



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

[REDACTED]
Pamula W.,¹
Complainant,

v.

Robert Wilkie,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 0120171387
Hearing No. 532-2013-00041X
Agency No. 200H-0541-2012-103530

DECISION

On March 2, 2017, 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 final order concerning her 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. For the following reasons, the Commission MODIFIES the Agency's final order regarding compensatory damages.

ISSUES PRESENTED

The issues presented are: (1) whether Complainant's appeal is timely; and (2) whether the EEOC Administrative Judge (AJ-1) erred in only awarding Complainant \$25,000.00 in nonpecuniary compensatory damages and \$8,125.00 in future pecuniary damages after finding that she was subjected to sexual harassment.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Health Technician at the Agency's Medical Center located in Cleveland, Ohio in the Pathology Laboratory. Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of sex (female) and reprisal for prior protected EEO activity when she was subjected to sexual harassment by C1, her team leader, and retaliation.

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.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge. Complainant timely requested a hearing and AJ-1 held a hearing on April 8 - 11, 2014, and April 14 - 15, 2014, and issued a decision on August 29, 2014. AJ-1 found that Complainant established that she was discriminated against based on her sex, and in retaliation for engaging in protected EEO activity. Among other things, AJ-1 determined that although Complainant had been subjected to harassment as early as October 2011, the Agency was only liable for damages beginning on April 18, 2012, the date upon which management became aware of the sexual harassment and failed to take prompt remedial action by removing C1 from the second shift and thereby enabling him to treat Complainant less favorably than other coworkers in the laboratory regarding her assignments and the assistance provided her for a period of seven (7) weeks. Complainant requested a monetary award of \$150,000.00 in non-pecuniary damages. The request was based on her experiencing sexual harassment and reprisal beginning in at least October 2011 through June 4, 2012.

Based on a review of the Commission's precedent, and the evidence presented, AJ-1 awarded Complainant \$25,000.00 in non-pecuniary damages resulting from the continued harassment/reprisal she experienced *after* complaining to management on April 18, 2012. AJ-1 found that Complainant established that she suffered emotional pain because of being subjected to sexual harassment and retaliation at work. Two expert witnesses, one for Complainant and the other for the Agency, testified during the hearing regarding her emotional damages.

Upon review of both expert witnesses' testimony and reports, the notes of the treating psychologists, Complainant's testimony and her daughter's testimony, it was determined by AJ-1 that most of the harm suffered by Complainant occurred prior to April 18, 2012, a time period for which the Agency was not liable. In addition, AJ-1 found that Complainant was experiencing other outside life stressors, not related to her job, which contributed to her depression/emotional distress, e.g., her sister being hospitalized, then her mother being hospitalized, and her fiancée having surgery. AJ-1 indicated, however, that Complainant's emotional distress was further aggravated by continuing to work with C1 for seven weeks after she complained of sexual harassment and having to occasionally work overlapping shifts with him on weekends and having to work with his friends on first shift who were less than welcoming or helpful to her.

AJ-1 also found that Complainant established pecuniary damages in the amount of \$1,480.50 for medical expenses incurred for therapy and medicine through the submission of copies of her medical bills. Further, she established pecuniary damages in the form of lost leave through the submission of leave records and her testimony, which resulted in the following amounts of leave being restored by AJ-1: seventy-five (75) hours of annual leave, seventy-three (73) hours of sick leave and ten (10) hours of leave without pay. These amounts were arrived at by taking all the sick leave, annual leave and leave without pay submitted for the time period of April 18, 2012 through May 31, 2013 and mitigating the amount by fifty percent for nonrelated leave and damages incurred as a result of the unreported sexual harassment.

AJ-1 also awarded future pecuniary damages. Complainant's expert estimated the cost of future treatment between \$8,125.19 to \$22,412.63. Taking into consideration the mitigation for the underlying harm done by Complainant not reported the sexual harassment, AJ-1 determined that Complainant was entitled to future pecuniary damages in the amount of \$8,125.00.

On December 16, 2016, a second AJ, (AJ-2) issued the decision regarding attorney's fees. AJ-2 granted Complainant's Petition for Fees with a 25% across-the-board reduction. AJ-2 determined that the Agency had to pay Complainant \$213,217.57 in attorney's fees plus \$16,467.53 in costs, for a total amount of \$229,685.10 in attorney's fees and costs. The amount of attorney's fees and costs are not an issue in this decision.

