



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

[REDACTED]
Cyrus A.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Appeal No. 2022000978

Hearing No. 440-2019-00207X

Agency No. 4J-604-0156-18

DECISION

On December 9, 2021, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's November 9, 2021 final order concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission VACATES the Agency's final order and REMANDS the matter for a hearing.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a non-career City Carrier Assistant at the Agency's Westmont Post Office in Westmont, Illinois. Effective September 15, 2018, Complainant was converted to a career City Carrier position. Report of Investigation (ROI) at 277.

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.

Complainant is an African American male with Brown skin who was born in November 1974. ROI at 106. Complainant identified his prior protected activity as contacting an EEO counselor to initiate the instant complaint on August 27, 2018, and filing a union grievance on August 19, 2018, regarding workplace harassment, a hostile work environment, and intimidating and bullying tactics used by the Postmaster towards Complainant. ROI at 108. Complainant stated that, as the result of an on-the-job injury, he was diagnosed with neuropathic pain and had weight, walking, climbing, bending, kneeling, stooping, and twisting limitations that restricted his ability to perform the core duties of his position. ROI at 107-08.

On August 27, 2018, Complainant contacted an EEO counselor and filed a formal EEO complaint on December 6, 2018, alleging that the Agency discriminated against him on the bases of race (African American), sex (male), color (Brown), disability, age (born in November 1974), and reprisal for prior protected EEO activity when:

1. On July 27, 2018, management threatened to discipline him and discussed him with coworkers;
2. On August 8, 2018, the Postmaster got loud with him;
3. On August 14, 2018, the Postmaster yelled a derogatory comment about him in front of coworkers;
4. On August 20, 2018, his doctor's office informed him that they were ending his treatment because they felt harassed by the Agency;
5. On August 24, 2018, his work schedule was changed;
6. On August 24, 2018, he was issued a Seven-Day Suspension;
7. On August 24, 2018, he was sent home;
8. On August 30, 2018, the supervisor slid his hand across his neck, and Complainant felt threatened;
9. On August 30, 2018, he was told he could not speak to his coworkers;
10. On August 30, 2018, his work hours were cut;
11. On September 1, 2018, the supervisor made a derogatory remark that Complainant felt was directed at him;
12. On September 3, 2018, the Postmaster yelled at him on the workroom floor;
13. On September 12, 2018, the supervisor told his coworkers that Complainant would not be able to become a career employee because of his limited duty status;
14. On September 17, 2018, the Postmaster threatened and intimidated him;
15. On dates to be specified, he was not accommodated when he was worked out of his medical restrictions;²
16. On dates to be specified, he was charged leave without pay (LWOP) and absent without leave (AWOL);³
17. On September 25, 2018, he was sent home; and

² Complainant stated that he was assigned work outside of his medical restrictions when he worked in the lobby in or around July 2018 and on August 2, 3, and 13, 2018. ROI at 155.

³ Complainant specified that he was charged LWOP and AWOL August 4-31, 2018. ROI at 160.

18. On November 28, 2018, he was issued a Notice of Removal (Reduced to Letter of Warning).⁴

At the conclusion of the Agency's investigation into his complaint, Complainant was provided a copy of the investigative file and requested a hearing before an EEOC Administrative Judge (AJ). The Agency filed a motion for summary judgment. Complainant submitted a response opposing summary judgment. The AJ subsequently issued a decision by summary judgment in favor of the Agency. In the decision, the AJ dismissed claim (18) for untimely EEO counselor contact.

The AJ found that Complainant, in his response, generally disagreed with the Agency's facts but failed to address most of the undisputed material facts set forth by the Agency. The AJ noted that the Order After Initial Conference and Scheduling Order ordered that any response contain specific citations to evidence and stated that a party opposing summary judgment must show by admissible evidence that there existed a dispute as to a material fact or that there were credibility issues. The AJ determined that Complainant's response did not comply with the Order and therefore adopted the Agency's Statement of Undisputed Material Facts.

According to the AJ, the record did not support a finding of discriminatory animus or harassment because Complainant was in the same protected classes as the management officials who allegedly subjected him to discrimination, he named no proper comparators, and could not establish that he was a qualified individual with a disability. The AJ found that the record revealed that management's actions were not directed exclusively at Complainant. The AJ also determined that Complainant failed to show that the Agency's actions were sufficiently severe or pervasive to alter the terms or conditions of the work environment, characterizing many of the incidents as everyday workplace interactions. Even accepting Complainant's allegations as true that he "was subjected to a few discrete comments and sound effects over the course of a several months," the AJ found that Complainant could not establish that he was subjected to discriminatory harassment.

The Agency's final order implemented the AJ's decision. The instant appeal followed.

