



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

[REDACTED]
Zachery V.,¹
Complainant,

v.

Pete Buttigieg,
Secretary,
Department of Transportation
(Federal Aviation Administration),
Agency.

Appeal No. 2021003929

Agency No. 2020-28941-FAA-06

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's April 4, 2022 final decision concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission AFFIRMS the Agency's final decision in part and REVERSES the final decision in part.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Supervisory Air Traffic Control Specialist/Operational Supervisor, AT-2152-LJ, at the Agency's Denver Air Traffic Control Tower in Denver, Colorado.

On November 16, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the basis of disability (chronic migraines) when:

1. since July 2020, management has failed to provide Complainant a reasonable accommodation;

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. on an unspecified date, management purposefully canceled an available vacancy announcement in Phoenix, Arizona, which would have satisfied Complainant's reasonable accommodation request, and instead gave the position to a lesser qualified candidate;
3. on an unspecified date, an Assistant General Manager (AGM) delayed the Agency's response to Complainant's July 2020, reasonable accommodation request, and was provided unauthorized access to his personal medical information;
4. on an unspecified date, AGM shared Complainant's medical information with an administrative employee without a need to know; and
5. on September 3, 2020, Complainant's reasonable accommodation request in the form of a reassignment to a position in Scottsdale, Arizona, was denied.

On July 13, 2020, Complainant submitted a memorandum to his first-level supervisor (S1) formally requesting a reasonable accommodation. In the memo, Complainant explained that he was diagnosed with chronic migraines in December 2019, and that he believed the migraines resulted from the altitude in Denver, Colorado. Complainant said that he previously lived in Phoenix, Arizona and had no issues with migraines. As a reasonable accommodation, Complainant requested relocation back to Phoenix, Arizona. Complainant identified an Operations Supervisor vacancy in the Scottsdale Air Traffic Control Tower, and requested to fill that vacancy.

Complainant attached to his request for reasonable accommodation memorandum records from his physician and said that, in addition to S1, he sent the request to a Labor Employee Relations Specialist, a National People with Disabilities Program Manager, and three people with Human Resources. The medical records indicated Complainant's diagnosis, prescriptions, and the physician's medical observations. On July 14, 2020, S1 forwarded the email and the attached medical documentation to Complainant's second-level supervisor (S2) and another employee. S2 then forwarded both the email and medical documentation to the AGM, the District Executive Advisor (DEA), and a third employee.

While the Agency conducted a search for suitable jobs in the Phoenix area, on August 18, 2020, S1 emailed several employees, including the AGM and an Agency attorney, to discuss Complainant's request. The Agency attorney responded, took the AGM off the list of recipients, and suggested limiting any further email responses to the five employees the attorney kept on the email.

On August 19, 2020, S1 responded to the attorney and mentioned that his District instructed him to include the AGM and the DEA. The attorney responded on August 24, 2020, and said that the AGM "does NOT have a need to know" about Complainant's medical information. The attorney offered to redact Complainant's medical documentation in a manner appropriate for the AGM's eyes. The attorney further explained that Complainant's medical documentation should be kept separate from any normal files S1 maintained, and should be saved locally to S1's computer and not in a shared location that others had access to.

Complainant said the AGM did not have permission to access his medical records but did so anyway when he learned from S1 that the AGM inserted himself into Complainant's reasonable accommodation process. Complainant alleged that Agency policy prohibited the AGM from being part of the process.

The AGM contended that he had more familiarity with hardship requests, which require his involvement. The AGM noted that he did not share information with the DEA, who services personnel job movements. S1 acknowledged that AGM questioned whether Complainant's request was more properly framed as a hardship request.

On the same day he submitted his request for accommodation, Complainant applied to the vacancy in Scottsdale via the USAJobs website. On August 17, 2020, Complainant learned the Agency had filled the position by transferring in an employee from the Grand Canyon facility. Complainant noted the employee transferred through the Employee Request for Reassignment (ERR) process. Complainant contended that the Air Traffic Manager in Scottsdale (ATM) disregarded his request for reasonable accommodation and chose to hire a lesser qualified candidate.

ATM explained that the employee who sought the ERR had done so in November 2019, and was a qualified candidate. At the time, ATM had no vacancies into which the employee could transfer. When one of his supervisors left, ATM advertised the vacancy but forgot that he had the ERR on file. When he remembered, ATM canceled the vacancy without reviewing any candidates and processed the ERR. ATM disclaimed knowing Complainant had a medical impairment or being part of the reasonable accommodation process. ATM reiterated that he canceled the vacancy announcement solely because he had the ERR on file.