The Agency failed to issue a final order within forty days of its receipt of the AJ-1's August 29, 2014, Order. Complainant did not file an appeal on the issue compensatory damages until March 2, 2017, three months after AJ-2's decision on attorney's fees. As with AJ-1's decision, the Agency did not issue a final order after receiving AJ-2's decision.

CONTENTIONS ON APPEAL

On appeal, Complainant contends, among other things, that AJ-1 erred as a matter of law by concluding that the Agency did not have an affirmative defense, but then denying an award of damages for the period prior to her complaint to management when most of the harm occurred. Complainant maintains that she should have been awarded compensatory damages for sexual harassment from October 2011 when the sexual harassment began to April 18, 2012, when she reported it.

Complainant also maintains that AJ-1 erred as a matter of law by awarding an inadequate amount of compensatory damages to Complainant for the time *after* she complained to management about the sexual harassment. According to Complainant, AJ-1's award for post-complaint compensatory damages is not consistent with other awards by the Commission in similar cases. Complainant maintained that she will suffer a minimum of five years from the sexual harassment and will require counseling and medication. At the April 2014 hearing, Complainant's Forensic Psychologist testified that because of the severity of Complainant emotional distress she would not complete her recovery until two years after the hearing and only if she received adequate counseling and medications. Consequently, Complainant maintains that a compensatory damages award of \$150,000 in non-pecuniary damages, and \$22,412.63 in pecuniary damages would be consistent with similar awards. Thus, Complainant requests a total award of \$172,412.63. Finally, Complainant contends that the Agency's brief is untimely.

In response, the Agency contends, among other things, that Complainant's appeal is untimely. Even assuming, *arguendo*, that her appeal is timely, the Agency argues that there is no justification for requesting such an increase in compensatory damages, i.e., more than six times what AJ-1 awarded in her decision.

The Agency argues that AJ-1 considered all of Complainant's evidence, her witnesses, and her expert, and thereafter, gave more weight to the Agency's expert witness, who she believed relied on objective information in Complainant's medical records, rather than just Complainant's statements.

ANALYSIS AND FINDINGS

Standard of Review

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held. An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony, or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See EEOC Management Directive 110, Chapter 9, at § VI.B. (Aug. 5, 2015).

Procedural Issues

At the outset, we find Complainant's appeal to be timely. We note in this regard that there is no indication that AJ-1's August 29, 2014, decision was a final decision subject to appeal. AJ-1 indicated in her decision that "[Complainant] is entitled to attorneys' fees and costs in this matter to be determine." Furthermore, her decision, unlike AJ-2's, does not provide the parties' appeal rights.

The period of liability

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).

With respect 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. Id.

We find that AJ-1 erred in limiting Complainant's period of entitlement to the period after April 18, 2012. Management was aware of C1's history of abusing another female employee in the workplace in 2010. AJ-1 stated "Complainant has argued that the Agency should be liable for damages prior to her April 18, 2012 complaint, because the Agency should have known of the ongoing sexual harassment by [C1] based on [the other female employee's] complaint in 2010." AJ-1 found that the argument failed, however, because the Agency took immediate an appropriate corrective action in response to the other female employee's complaint of harassment by C1. We disagree. We find that appropriate corrective action would have involved effective monitoring of C1 to ensure that his conduct did not reoccur with Complainant or other employees. AJ-1 found that Complainant's managers testified credibly that they had no knowledge that Complainant was being sexually harassed by C1 until mid-April 2012. We find no reason to disturb this finding. The issue, however, is whether they should have known. AJ-1 found that:

[s]everal witnesses, both technicians and lead technicians acknowledged instances of vulgar music and jokes of a sexual nature, and an unprofessional atmosphere on the second shift in late 2011 and 2012. They all acknowledged that sexual comments, jokes and music were present in the lab on the second shift. The interaction amongst employees on the second shift was very loose and unprofessional involving talk of sex, personal relationships and sexually explicit jokes.

We find that management should have done more to ascertain what was going on in its workplace. This is especially true if it was going to place C1 in a position of authority given his history and the unprofessional atmosphere surrounding second shift.

