



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

[REDACTED]  
Davina W.,<sup>1</sup>  
Complainant,

v.

Kilolo Kijakazi,  
Acting Commissioner,  
Social Security Administration,  
Agency.

Appeal No. 2022003512

Agency No. NY210414SSA

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (“EEOC” or “Commission”) from a June 15, 2022 final agency decision (“FAD”) that found the Agency was in compliance with the terms of the settlement agreement into which the parties entered. The Commission accepts the appeal. See 29 C.F.R. § 1614.402; 29 C.F.R. § 1614.504(b); and 29 C.F.R. § 1614.405.

**BACKGROUND**

Since 2010, Complainant has worked as a Supervisory Contact Representative (“SCR”), GS-12, for the Agency’s Teleservice Center (“TSC”) in Jamaica, New York. Believing that she was denied a reasonable accommodation and, since 2018, subjected to a hostile work environment by her first level supervisor, a TSC Assistant Manager (“Former Supervisor”) <sup>2</sup>, Complainant filed a formal EEO complaint on August 24, 2021.

In her EEO complaint and testimony provided to the EEO Investigator, Complainant stated: “I have mental and physical disabilities. I have panic attacks, major depressive disorder, anxiety, breathing issues and stress that is affecting my recovery from recent breast cancer.

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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.

<sup>2</sup> Complainant reported to Former Supervisor through May 21, 2021.

I have a 12-year old daughter who has asthma and also care for my mother who is being treated for stage 4 colon rectal cancer. *All of my impairments are aggravated by the stress of my position and my interactions with [Former Supervisor]*”(emphasis added).

As a reasonable accommodation, Complainant requested a transfer to a non-managerial GS-12 position with the Disability Processing Branch (“DPB”) as a Disability Processing Specialist (“DPS”), having previously held the position for six months as part of a leadership program. Complainant explained that the DPS position would allow her to manage her health conditions because it lacked the stress triggers of the SCR position. Specifically, it would ensure that interactions with Former Supervisor would be minimal since “DPS is on the 7th floor and [Former Supervisor] has no connection with that component.” Also, she would not have to work additional hours.

On or about May 21, 2021, Complainant was notified that her request for a transfer as a reasonable accommodation had been denied, in favor of an alternative accommodation, where, going forward, Complainant would instead report to her second level supervisor, the TSC Manager. Days later, on May 25, 2021, Complainant initiated her EEO complaint and requested reconsideration of her accommodation request. According to Complainant, the alternate accommodation was not effective because “my interaction with [Former Supervisor] is only one aspect of my current position that aggravates my anxiety, major depression and panic attacks. . . . Although my interactions with [Former Supervisor] are not as frequent since I began reporting to [TSC Manager] I believe she is still influencing things that are happening to me.”

In approximately February 2022, while the complaint was awaiting a hearing before an EEOC Administrative Judge (“AJ”)<sup>3</sup> and additional requests for a reasonable accommodation by Complainant were pending, the parties engaged in settlement negotiations. On April 13, 2022, Complainant and the Agency entered into a negotiated settlement agreement (“NSA” or “Agreement”) to resolve the matter. The Agreement provided, in relevant part:

- 1(b) In light of the terms of this settlement agreement, *which offers Complainant a position that she was otherwise seeking through a reasonable accommodation request*, Complainant agrees that she will withdraw all reasonable accommodation requests currently pending with the Agency within three days of the effective date of this settlement agreement. This agreement does not prevent Complainant from filing reasonable accommodation requests in the future. [Emphasis added.]
- 2(b) Within 14 calendar days of the effective date of this Settlement Agreement, the Agency agrees to reassign Complainant to a GS-12, Social Insurance Specialist [Systems Coordinator (“Sysco”) position]. Position Description No. 5E325, within the Agency's DCO/New York Region /Northeastern Program Service Center/Computer Operations Section....

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<sup>3</sup> EEOC Hearing No. 520-2022-00143X.

The Parties agree that...[the GS-12 Sysco position] has no unusual physical demands, although there may be occasional lifting, stooping, and moving computer equipment, etc., within offices...However, in recognition of Complainant's recent surgery, the Agency agrees that Complainant shall not be required to lift anything over 10 pounds for six months, beginning on the day Complainant is reassigned to the [the GS-12 Sysco position]. The Agency makes no assurances nor shall any language in this Settlement Agreement be construed as an assurance that the Position Description for the [the GS-12 Sysco position] will not be altered or rescinded following the effective date of this Settlement.