The Agency granted Complainant's request for accommodation on August 25, 2020. Complainant acknowledged that S1 approved his request for reasonable accommodation. However, Complainant complained that the Agency violated its own policy to approve and implement reasonable accommodations within 25 business days. Complainant asserted that the deadline was August 11, 2020, but the Agency did not approve his request until August 25, 2020, and did not transfer him to Phoenix until January 31, 2021.

S1 averred that the reasonable accommodation process took more than 25 days due to "Agency processes outside of this facility and beyond [his] control." S1 explained that the request involved "two different service areas and two different Human Resources offices."

Complainant's servicing HR Specialist (HRS1) explained that the 25-day deadline applied only to the Agency's evaluation of a reasonable accommodation request and decision whether to approve the request. Implementing any granted accommodation can take place after the 25 days.

Complainant noted that the Agency began a search for suitable positions on August 20, 2020, but asserted that he had already identified a vacant position and was not told why he could not transfer into that position.

Complainant speculated that he was not put in the vacancy because “people were afraid to touch it due to the medical sensitivity and the constant violations that were being made on the case.” Complainant believed it was “a bias against the reasonable accommodation process, which was based on [his] medical impairment.

After the Scottsdale vacancy was canceled, Complainant identified another vacancy, which was a position classified as MSS-3. Complainant contacted HRS1 to see if he could be transferred into that position as an accommodation. HRS1 told him that the position would have been a promotion from Complainant’s current position, which was classified as an MSS-2, and therefore did not constitute a reasonable accommodation.

HRS1 clarified that Complainant sought to move to a Support Manager position. As an MSS-3 position, the job had a higher promotion potential, so it could not be considered the same level as Complainant’s then-position. Thus, Complainant would need to compete for the job. Ultimately, Complainant accepted a Support Manager position at the Phoenix Tower in Arizona.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). On March 10, 2021, Complainant requested a final decision pursuant to 29 C.F.R. § 1614.110(b). The Agency did not issue its final decision until August 4, 2022, approximately four months after Complainant filed the instant appeal.

In the decision, the Agency concluded that management did not fail to accommodate Complainant because Complainant’s request was granted and he was reassigned to a position in the Phoenix, Arizona area. While Complainant may not have gotten his preferred reassignment, the Agency concluded that the law does not require the Agency to grant Complainant his accommodation of choice. The Agency also found that it acted reasonably in the processing of Complainant’s request and noted some confusion with the AGM over whether Complainant’s request was for a reasonable accommodation or for a hardship transfer.

Next, the Agency concluded that ATM articulated a legitimate, non-discriminatory reason for filling the Scottsdale vacancy through the ERR process instead of selecting Complainant. The Agency also declined to find a per se violation of the Rehabilitation Act. The Agency concluded that, because of the nature of Complainant’s request, the AGM qualified as an individual with a need-to-know about Complainant’s request for accommodation.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant objects that the Agency issued its final decision well past 60 days after Complainant notified the Agency of his request for an immediate final decision. Complainant requested that the Commission sanction the Agency for its delay. Complainant offered no arguments with regard to the substance of his complaint.

ANALYSIS AND FINDINGS

The Agency's Untimely Issuance of Final Decision

Complainant correctly points out that the Agency did not issue its final decision in a timely fashion. The Agency concedes that Complainant requested a final decision on March 10, 2021. Thus, the final decision was issued approximately 15 months late. We note that our regulations require agency action in a timely manner at many points in the EEO process. Tammy S. v. Dep't of Def., EEOC Appeal No. 0120084008 (June 6, 2014). Compliance with these timeframes is not optional; as the Commission stated in Royal v. Department of Veterans Affairs, EEOC Request No. 0520080052 (Sept. 25, 2009), "the Commission has the inherent power to protect its administrative process from abuse by either party and must insure that agencies, as well as complainants, abide by its regulations." Because of the length of time it can take to process a federal sector EEO complaint, any delays in complying with the time frames in the regulations can impact the outcome of the complainant's claims. Id.

Here, we find that the Agency clearly failed to comply with the Commission's regulations. In so finding, we note that on March 10, 2021, Complainant made his election for an immediate final agency decision in accordance with EEOC regulation 29 C.F.R. § 1614.108(f). We note that pursuant to 29 C.F.R. § 1614.110(b), EEOC regulations provide that an agency shall issue the final decision within 60 days of receiving notification that a complainant has requested an immediate decision. Therefore, the Agency was required to issue its final decision by May 9, 2021. However, the Agency did not issue its final decision until August 4, 2022, which was 452 days after Complainant's March 10, 2021 request for an immediate final decision. Therefore, the Agency's final decision is untimely, and the Agency has not explained the reason for this excessive delay.