Pecuniary Damages

According to our Guidance, "[p]ecuniary losses include, for example, moving expenses, job search expenses, medical expenses, psychiatric expenses, physical therapy expenses, and other quantifiable out-of-pocket expenses that are incurred as a result of the discriminatory conduct." EEOC Notice No. N 915.002, at 10. The employee, to recover damages, must prove that the employer's discriminatory act or conduct was the cause of the loss. Id. The critical question is whether the employee incurred the pecuniary losses because of the employer's discriminatory action or conduct. Id.

The Agency, for the most part, focused its appellate arguments on the untimeliness of Complainant's appeal and the correctness of AJ-1's decision. The Agency did not dispute the accuracy of Complainant's pecuniary damages. We would also add that AJ-1 did not question the accuracy of the amounts requested.

Therefore, in light of our determination that AJ-1 erred by limiting Complainant's entitlement to pecuniary damages to the period after April 18, 2012, when she reported C1's harassment, and the fact that the Agency did not dispute the amounts on appeal, we find that she is entitled to the full amount of pecuniary damages that she can establish. Consequently, the Agency should pay her \$1,480.50 for her past pecuniary damages; and restore in full all amounts of leave that were used because of the discrimination.

Regarding future pecuniary damages, Complainant's expert estimated the cost of future treatment to be between \$8,125.19 to \$22,412.63. AJ-1 only awarded \$8,125.00, due to her erroneously mitigating Complainant's damages for not reported the sexual harassment until April 18, 2014. On appeal, however, Complainant sought \$23,893.13 in future pecuniary damages. Given the passage of time, we find that the best recourse now is to allow Complainant to present her actual bills for the treatment that she underwent to the Agency for reimbursement.

Finally, we are not persuaded that AJ-1 erred with regard her determination of leave restoration and will not disturb her ruling on that issue. As was noted above, AJ-1 ordered restoration of seventy-five (75) hours of annual leave, seventy-three (73) hours of sick leave; and ten (10) hours of leave without pay. Complainant sought reinstatement of (96.5) hours of annual leave; (82.5) hours of sick leave; and (72) hours of leave without pay. Part of the mitigation noted AJ-1 was for "non-related leave" in addition to "damages as a result of the unreported sexual harassment." Complainant has not persuasively established the extent to which the increases that she seeks were due to C1's harassment.

Non-Pecuniary Compensatory Damages

Because we have found that the Agency's liability extends back to the beginning of the harassment, we find that Complainant is entitled to compensatory damages from October 2011, when the discrimination started, to June 4, 2012, when it ended. The fact that Complainant did not report the sexual harassment until April 18, 2012, is inconsequential to the harm that she suffered because of the discriminatory harassment to which she was subjected.

In this case, the AJ awarded Complainant \$25,000 in non-pecuniary compensatory damages. To receive an award of compensatory damages, Complainant must demonstrate that she has been harmed as a result of the agency's discriminatory action, and establish the extent, nature, severity, and the duration or expected duration of the harm. Rivera v. Dep't of the Navy, EEOC Appeal No. 01934157 (July 22, 1994), req. for reconsideration den'd, EEOC Request No. 05940927 (Dec. 11, 1995); Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, (Enforcement Guidance) EEOC Notice No. 915.002 (July 14, 1992), at 11-12, 14.

We note that compensatory damages may be awarded for the past pecuniary losses, future pecuniary losses, and non-pecuniary losses which are directly or proximately caused by the agency's discriminatory conduct.

Enforcement Guidance at 8. Objective evidence of compensatory damages can include statements from the complainant concerning his or her emotional pain or suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character or reputation, injury to credit standing, loss of health, and any other non-pecuniary losses that are incurred as a result of the discriminatory conduct. Statements from others, including family members, friends, health care providers, or other counselors (including clergy) could address the outward manifestations or physical consequences of emotional distress, including sleeplessness, anxiety, stress, depression, marital strain, humiliation, emotional distress, loss of self-esteem, excessive fatigue, or a nervous breakdown. Lawrence v. U.S. Postal Serv., EEOC Appeal No. 01952288 (Apr. 18, 1996) (citing Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (January 5, 1993)).

The more inherently degrading or humiliating the Agency's action is, the more reasonable it is to infer that a person would suffer humiliation or distress from that action. The absence of supporting evidence, however, may affect the amount of damages appropriate in specific cases. See Banks v. U.S. Postal Serv., EEOC Appeal No. 07A20037 (Sept. 29, 2003) (citing Lawrence v. U.S. Postal Serv., EEOC Appeal No. 01952288 (Apr. 18, 1996)).