On May 11, 2022, Complainant notified the Agency, in writing, that it breached the NSA on two occasions. She asked that the Agency cure the alleged breach(es) by placing her in a Disability Specialist position within DPB. Specifically, Complainant alleged that on May 9, 2022, only *two weeks* after she started in the Sysco position, Former Supervisor was transferred to the 11<sup>th</sup> floor, in an office that shared a wall with Complainant's new workspace. Complainant explained: "[t]he main reason I filed a complaint was to be removed from . . . [Former Supervisor's] toxic manner and egregious behavior." Complainant also became aware that the 10 pound weight restriction and surgery, referenced in Paragraph 2(b) of the NSA, were disclosed to a colleague outside her supervisory chain, which she believed was also in violation of the Agreement. Further, Complainant claimed these actions also created a hostile work environment.

Complainant again wrote to the Agency, on May 20, 2022, stating: "I cannot be on the same floor" as Former Supervisor. She explained that the prospect of Former Supervisor's presence caused her to "fear for [her] wellbeing." Complainant reminded the Agency that she still had caregiver responsibilities and that she was currently "battling severe anxiety and depression." She noted that in her new Sysco position, she may have to provide Former Supervisor with technical support, "on top of having to see [Former Supervisor] in the ladies room on the 11<sup>th</sup> floor or having to be near her at the 11<sup>th</sup> floor elevator." Complainant also asserted that the Agency breached the NSA again when it failed to advise her that following the training period, the Sysco position she accepted under Paragraph 2(b) would require her to work during off hours, cover for other employees, and take a rotating weekend shift. Once again, Complainant asked the Agency to cure the alleged breaches by placing her into her preferred position in DBP.

Days later, on May 24, 2022, Complainant informed the Agency: "Today I am in the office. I have to be in the HSDP 12 room. [Former Supervisor] is here, she comes out of her office and passes where I am twice; I am very upset, I feel sick... I stated this would happen. I cannot work like this, my stomach is in knots and I feel trapped." Complainant contended that since then, she has "not been able to go into the office due to anxiety and depression since seeing [Former Supervisor]."

In its June 15, 2022 FAD, the Agency concluded that no breach occurred.

### ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.504(a) provides that any settlement agreement knowingly and voluntarily agreed to by the parties, reached at any stage of the complaint process, shall be binding on both parties. The Commission has held that a settlement agreement constitutes a contract between the employee and the Agency, to which ordinary rules of contract construction apply. See Herrington v. Dep't of Def., EEOC Request No. 05960032 (Dec. 9, 1996). The Commission has further held that it is the intent of the parties as expressed in the contract, not some unexpressed intention that controls the contract's construction. Eggleston v. Dep't of Veterans Affairs, EEOC Request No. 05900795 (Aug. 23, 1990). In ascertaining the intent of the parties with regard to the terms of a settlement agreement, the Commission has generally relied on the plain meaning rule. See Hyon O. v. United States Postal Serv., EEOC Request No. 05910787 (Dec. 2, 1991). This rule states that if the writing appears to be plain and unambiguous on its face, its meaning must be determined from the four corners of the instrument without resort to extrinsic evidence of any nature. See Montgomery Elevator Co. v. Building Eng'g Servs. Co., 730 F.2d 377 (5th Cir. 1984); Complainant v. United States Postal Serv., EEOC Appeal No. 0120140143 (Feb. 20, 2014).

Consistent with the plain language in Paragraph 2(b), the Agency timely reassigned Complainant to the GS-12 Sysco position. It is undisputed that Complainant has not been asked or expected to lift anything weighing 10 pounds or greater since starting in the position. Additionally, the parties do not dispute that Complainant reviewed the PD for the Sysco position and had opportunities to request clarification from the Agency regarding the PD before she entered the NSA.

Regarding the May 11, 2022 allegation of breach, Complainant has not established the agreement was violated when her lifting restriction and surgery were disclosed to a colleague outside of her supervisory chain. The Agency asserts that the colleague was notified because he was Complainant's mentor and, as such, could potentially give her assignments. Moreover, the plain language of the NSA does not limit disclosure of Complainant's restriction to Management. Rather, Paragraph 7 of the NSA specifies: "[n]othing in this Settlement Agreement shall prevent the disclosure of any terms or conditions of this Settlement Agreement...or any other information necessary to enforce this Settlement Agreement."