Although the Agency failed to timely issue a final decision as required by our regulations, it did not act in a manner to warrant the sanction of a default judgment against it. See, e.g. Josefina L. v. Soc. Sec. Admin., 0120142023 (July 19, 2016), req. for recon. denied, EEOC Request No. 0520170108 (Feb. 9, 2017) (finding that the Agency's 571-day delay in issuing the decision did not warrant sanctions, as complainant did not show she was prejudiced by the delay); Abe K. v. Dep't of Agric., EEOC Appeal No. 0120141252 (Nov. 4, 2016) (declining to sanction an agency that issued a decision after approximately 326 days when complainant failed to show that he was prejudiced by the delay); Jocelyn R. v. Dep't of Def., EEOC Appeal No. 0120152852 (Mar. 11, 2016) (citing Vunder v. U.S. Postal Serv., EEOC Appeal No. 01A55147 (May 12, 2006) (declining to sanction an agency that issued a decision after approximately 371 days)); Anthony M. v. Dep't of the Air Force, EEOC Appeal No. 2019003380 (Sept. 22, 2020). In the instant case, we find that Complainant has not shown he was prejudiced by the delay. As such, under the specific circumstances present, we decline to sanction the Agency for its delay in issuing the final decision.

While we will not impose a default judgment in the present case, we do find the Agency's failure to abide by the regulations reflects negatively on the Agency's support for the integrity of the EEO process. Beatrice B. v. Dep't of Veterans Affairs, EEOC Appeal No. 2019001641 (Sept. 17, 2020) (The Commission declined to issue a sanction where following a supplemental investigation, the

Agency delayed in issuing a final decision for over eight months). As a result, we will notify Federal Sector Programs (FSP) which monitors the federal agencies' EEO programs of the Agency's failure to comply with the regulations regarding the timely issuance of final agency decisions.

Standard of Review

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review “requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker,” and that EEOC “review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission’s own assessment of the record and its interpretation of the law”).

Denial of Reasonable Accommodation

Under the Commission's regulations, an agency is required to make reasonable accommodation to the known physical and mental limitations of a qualified individual with a disability unless the agency can show that accommodation would cause an undue hardship. 29 C.F.R. §§ 1630.2(o) and (p).

After receiving a request for reasonable accommodation, the employer should engage in an informal process with the disabled individual to clarify what the individual needs and identify the appropriate reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (Enforcement Guidance on Reasonable Accommodation), EEOC Notice No. 915.002 (Oct. 17, 2002); see also Abeijon v. Dep't of Homeland Sec., EEOC Appeal No. 0120080156 (Aug. 8, 2012). Protected individuals are entitled to reasonable accommodation, but they are not necessarily entitled to their accommodation of choice. Castaneda v. U.S. Postal Serv., EEOC Appeal No. 01931005 (Feb. 17, 1994).

In the instant matter, Complainant concedes that the Agency granted his request for a reasonable accommodation and that he was ultimately reassigned to a position in the Phoenix, Arizona area. Complainant primarily objects to the pace in which the Agency addressed his request. Here, Complainant initiated his request for accommodation on July 13, 2020. The Agency granted the request on August 25, 2020, initiated a job search thereafter, and transferred him to Phoenix on January 31, 2021. Based on the circumstances present and discussed above, we do not find the Agency unreasonably delayed granting Complainant’s request.

We note Complainant requested to be placed into two positions but was not. As to the Scottsdale vacancy, ATM filled the vacancy before the Agency approved Complainant’s request.

As to the MSS-3 position, the Rehabilitation Act does not require an agency to promote an employee as a reasonable accommodation. See Enforcement Guidance on Reasonable Accommodation. While Complainant is entitled to an effective accommodation, he is not entitled to the accommodation of his choice. Owen T. v. Dep't of the Army, EEOC Appeal No. 0120180596 (June 12, 2019) citing Lynette B. v. Dep't of Justice, EEOC Appeal No. 0720140010 (Dec. 3, 2015). Complainant has presented no evidence demonstrating that the provided accommodation as Support Manager at the Phoenix Tower was an ineffective accommodation. Accordingly, the Commission finds that the Agency did not deny Complainant reasonable accommodation in violation of the Rehabilitation Act.