STANDARD OF REVIEW

In rendering this appellate decision, we must scrutinize the AJ's legal *and* factual conclusions, and the Agency's final order adopting them, de novo. See 29 C.F.R. § 1614.405(a) (stating that a "decision on an appeal from an Agency's final action shall be based on a de novo review . . ."); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (Aug. 5, 2015) (providing that an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed de novo).

⁴ The record reflects that Complainant received the Notice of Removal on November 28, 2017, not November 28, 2018. ROI at 475-78.

This essentially means that we should look at this case with fresh eyes. In other words, we are free to accept (if accurate) or reject (if erroneous) the AJ's, and Agency's, factual conclusions and legal analysis – including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. See id. at Chapter 9, § VI.A. (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”).

ANALYSIS AND FINDINGS

Timeliness of Claim (18)

As a preliminary matter, the AJ dismissed claim (18) for untimely EEO counselor contact. EEOC Regulation 29 C.F.R. § 1614.107(a)(2) states that the Agency shall dismiss a complaint or a portion of a complaint that fails to comply with the applicable time limits contained in §§ 1614.105, 1614.106 and 1614.204(c), unless the Agency extends the time limits in accordance with § 1614.604(c). EEOC Regulation 29 C.F.R. § 1614.105(a)(1) provides that an aggrieved person must initiate contact with an EEO counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action. EEOC Regulation 29 C.F.R. § 1614.105(a)(2) allows the Agency or the Commission to extend the time limit if the complainant can establish that Complainant was not aware of the time limit, that Complainant did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence Complainant was prevented by circumstances beyond her control from contacting the EEO counselor within the time limit, or for other reasons considered sufficient by the Agency or Commission.

Claim (18) concerns a Notice of Removal that was reduced to a Letter of Warning. Although Complainant alleged in the EEO complaint that he received the Notice of Removal on November 18, 2018, the record reflects that the actual date was November 18, 2017. ROI at 168, 475-78. Complainant initiated contact with an EEO counselor on August 27, 2018. ROI at 9. We therefore find that Complainant's EEO counselor contact was untimely, and he has not offered any justification for the delay. Although Complainant alleged that he was subjected to harassment, the next instance of alleged harassment in the EEO complaint, allegation (1), occurred on July 27, 2018, eight months after Complainant received the Notice of Removal. Upon review, Complainant has alleged that he was subjected to ongoing harassment beginning in April 2018, after he returned to work from surgery, through September 25, 2018, when he was sent home and told that there was no work available within his medical restrictions. ROI at 105-75. The record reflects that Complainant's surgery took place on December 14, 2017. ROI at 205, 300. We find that the November 28, 2017 Notice of Removal, which was issued before Complainant's surgery, is not related to Complainant's harassment allegations and that the AJ therefore properly dismissed claim (18) pursuant to 29 C.F.R. § 1614.107(a)(2) for untimely EEO counselor contact.

Summary Judgment

We must determine whether it was appropriate for the AJ to have issued a decision without a hearing on this record for the remaining allegations. The Commission's regulations allow an AJ to issue a decision without a hearing when he or she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). This regulation is patterned after the summary judgment procedure set forth in Rule 56 of the Federal Rules of Civil Procedure. The U.S. Supreme Court has held that summary judgment is appropriate where a court determines that, given the substantive legal and evidentiary standards that apply to the case, there exists no genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a motion for summary judgment, a court's function is not to weigh the evidence but rather to determine whether there are genuine issues for trial. Id. at 249. The evidence of the non-moving party must be believed at the summary judgment stage and all justifiable inferences must be drawn in the non-moving party's favor. Id. at 255. An issue of fact is "genuine" if the evidence is such that a reasonable fact finder could find in favor of the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A fact is "material" if it has the potential to affect the outcome of the case.

If a case can only be resolved by weighing conflicting evidence, issuing a decision without holding a hearing is not appropriate. In the context of an administrative proceeding, an AJ may properly consider issuing a decision without holding a hearing only upon a determination that the record has been adequately developed for summary disposition. See Petty v. Dep't of Def., EEOC Appeal No. 01A24206 (July 11, 2003). Finally, an AJ should not rule in favor of one party without holding a hearing unless he or she ensures that the party opposing the ruling is given (1) ample notice of the proposal to issue a decision without a hearing, (2) a comprehensive statement of the allegedly undisputed material facts, (3) the opportunity to respond to such a statement, and (4) the chance to engage in discovery before responding, if necessary. According to the Supreme Court, Rule 56 itself precludes summary judgment "where the [party opposing summary judgment] has not had the opportunity to discover information that is essential to his opposition." Anderson, 477 U.S. at 250. In the hearing context, this means that the administrative judge must enable the parties to engage in the amount of discovery necessary to properly respond to any motion for a decision without a hearing. Cf. 29 C.F.R. § 1614.109(g)(2) (suggesting that an AJ could order discovery, if necessary, after receiving an opposition to a motion for a decision without a hearing).