In her May 20, 2022 Breach Notice, Complainant asserted her new schedule and job duties constituted a breach because "I asked to be placed in a position that was less stress not still working after my shift or working on the weekends." However, nothing in the plain language of the NSA obligates the Agency to ensure that Complainant does not have to work overtime, or that she is provided specific days off. See Carter v. Dep't of the Army, EEOC Appeal No. 01985009 (Jul. 2, 1999) citing Jenkins-Nye v. Gen. Serv. Admin., EEOC Appeal No. 019851903 (Mar. 4, 1987) (in the absence of writing, an interpretation of an Agreement cannot be enforced).

Further, the record reflects that Complainant entered the NSA with the knowledge that additional duties or overtime could be asked of her were she to accept the Sysco position in 2(b).

Email conversations between Complainant and Agency Counsel, provided by Complainant, demonstrate that Complainant communicated her trepidation that the Sysco position would be just as stress-inducing as her SCR position within TSC. Nevertheless, after confirming that there was no possibility that the Agency would offer her an alternative non-supervisory GS-12 position (DSP or otherwise) and that Former Supervisor would be in a different office (at the time on the 4<sup>th</sup> floor), Complainant opted to enter the NSA. Therefore, we decline to find that the new schedule or duties violated the Agreement.

We next consider Complainant's claim that transferring Former Supervisor to an office near Complainant's new position constitutes a breach of the Agreement. The parties chose to explicitly note in Paragraph 1(b) of the NSA that the Sysco position is "a position that [Complainant] was otherwise seeking through a reasonable accommodation request." Additionally, the record reflects that the Agency was aware that Complainant's request for a reasonable accommodation entailed minimizing her interactions with Former Supervisor, not simply removing her from Complainant's supervisory chain. On February 28, 2022, Complainant informed Agency Counsel that as an accommodation, in addition to "no heavy lifting" or telework, she did "not want *any* contact with [Former Supervisor] (*former abuser*)" (emphasis in original). Similarly, in her August 24, 2021 EEO complaint Complainant expressly linked her anxiety and need for an accommodation to Former Supervisor's *presence*, stating that she "faced bullying/harassment/[a] hostile work environment from [Former Supervisor] over the years which has caused me to suffer anxiety and mental health problems....I cannot afford to have a nervous breakdown my family need me; my mental health is important." She goes on to explain, in her formal EEO complaint, that she "applied for [other positions within the Agency] *to remove myself from [Former Supervisor's] presence.*" Additionally, Complainant stated that her reasonable accommodation request(s) were "to be removed from the stresses of management, *especially from [Former Supervisor's] presence....*"

By accepting the Sysco position, as noted in her May 11, 2022 correspondence, Complainant understood that she would be "removed to a completely new component and floor (11th)." Complainant acknowledged that she was "cognizant that [she] could possibly see [Former Supervisor] around the building; however, her being on the 4th floor would make seeing her a rare encounter." However, only two weeks after starting her new position, Supervisor was transferred to the same floor, her office sharing a wall with Complainant.

The Commission has previously found that bad faith in negotiating and implementing a settlement agreement constitutes a breach. Todd v. Soc. Sec. Admin., EEOC Request No. 05950169 (Jun. 12, 1997), Dupuich v. Dep't of the Army, EEOC Appeal No. 0120073901 (Nov. 2, 2007). A complainant may establish that an agency acted in bad faith during negotiations with evidence that the agency: (1) was aware of the complainant's main purpose for entering the agreement, (2) knew or should have known facts that would undermine that purpose, and (3) failed to disclose those facts to the complainant before executing the agreement. See, e.g. Complainant v. Nat'l Endowment for the Arts, EEOC Appeal No. 0120133264 (Feb. 4, 2014).