Disparate Treatment

Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Complainant must initially establish a prima facie case by demonstrating that he was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Corp. v. Waters, 438 U.S. 567, 576 (1978). Proof of a prima facie case will vary depending on the facts of the particular case. McDonnell Douglas, 411 U.S. at 804 n.14. The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). To ultimately prevail, Complainant must prove, by a preponderance of the evidence, that the Agency's explanation is pretextual. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 120 S. Ct. 2097 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993).

Assuming arguendo that Complainant established a prima facie case of discrimination, we find that the Agency articulated legitimate, nondiscriminatory reasons for its actions as discussed above. For example, regarding Claim 2, Agency officials cancelled the vacancy announcement at issue before any applications were reviewed because Agency management had previously received an ERR for the position.

Complainant has the burden of establishing that the Agency's stated reasons are merely a pretext for discrimination. Shapiro v. Soc. Sec. Admin., EEOC Request No. 05960403 (Dec. 6, 1996). Complainant can do this directly by showing that the Agency's proffered explanation is unworthy of credence. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 256 (1981). At all times, the ultimate burden remains with Complainant to demonstrate by a preponderance of the evidence that the Agency's reasons were not the real reasons and that the Agency acted on the basis of discriminatory animus. Complainant failed to carry this burden. As a result, the Commission finds that Complainant has not established that he was subjected to discrimination as alleged.

Disclosure of Confidential Medical Information

The Commission's regulations implementing the Rehabilitation Act also provide for the confidentiality of medical information. Specifically, 29 C.F.R. § 1630.14(c)(1) provides, in pertinent part, that: "Information obtained... regarding the medical condition or history of any employee shall . . . be treated as a confidential medical record, except that: (i) [s]upervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodation." Although not all medically-related information falls within this provision, documentation or information of an individual's diagnosis is without question medical information that must be treated as confidential except in those circumstances described in 29 C.F.R. Part 1630.

In this case, S1 forwarded Complainant's request for reasonable accommodation, which explained that Complainant was suffering from migraines at work in Denver due to the altitude to his supervisor, who then forwarded it to AGM and the DEA, Complainant's third-level supervisor.

The Agency concluded, without discussion or rationale, that AGM and the DEA had a need-to-know about Complainant's confidential medical information. We find no support for this. Complainant sent his medical documentation to S1, which S1 had an obligation to safeguard. Although the attorney provided good advice to S1, her advice came well after S1 had already shared Complainant's medical information to several people who did not have a need-to-know. Thus, the record demonstrates plainly that the Agency improperly disclosed Complainant's medical records and there is no evidence any employee took efforts to correct the issue or otherwise safeguard Complainant's medical information.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's final decision in part, but REVERSE the Agency's final decision with respect to the disclosure of Complainant's confidential medical information. We REMAND the matter to the Agency for further processing in accordance with the ORDER below.

ORDER

The Agency is ordered to take the following remedial action:

1. The Agency shall conduct and complete a supplemental investigation on the issue of Complainant's entitlement to compensatory damages and will afford him an opportunity to establish a causal relationship between the Agency's discriminatory action and her pecuniary or nonpecuniary losses, if any. Effective the date that this decision is issued, the Agency shall give Complainant notice of her right to submit objective evidence (pursuant to the guidance given in Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993)) in support of her claim for compensatory damages. Complainant shall have 30 days

from the date Complainant receives the Agency's notice to submit his compensatory damages evidence. Complainant has a duty to cooperate in determining compensatory damages, including providing evidence/input/documents (including responding to Agency requests for documentation or completing agency forms). Within 60 days of the receipt of this decision, the Agency shall determine the appropriate amount of compensatory damages. Within 60 days of determining the amount of compensatory damages due Complainant, the Agency shall issue a final decision, with appeal rights to the Commission, on the issue of compensatory damages, and payment of any undisputed funds. 29 C.F.R. § 1614.110. The Agency shall submit a copy of the final decision to the Compliance Officer at the address set forth herein.

2. Within 90 days of the date this decision is issued, the Agency shall provide training on the medical confidentiality provisions of the Rehabilitation Act to the AGM, S1, S2, the DEA, and any other individual known to have received Complainant's confidential medical information especially focusing on how medical information is handled.
3. The Agency shall post a notice in accordance with the paragraph below entitled "Posting Order."

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). Further, the report must include supporting documentation of the Agency's calculation of back pay and other benefits due Complainant, including evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

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

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

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

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999).

If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated. See 29 C.F.R. § 1614.409.

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

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0920)

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

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

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

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

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>. Alternatively, Complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

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

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


COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

June 26, 2023

Date