



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

[REDACTED]
Jess P.,¹
Complainant,

v.

Kevin K. McAleenan,
Acting Secretary,
Department of Homeland Security
(Transportation Security Administration),
Agency.

Appeal No. 0120132186

Agency No. HS-TSA-00508-2011

DECISION

Complainant timely filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's April 1, 2013 final decision 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. 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 AFFIRMS in part and REVERSES in part the Agency's final decision.

ISSUES PRESENTED

Did the Agency properly process Complainant's claim of discrimination on the basis of sex due to his sex? Did Complainant establish that he was subjected to disparate treatment on the bases of sex (male, sexual orientation), age, and reprisal for prior protected EEO activity when he was not selected for two positions? Did Complainant establish that the Agency is liable for coworker harassment?

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Transportation Security Officer (TSO), E-Band, at the Luis Munoz Marin International Airport in San Juan, Puerto Rico.

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

On December 12, 2007, Complainant complained to a manager that a coworker was making offensive remarks about his sexual orientation, including calling him “faggot,” and insisted on addressing him as “Angie” instead of his real name. The record reveals that management immediately began an investigation into the issue, during which the coworker admitted to using the word “faggot” because he did not know another word for a gay man in English. He further admitted that he told Complainant that he should be like another gay man who is not as open about his sexual orientation. Also, during the investigation, Complainant admitted that he told his coworkers to address him as “Angie” and that he openly discussed inappropriate topics. The coworker was instructed to cease the conduct and was issued a Record of Conversation, and the entire facility was issued a memorandum about the Agency’s anti-harassment policy. Complainant also received a Record of Conversation for his inappropriate sexual remarks.

On March 25, 2010, the Agency posted a vacancy for a Transportation Security Inspector (TSI) position under vacancy announcement number HQ-OSO-10-TSI-Canine-G. Complainant applied for the position and subsequently took a writing assessment for the position. He was ranked 26th out of 29 candidates based on the writing assessment. As a result, he was not placed on the Certificate of Eligibles and was not interviewed for the position. Ultimately, the position was not filled due to a lack of allocation.

On July 14, 2010, the Agency posted a vacancy for a Lead Transportation Security Officer (LTSO) position under vacancy announcement number SJU-10-262759. Twenty-five candidates, including Complainant, were placed on the Certificate of Eligibles and were interviewed. The selecting official selected the five highest-ranked candidates for the position. The Agency initially offered the position to the top five candidates. However, when one candidate declined the position, the Agency offered the position to two additional candidates. Complainant was ranked ninth, and as a result was not offered a position. The Agency also filled additional vacancies for this position through lateral transfers via the Voluntary Transfer Program.

On April 11, 2011, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of sex (male, sexual orientation), age (46), and reprisal for prior protected EEO activity when:

1. On unspecified dates beginning in 2007, Complainant was taunted, humiliated, and threatened with physical harm by his coworkers, and his coworkers called him “Angie” instead of using his proper name, “Angel;”
2. On an unspecified date in 2010, Complainant received notification of his non-selection for a Transportation Security Inspector (TSI) position under vacancy announcement number HQ-OSO-10-TSI-Canine-G; and

3. On December 8, 2010, Complainant received notification of his non-selection for a Lead Transportation Security Officer (LTSO) position under vacancy announcement number SJU-10-262759.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and (EEOC or Commission) Administrative Judge (AJ). Complainant timely requested a hearing but subsequently withdrew his request. Consequently, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). Therein, the Agency concluded that Complainant failed to prove that it had subjected him to discrimination as alleged. The Agency found that it provided legitimate, nondiscriminatory reasons for its actions regarding the TSI and the LTSO positions which Complainant failed to establish were pretext for discrimination. The Agency also determined that Complainant was not subjected to harassment as alleged.

CONTENTIONS ON APPEAL

On appeal Complainant contends that the record supports a finding that he was subjected to discrimination, especially with regard to his sexual orientation. Complainant stated that the record establishes that he should have been selected for the Transportation Security Inspector and Lead Transportation Security Officer positions. He also alleges that the record is clear that his coworkers harassed him because of his sexual orientation.

The Agency did not offer any new contentions in opposition to the appeal.

ANALYSIS AND FINDINGS

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 (MD-110), at Chap. 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").