The courts have been clear that summary judgment is not to be used as a "trial by affidavit." Redmand v. Warrenner, 516 F.2d 766, 768 (1st Cir. 1975). The Commission has noted that when a party submits an affidavit and credibility is at issue, "there is a need for strident cross-examination and summary judgment on such evidence is improper." Pedersen v. Dep't of Justice, EEOC Request No. 05940339 (Feb. 24, 1995).

The AJ's September 18, 2019, Order After Initial Conference and Scheduling Order stated, in relevant part, "In support of arguments, motions for summary judgment and responses/opposition to such motions shall contain specific citations to referenced evidence (e.g., specific pages of the Report of Investigation or other submitted evidence)."

Order After Initial Conference and Scheduling Order (emphasis in original). The AJ found that Complainant's response to the motion for summary judgment failed to comply with the AJ's Order requiring specific citations to evidence. The AJ therefore adopted the Agency's statement of undisputed material facts. Upon review, Complainant's Response to Agency's Motion for Summary Judgment does contain citations to evidence, including references to specific pages of the ROI and to two exhibits. Exhibit A consists of emails produced by the Agency during discovery, and Exhibit B consists of excerpts from the Agency's responses to Complainant's discovery requests. Accordingly, it appears Complainant's response did comply with the AJ's Order by citing to specific evidence. We therefore find that the AJ erred in adopting the Agency's statement of undisputed material facts without further analysis.

Complainant alleged that he was denied a reasonable accommodation for his disability when he was assigned work outside of his medical restrictions and when he was sent home and told that there was no work available within his medical restrictions. The Agency assumed for the purposes of its motion that Complainant was an individual with a disability. It is undisputed that Complainant had medical restrictions and that the Agency offered Complainant limited duty assignments based on his medical restrictions. The Agency's Motion for Summary Judgment asserted that Complainant could not establish that he was a qualified individual with a disability. The Agency based this argument on the District Reasonable Accommodation Committee (DRAC)'s determination that Complainant could not perform the essential functions of the City Carrier position and the DRAC Chairperson's statement that the Agency conducted two searches for work within Complainant's medical restrictions, but no work was located.

As the Agency noted, the discussion of "qualified" does not end at Complainant's position of record. The term "qualified individual with a disability," with respect to employment, is defined as a person with a disability who, with or without a reasonable accommodation, can perform the essential functions of the position held or desired. 29 C.F.R. § 1630.2(m). The term "position" is not limited to the position held by the employee, but also includes positions that the employee could have held as a result of reassignment. Therefore, in determining whether an employee is "qualified," an agency must look beyond the position which the employee presently encumbers. 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, No. 915.002, (Oct. 17, 2002).

In an affidavit, the DRAC Chairperson stated, "With the assistance of [unidentified Agency employee],⁵ two work searches were completed in October and November 2018, searching for work within 50 miles that [Complainant] could perform within his restrictions. No work was located." Agency's Motion for Summary Judgment at Ex. 3. The DRAC Chairperson did not describe how the Agency conducted its search. There is limited evidence of the Agency's search efforts in the record. The first page of a Priority for Assignment Worksheet that apparently describes the Agency's search efforts is illegible. ROI at 262-63.

⁵ In a November 5, 2018, letter, Complainant referred to the Agency employee in question as the "Manager Health & Resources." ROI at 299.

Accordingly, we find that the record is insufficiently developed to determine whether Complainant is a qualified individual with a disability

Complainant also alleged that he was subjected to discriminatory harassment. To establish a claim of harassment a complainant must show that: (1) they belong to a statutorily protected class; (2) they were subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on their statutorily protected class; (4) the harassment affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982). Further, the incidents must have been “sufficiently severe or pervasive to alter the conditions of [complainant’s] employment and create an abusive working environment.” Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993). The harasser’s conduct should be evaluated from the objective viewpoint of a reasonable person in the victim’s circumstances. Enforcement Guidance on Harris v. Forklift Systems Inc., EEOC Notice No. 915.002 at 6 (Mar. 8, 1994).

Complainant stated that, when he told the Postmaster that a job offer was outside of his medical restrictions, the Postmaster shouted, “I don’t care about what injuries you say you have; if you don’t sign this job offer, you will not have a job.” ROI at 112. Complainant alleged that the Postmaster made derogatory comments about his disability, shouting “Ain’t nothing wrong with you” at him and threatening to charge him AWOL in front of another manager. ROI at 115. According to Complainant, when he told the Postmaster that he needed help loading his vehicle, the Postmaster “got on the PA system, screamed out for maintenance then then told him to ‘Help This Little Girl Load His Truck.’” ROI at 115. In July 9, 2018, and October 2, 2018, emails, the Postmaster questioned why Complainant should be converted to a career employee in light of his medical restrictions. Complainant’s Response to Agency’s Motion for Summary Judgment at Ex. A.