In Verdell A. v. Department of Homeland Security, the Commission found that the agency negotiated in bad faith when it laterally transferred a complainant to another office in accordance with a settlement agreement, then, *two and a half months later*, notified the complainant that due to a reorganization, her former supervisors were going to be reassigned to the same office in supervisory roles. EEOC Appeal No. 0120152922 (Feb. 23, 2016). In that instance, evidence reflected that “the parties to the negotiation were aware that [the complainant's] only purpose in entering the Agreement was to leave the chain of command her [former supervisors].” The Commission concluded that “given the timing and the extent of the organizational changes . . . the Agency likely knew or should have known at the time of the negotiation that the possibility existed for [the complainant’s former supervisors] to be transferred to [her] new office.” *but see*, Joshua F. v. Dep’t of the Air Force, EEOC Appeal No. 0120161062 (Apr. 19, 2016) (no bad faith found where an agency, in accordance with a settlement agreement, laterally transferred a complainant to a different position, which was then eliminated due to a reduction in force because “the record contain[ed] no evidence indicating that the agency was aware that this circumstance would occur when the parties entered into the Agreement”).

In Verdell A., the Commission also explained that “*based on the reasonable intentions of the parties*, we do not interpret two and a half months to be a reasonable amount of time to satisfy the Agreement.” Emphasis added, *see also*, Suter v. United States Postal Serv., EEOC Appeal No. 0120093523 (Oct. 19, 2010) (bad faith found when, per a settlement agreement, an agency placed a complainant into a specific building management position, after failing to disclose that the building where the position was located was scheduled to close in six months), *but see*, Carter v. United States Postal Serv., EEOC Appeal No. 01A60569 (May 25, 2006) (no breach when, three years after placing Complainant in a modified clerk position as part of a Settlement Agreement, the district offices decided to eliminate clerk positions).

According to Complainant, the Agency was aware at the time of the NSA negotiations that Former Supervisor would be transferred to the 11<sup>th</sup> Floor, as it was a noncompetitive transfer, and it “was not a promotion... she was removed from her supervisory duties.” Complainant asserts: “[t]he agency does not see how unhealthy and unsafe this situation is.” We note that the investigative record reflects that Former Supervisor was aware that Complainant’s reasonable accommodation requests accused her of harassment and identified such as a reason for the request. We find the two-week time frame sufficient to infer that the Agency knew, or should have known, that Former Supervisor would be reassigned to the 11<sup>th</sup> floor during negotiations.

We find that the Agency’s responses downplaying Former Supervisor’s proximity to Complainant’s workspace are disingenuous and contradicted by the record. On appeal, Complainant explains that despite working in “different suites” there are still two doors leading from her work area to Former Supervisor’s office. When they were in the office at the same time, states Complainant, Former Supervisor walked past Complainant and stared at her in an intimidating manner. The Agency claims that Complainant and Former Supervisor are scheduled to telework four days a week, with different in-office days. Yet it fails to acknowledge that the telework schedule arose as a precaution against the COVID-19 pandemic, and that the plain language of the NSA and the PD do not guarantee telework.

While the Agency also claims that Complainant has held a regular schedule, it does not admit that this was a temporary training schedule. Similarly, in arguing that Complainant and Former Supervisor saw each other once, on May 24, 2022, and did not talk to each other, the Agency disregards Complainant's expressed fears regarding such an event, and the impact on her disabilities when it occurred.

The record does not support the Agency's assertion Complainant did not made it clear, during negotiations, that her "main reason" for entering the NSA was to get away from Former Supervisor. On February 16, 2022, during settlement negotiations, Complainant informed Agency Counsel, that due to stress from working in TSC, she survived a suicide attempt, and has since been undergoing outpatient psychiatric treatment and increased medication. She explained, "I'm being extremely cautious with accepting positions for my mental stability and ongoing medical issues." On March 9, 2022, Agency Counsel assured Complainant that Former Supervisor "will no longer be in the same office as you nor will she be anywhere in your management chain, so any contact would probably be limited to maybe seeing her in the building sometimes." On March 24, 2022, Complainant followed up, indicating that she was eager to transfer, stating, "[s]orry if I'm a bit inpatient but we will be going into the office next week and I am on the same floor as [Former Supervisor]. I do not want to be in the office with her each day; Supervisors and Managers have to be in the office every day for the next week." Particularly in light of Complainant's very specific and shared concerns, over proximity to Former Supervisor, the Agency's failure to disclose the impending transfer of Former Supervisor to the 11<sup>th</sup> floor during negotiations evinces bad faith.