Claim of Sexual Orientation Discrimination

As an initial matter we note that the Agency did not process Complainant's claim of sexual orientation discrimination through the 29 C.F.R. Part 1614 process as a claim of sex discrimination in violation of Title VII. The Agency found that sexual orientation discrimination is not prohibited under federal anti-discrimination laws, and as a result, it processed this basis through its separate internal process.

The Commission has held that claims of discrimination based on sexual orientation are valid claims of sex discrimination under Title VII and should be processed in the 29 C.F.R. Part 1614 EEO complaint process. Baldwin v. Dep't of Transportation, EEOC Appeal No. 0120133080 (July 15, 2015). As a result, we find that the Agency erred when it did not process this as a claim of sex discrimination under Title VII, and when it did not give Complainant appeal rights to the Commission on his allegation of sex discrimination because of his sexual orientation.

Despite this Agency error, a review of the record reveals that the Report of Investigation includes an investigation into his allegations of sex discrimination based on his sexual orientation, and that the Agency addressed these allegations in the final Agency decision. As a result, the record is developed sufficiently on this issue to enable us to address these allegations in this appeal.

Disparate Treatment

Here, Complainant alleged that he was subjected to disparate treatment when he was not selected for a Transportation Security Inspector (TSI) position and a Lead Transportation Security Officer (LTSO) position. To prevail in a disparate treatment claim, 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 802 n.13. 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).

To establish a prima facie case of discrimination, a complainant must show that: (1) he is a member of a protected group; (2) he is qualified for his position; (3) he suffered an adverse employment action; and (4) the circumstances give rise to an inference of discrimination. We note that, although a complainant bears the burden of establishing a "prima facie" case, Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 252-53 (1981), the requirements are "minimal," St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 506 (1993), and complainant's burden is "not onerous." Burdine, 450 U.S. at 253.

As to the TSI position, we find that Complainant failed to establish a prima facie case. Specifically, we note that Complainant has not shown that he was qualified for the position in question. The record indicated that Complainant failed to make the best-qualified list and was not considered for the TSI position. In addition, the Agency showed that no one was selected for the TSI position. Complainant has provided no evidence to establish that the Agency's cancellation of the vacancy was based on discrimination. We conclude that Complainant has not shown he was subjected to an adverse action with respect to the TSI position. As such, Complainant has not established a prima facie case as to the TSI position.

We turn to the LTSO position. Here, record evidence reveals that Complainant established a prima facie case of sex discrimination because: (1) Complainant is a male; (2) he was qualified for the LTSO position; and (3) he was not selected for the LTSO position. A review of the record shows that the Agency failed to provide the protected bases of Complainant's comparators. The record included only the names of the seven individuals who were selected for the vacant LTSO positions. Upon review, it appears that one of the selectees had a female name. We note that the Agency failed to determine whether Complainant had established a prima facie case of sex-based discrimination. In essence, the Agency assumed that Complainant established his prima facie case of disparate treatment. Without specific information from the Agency to the contrary, we determine that Complainant has established an inference that discrimination was the reason for his non-selection. We conclude that Complainant satisfied his burden of establishing a prima facie case.

Because Complainant established a prima facie case of sex discrimination, the Agency now has the burden of producing a legitimate, non-discriminatory explanation for not selecting Complainant. While we note that an agency's burden of production is not onerous, it must provide a specific, clear, and individualized explanation for its selection decision. This is required in order for a complainant to have the opportunity to prove that the asserted reason was a pretext for discriminatory animus. See Stewart v. Dep't of Homeland Security (TSA), EEOC Request No. 0520070121 (Nov. 14, 2011) (agency failed to meet its burden of production by simply explaining the general mechanics of the selection process but failed to provide an individualized explanation for complainant's specific score) (citing Boston v. U.S. Postal Serv., EEOC Appeal No. 0120042074 (May 26, 2004)).

In the case at hand, the selecting official for the LTSO position stated, "There were a total of 8 positions to be filled. Of the eight, three were filled through the Voluntary Transfer Program; the remainder 5 positions were filled by candidates who received higher interview scores than the Complainant. He was not selected because there were other officers with higher interview scores than him. He made number 9 in the interview score list." The Agency's investigation included a copy of Complainant's application, the interview panel's notes on Complainant's interview, and the list of candidates with their scores. The only other evidence provided by the Agency regarding the LTSO position was the vacancy announcement and an affidavit from the selecting official. This was the extent of the Agency's reason for Complainant's non-selection and its supporting documentation provided to the Commission with respect to the LTSO position.

