools for which Complainant is qualified (including positions outside of her current job series) that are comparable to the grade level of her current position, and permit her to select the position and facility into which she seeks to transfer. Complainant's transfer should be made effective as soon as possible, but no later than six months from the date this decision becomes final. At the end of the six-month period, the Agency's obligation to transfer Complainant as a remedy will expire.
3. Within ninety (90) calendar days of the date of this decision, the Agency shall pay Complainant the sum of \$45,000 in nonpecuniary compensatory damages.
4. Within sixty (60) calendar days of the date of this decision, the Agency shall pay Complainant's attorney \$50,950 in fees, and \$665 in paralegal fees. In addition, the Agency shall pay Complainant \$2,184.04 in costs.

5. Within sixty (60) calendar days of the date of this decision, the Agency shall provide no less than eight (8) hours of anti-harassment training to Coworker 1 and the Principal. If any of these individuals are no longer employed by the Agency, the Agency shall provide an affidavit from a Human Resources management official attesting to that fact and providing the date when the employee left the Agency.
6. Within sixty (60) calendar days of the date of this decision, the Agency shall consider taking disciplinary action against Coworker 1 and the Principal. The Commission does not consider training to constitute disciplinary action. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

POSTING ORDER (G0617)

The Agency is ordered to post at its Middle-High School at Aviano Air Force Base, Italy, copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted both in hard copy and electronic format by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

ATTORNEY'S FEES (H0610)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), he/she is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of this decision becoming final. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and §1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a).

The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0920)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.**

A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files his or her request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the request for reconsideration.** The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

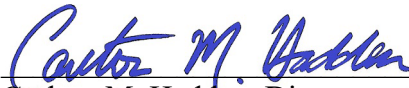
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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 28, 2022

Date