#### *Subsequent Actions of Alleged Discrimination*

Pursuant to 29 C.F.R. § 1614.504(c), allegations that subsequent acts of discrimination violate a settlement agreement shall be processed as separate complaints. "Subsequent acts of discrimination" include incidents that are not expressly addressed within the settlement agreement, or allegations of retaliation for EEO activity related to or arising from the settlement agreement. See Shanice C. v. United States Postal Serv., EEOC Appeal No. 0120152764 (Feb. 16, 2017). In such cases, rather than raise a breach allegation, the complainant should contact an EEO Counselor in accordance with 29 C.F.R. § 1614.105.

Throughout her appeal and in her correspondence alleging breach, Complainant asserts that she has been subjected to a hostile work environment and retaliation since entering the NSA. For instance, she alleges: "I have to deal with my fellow co-workers being told I'm 'Upset' and 'Disgruntled' to now seeing [Former Supervisor] all over again...I have been completely disgraced, violated, and blackballed." The Agency correctly identified these allegations as subsequent acts of discrimination, and properly directed Complainant to report any new allegations of discrimination to an EEO Counselor. As these allegations do not concern a breach of the NSA they cannot be adjudicated in this decision.

Further, we note that the May 11, 2022 allegation of breach also alleges that confidential medical information pertaining to her FMLA, breast cancer surgery, and the 10 pound lifting restriction was improperly disclosed to her mentor and other unspecified employees.

See, e.g. Melanie F. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120142156 (Jun. 23, 2016) (failure to protect confidential medical records constitutes a *per se* violation of the Rehabilitation Act of 1973) citing 29 C.F.R. § 1630.14(c)(1) ("Information obtained . . . regarding the medical condition or history of any employee shall . . . be treated as a confidential medical record"). This new, subsequent action must be processed as a separate matter. If Complainant wishes to pursue the issue through the EEO process, she must raise the matter with an EEO Counselor.

Similarly, while Complainant's May 20, 2022 assertion that her post-training schedule for the new Sysco position will exacerbate the symptoms of her disabilities does not constitute a breach of the agreement, the Agency should consider this to be a request for a reasonable accommodation. The Agency is reminded that an employee is not required to use the "magic" words "reasonable accommodation" when making a request. See Robinson-Brooks v. United States Postal Serv., Appeal No. 0120120732 (Oct. 25, 2012); see also, e.g. Angus W. v. United States Postal Serv., EEOC No. 0120160826 (Mar. 23, 2016) (complainant's request for an earlier start time and for others to assist when she was the only one assigned work requiring a repetitive motion that exacerbated an injury was a request for a reasonable accommodation). She has identified possible job modifications to accommodate her disabilities: "I just want to be able to do my work during my shift (NOT during off hours) and go home to my ill parent and *deal with my own medical problems*...I [would] sit in a cubicle or home do my work log off, after completing my shift, and go home to worry about my personal life. *I am battling severe anxiety and depression*..." [emphasis added].

### CONCLUSION

Accordingly, the Agency's finding that no breach occurred is REVERSED. We find that the Agency acted in bad faith, regarding Paragraphs 1(b) and 2(b), but only to the extent that Complainant was not removed from Former Supervisor's presence.

The matter is hereby REMANDED for further processing in accordance with this Decision and the following Order.

### ORDER

- I. Within **thirty (30) calendar days** of the date this decision is issued, the Agency is ORDERED to notify Complainant that she has **fifteen (15) calendar days** from the date of her receipt of the Agency's notice within which to notify the Agency that:
  - a. She wishes to return to the status quo prior to the signing of the agreement by returning any benefits already received under the agreement and reinstate her underlying EEO complaint for continued processing; or
  - b. She wishes to keep the settlement agreement in effect, deleting provisions 1(b) and 2(a), while allowing the remainder of the agreement to stand.



- II. If Complainant elects the reinstatement of her underlying complaint and she returns any monies or benefits owing to the Agency (e.g. payment for sick leave), the Agency promptly resume processing of the complaint from the point processing ceased pursuant to the provisions of 29 C.F.R. Part 1614.

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).

#### IMPLEMENTATION OF THE COMMISSION’S DECISION (K0719)

Compliance with the Commission’s corrective action is mandatory. The Agency shall submit its compliance report **within thirty (30) calendar days** of the completion of all ordered corrective action. The report shall be in the digital format required by the Commission, and submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The Agency’s report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

October 19, 2022

Date