We find that the evidence presented by the Agency is not sufficient to provide a specific, clear, and individualized explanation as to why Complainant was not selected for the position for which he was deemed qualified. The Agency explained the general mechanics of the selection process but failed to provide an individualized explanation for Complainant's specific situation. See, e.g., Koudry v. Dep't of Educ., Request No. 0520100196 (Apr. 13, 2010) (discrimination found where agency merely explained the mechanics of selection process, provided list of candidates deemed best qualified, and summarized applications of selectee and complainant, but failed to provide statements from selecting officials explaining how complainant's qualifications

were evaluated compared to selectee's qualifications). The record simply does not indicate how the Agency determined which seven candidates were selected, or why Complainant was not one of the seven. Merely indicating that the selecting official, or their designees, have the discretion to interview any or all applicants referred as best qualified is not enough. Further, we add that the record also does not identify how or why the seven selectees received their scores and rankings. In addition, the Agency indicated that the remaining openings were filled through lateral transfers via the Voluntary Transfer Program. However, the Agency failed to provide any reason or explanation for filling the remaining openings in this manner.

Therefore, the Commission finds that the Agency failed to overcome Complainant's prima facie case of sex discrimination, and Complainant prevails without having to prove pretext. Chhe v. Dep't of Housing and Urban Dev., EEOC Request No. 0720090008 (Aug. 6, 2010) (the consequence of an agency's failure to meet its burden of production under McDonnell Douglas is that the complainant, having established a prima facie case, prevails without having to make any demonstration of pretext), request for recon. den. EEOC Request No. 0520100584 (Jan. 27, 2011). As a result of the Agency's failure to meet its burden of production, we find that Complainant has established that he was subjected to sex discrimination when he was not selected for the LTSO position.²

Harassment

To establish a claim of hostile work environment, Complainant must show that: (1) he is a member of a statutorily protected class; (2) he was subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on the 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); EEOC's Enforcement Guidance on Harris v. Forklift Sys. Inc., EEOC Notice No. 915.002 (March 8, 1994).

As to element (5), in the case of co-worker harassment, an agency is responsible for acts of harassment in the workplace where the Agency (or its agents) knew or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action. 29 C.F.R. §1604.11(d); Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors, EEOC Notice No. 915.002 (June 18, 1999).

What is appropriate remedial action will necessarily depend on the particular facts of the case, such as the severity and persistence of the harassment and the effectiveness of any initial remedial steps. See Taylor v. Dept. Of Air Force, EEOC Request No. 05920194 (July 8, 1992).

² As we find that Complainant has established discrimination based on sex (male), we need not reach a determination on his claim of discrimination based on age, reprisal, or sex (sexual orientation).

However, when an employer receives a complaint or otherwise learns of alleged sexual harassment in the workplace, the employer should investigate promptly and thoroughly. Policy Guidance on Current Issues of Sexual Harassment, N-915-050 (March 19, 1990). The employer should take immediate and appropriate corrective action by doing whatever is necessary to end the harassment, make the victim whole by restoring lost employment benefits or opportunities, and prevent the misconduct from recurring. Id. Disciplinary action against the offending supervisor or employee, ranging from reprimand to discharge, may be necessary. Generally, the corrective action should reflect the severity of the conduct. Id.

Here, we assume without so finding that Complainant established elements 1 through 4 of a hostile work environment. We find that Complainant did not establish claim 5 of a hostile work environment because the record reflects that when Complainant reported the harassment to management, it took prompt and effective action to address the harassment.

The record reveals that when Complainant reported the first incidents of harassment on December 12, 2007, management immediately investigated the incident and issued a report of findings by December 26, 2007. The investigation revealed that both the coworker and Complainant engaged in inappropriate conduct in the workplace, and both were issued a Record of Conversation. The coworker was ordered to cease his inappropriate behavior specifically with regard to offensive words and any discriminatory remarks towards gay people. The Agency also issued a memorandum to all employees at the facility about its anti-harassment policy and about its zero-tolerance policy for discrimination towards individuals because of their sexual orientation. The record shows that management's response was prompt, and it appears to be effective as there are no additional allegations that the coworker continued in his discriminatory behavior.