Complainant alleged that, when he would request assistance with lifting and other tasks outside of his medical restrictions, a Supervisor, Customer Service (Supervisor-1) called Complainant a “She-Male” and made “baby whining noises” towards Complainant on numerous occasions. ROI at 110, 122, 126. Notably, when asked to respond to Complainant’s allegation that, on many occasions, he called Complainant a “she-male” and made baby whining noises Supervisor-1 did not deny calling Complainant a “she-male,” responding, “His coworkers gave him that name.” ROI at 389. Complainant stated that, on September 1, 2018, Supervisor-1 loudly asked a Clerk, “Do you know anyone in need of a job that isn’t a cry baby” in Complainant’s presence. ROI at 143. According to Complainant, Supervisor-1 told Complainant’s coworkers that Complainant would never become a career Carrier because of his disability. ROI at 149. Supervisor-1 also did not deny telling Complainant’s coworkers that Complainant would not be converted to a career employee because of his medical restrictions. ROI at 408.

We find that there are genuine issues of material fact and the need to assess the credibility of Complainant, the responsible management officials, and other witnesses concerning Complainant's harassment claim. Complainant has alleged that the Postmaster and Supervisor-1 questioned his disability and limitations, tried to assign him work outside of his medical restrictions, and threatened him, that the Postmaster referred to him as "little girl," and that Supervisor-1 repeatedly called Complainant a "she-male" and made crying noises and a reference to a crybaby around Complainant. "She-male," "little girl," and "crybaby," clearly implicate Complainant's sex and disability, implying that he was less of his man because of his medical restrictions. Assuming that Complainant's allegations are true, Complainant has shown a connection between the alleged harassment and disability and his sex.

Further, contrary to the AJ's determination that Complainant merely alleged that he "was subjected to a few discrete comments and sound effects over the course of a several months," Complainant characterized the harassment by the Postmaster and Supervisor-1 as frequent, occurring on many occasions between April 2018 and September 2018. ROI at 170. Complainant stated that the "consistent harassment" was intimidating and stressful and caused him to experience anxiety and headaches. ROI at 174. Considering the totality of the circumstances and viewing the facts in the light most favorable to Complainant, we find that he has alleged harassment sufficiently severe or pervasive to constitute a hostile work environment.

We note that the hearing process is intended to be an extension of the investigative process, designed to ensure that the parties have "a fair and reasonable opportunity to explain and supplement the record and, in appropriate instances, to examine and cross-examine witnesses." See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), 7-1 (Aug. 5, 2015); see also 29 C.F.R. § 1614.109(e). "Truncation of this process, while material facts are still in dispute and the credibility of witnesses is still ripe for challenge, improperly deprives Complainant of a full and fair investigation of her claims." Bang v. U.S. Postal Serv., EEOC Appeal No. 01961575 (March 26, 1998). See also Peavley v. U.S. Postal Serv., EEOC Request No. 05950628 (Oct. 31, 1996); Chronister v. U.S. Postal Serv., EEOC Request No. 05940578 (April 25, 1995). The record requires further development regarding whether Complainant is a qualified individual with a disability, and there are simply too many unresolved issues which require an assessment as to the credibility of Complainant and various management officials, including the Postmaster and Supervisor-1. Accordingly, judgment as a matter of law for the Agency should not have been granted, and we will remand the matter for a hearing on allegations (1) through (17).

CONCLUSION

Therefore, after a careful review of the record, including Complainant's arguments on appeal, the Agency's response, and arguments and evidence not specifically discussed in this decision, the Commission VACATES the Agency's final order and REMANDS the matter (allegations (1) through (17)) to the Agency for further processing in accordance with this decision and the ORDER below.

ORDER

Within fifteen (15) calendar days of the date this decision is issued, the Agency shall submit a renewed request for a hearing on Complainant's behalf, as well as a copy of the complete complaint file and a copy of this appellate decision, to the Hearings Unit of the EEOC's Chicago District Office. The Agency shall provide written notification to the Compliance Officer at the address set forth below that the complaint file has been transmitted to the Hearings Unit. Within five (5) calendar days of the date of assignment of the new hearing number, the Agency shall provide written notification to the Compliance Officer. Thereafter, the Administrative Judge shall hold a hearing and issue a decision on allegations (1) through (17) of the complaint in accordance with 29 C.F.R. § 1614.109 and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

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

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

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

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0920)

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

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

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.** A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

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

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

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

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

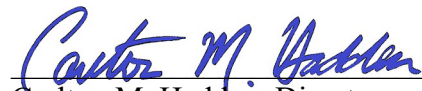
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. **Filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

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

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

September 28, 2023
Date