Complainant alleged during the investigation that a few years later other coworkers called him "Angie" and he finally told them to stop in May 2010. Complainant subsequently reported to management that the name was not welcome, and management immediately replied by sending out a roster of the official names of all employees and instructing the workforce that they are only to address each employee by the name on the list. Complainant stated that the name-calling stopped after that. The record shows that once Complainant reported that other coworkers were calling him "Angie" and that the name was not welcome, management took prompt and effective action to end the name calling.

Complainant also alleged during the investigation that on an unspecified date three years prior³ another coworker began calling him verbally abusive and insulting words. Complainant told his supervisor of the incident, who immediately addressed the situation by separating the two employees and issuing the coworker a verbal reprimand.

³ Because there is no date associated with this incident, it is unclear if this occurred before or after management issued the memorandum about the Agency's anti-harassment policy following the December 2012 incident.

There is no indication in the record that this coworker ever harassed Complainant again. Therefore, we find that management took prompt and effective action to end the harassment.

After a review of the entire record, assuming without finding that Complainant established that he was subjected to coworker harassment, we find that he did not establish that the Agency is liable for the harassment because the record shows that the Agency reacted promptly and effectively when it was put on notice of the harassment.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency's finding of no discrimination with respect to the LTSO position and REMAND the matter for further processing in accordance with the ORDER below. We AFFIRM in part the Agency's final decision because a preponderance of the evidence does not establish that discrimination existed as alleged with respect to the TSI position and Complainant's claim of harassment.

ORDER (D0617)

The Agency is ordered to take the following remedial action:

- I. The Agency will place Complainant in the position of a Lead Transportation Security Officer position under vacancy announcement number SJU-10-262759 within thirty (30) calendar of the date this decision is issued.
- II. The Agency shall pay Complainant back pay with interest from the date on which it is determined Complainant would have started in the Lead Transportation Security Officer position. The Agency shall determine the appropriate amount of back pay, with interest, and other benefits due the Complainant, pursuant to 29 C.F.R. § 1614.501, no later than sixty (60) calendar days after the date this decision was issued. The Agency will ensure that all tax consequences are taken into account. The Complainant shall cooperate in the Agency's efforts to compute the amount of back pay and benefits due and shall provide all relevant information requested by the Agency. If there is a dispute regarding the exact amount of back pay and/or benefits, the Agency shall issue a check to the Complainant for the undisputed amount within sixty (60) calendar days of the date the Agency determines the amount it believes to be due. The Complainant may petition for enforcement or clarification of the amount in dispute. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."
- III. The Agency will 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 his pecuniary or non-pecuniary losses, if any. Complainant will cooperate in the Agency's efforts to compute the amount of compensatory damages and will provide all relevant information requested by the Agency. The Agency will issue a final decision on the issue of compensatory damages. 29 C.F.R. § 1614.110. The final decision shall contain appeal rights to the Commission. The Agency shall submit a copy of the final decision to the Compliance Officer at the address set forth herein. Within fifteen (15) calendar days of the date this decision is issued, the Agency shall give Complainant notice of his 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 his claim for compensatory damages. Complainant shall have forty-five (45) calendar days from the date the Complainant receives the Agency's notice to submit his compensatory damages evidence. The Agency shall complete the investigation on the claim for compensatory damages within forty-five (45) calendar days of the date the Agency receives Complainant's claim for compensatory damages. Thereafter, the Agency shall process the claim in accordance with 29 C.F.R. § 1614.110. Within thirty (30) calendar days of determining the amount of compensatory damages due Complainant, the Agency shall pay that amount to Complainant.

- IV. The Agency is directed to conduct eight (8) hours of in-person or interactive training for the selecting official for the LTSO position. The Agency shall address management's responsibilities with respect to eliminating discrimination in the workplace. The Agency shall conduct the training within ninety (90) days from the date the decision is issued.
- V. Within sixty (60) days from the date the decision is issued, the Agency shall consider disciplining the selecting official for the LTSO position. The Agency shall report its decision. The Agency shall report its decision. If the Agency decides not to issue any disciplinary action any of the named management officials, it shall set forth the reason(s) for its decision not to impose any disciplinary action. If any of the named management officials is no longer employed by the Agency, the Agency shall furnish proof of the date(s) of separation.
- VI. The Agency shall, within thirty (30) days of the date this decision is issued, post a notice in accordance with the Order below.

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

ATTORNEY'S FEES (H1016)

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

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

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

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

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

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

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which 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 to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in 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). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your 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

September 17, 2019

Date