An award of non-pecuniary compensatory damages should reflect the extent to which the agency's discriminatory action directly or proximately caused the harm as well as the extent to which other factors also caused the harm. Johnson v. Dep't of the Interior, EEOC Appeal No. 01961812 (June 18, 1998). It is the complainant's burden to provide objective evidence in support of her claim and proof linking the damages to the alleged discrimination. Papas v. U.S. Postal Serv., EEOC Appeal No. 01930547 (Mar. 17, 1994); Mints v. Dep't of the Navy, EEOC Appeal No. 01933956 (Nov. 24, 1993). The Commission recognizes that not all harms are amenable to a precise quantification; the burden of limiting the remedy, however, rests with the employer. Chow v. Dep't of the Army, EEOC Appeal No. 01981308 (Feb. 12, 2001). Moreover, the amount of an award should not be "monstrously excessive" standing alone, should not be the product of passion or prejudice, and should be consistent with the amount awarded in similar cases. Cygnar v. Chicago, 865 F.2d 827, 848 (7th Cir. 1989); EEOC v. AIC Sec. Investigations, Ltd., 823 F. Supp. 571, 574 (N.D.Ill. 1993).

In the instant case, Complainant estimates that the duration of her emotional distress will be for a period of five years, due to the sexual harassment that she experienced starting in October 2011. Before the sexual harassment began, she maintained that she was generally "happy go lucky." She had several prior episodes of depression but was not experiencing any depression when she came to the Agency. She had an active life, engaged with family, worked in her yard, and participated in line dancing. She did not cry often, did not drink alcohol frequently, had a good temperament, her weight was stable, and she was "high maintenance" in her self-care, getting her long hair and nails "done" regularly. After the harassment began in October 2011, however, everything changed. Complainant maintained that her demeanor changed, her weight fluctuated, she did not want to do anything, she isolated herself, she cried and became depressed, she became very short fused, stressed and withdrawn. Her relationship with her family suffered, her hair started to fall out and she had it cut, she experienced headaches every day, she stopped working in the yard or renovating her house because she did not have the energy.

In October 2011, she was prescribed Zoloft by her doctor but as it was not effective, and she was switched to a double dose of Prozac. Complainant also maintained that her alcohol use and nicotine use increased. She had problems sleeping and her allergies worsened to the point she scratched her skin so severely that scars formed. Complainant's daughter and her psychologist corroborated her testimony. Complainant's psychologist diagnosed her with Major Depressive Disorder, recurrent. Complainant's psychologist found that while Complainant had other issues going on in her life, such as the breakup of her relationship with her fiancé, he found, that a majority of her issues stemmed from the sexual harassment by C1.

Based on the review of the evidence, we find that the AJ's award of \$25,000 in non-pecuniary compensatory damages was inadequate. We find that an award of \$50,000.00 is more consistent with the Commission's cases where a Complainant has established these types of damages. For example, in Tramontozzi v. Dept. of Veterans Affairs, EEOC Appeal No. 0120053114 (May 10, 2007) (\$40,000 awarded in non-pecuniary damages where complainant was diagnosed with adjustment disorder, generalized anxiety, attempted suicide, and experienced severe depression and destructive behavior as a result of the work environment but record contained evidence of contributing factors such as former drug addiction, diabetes, and post-traumatic stress disorder). Also See Danita P. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120172149 (July 18, 2018) (an award of \$50,000 in compensatory damages was appropriate where complainant suffered anxiety, sleeplessness, disengagement from family and high blood pressure); Harvey D. v. Dep't of State, EEOC Appeal No. 0120171079 (Aug. 23, 2018) (\$50,000 in compensatory damages appropriate where the complainant became withdrawn and relationship with husband suffered). We find an award of \$50,000.00, is not motivated by passion or prejudice, not "monstrously excessive" standing alone, and is consistent with the amounts awarded in similar cases.

CONCLUSION

Accordingly, we MODIFY the Agency's final order as set forth below.

ORDER

The Agency, to the extent that it has not already done so, is ordered to take the following remedial actions within one hundred and twenty (120) calendar days of the date this decision is issued:

1. The Agency shall issue a check to Complainant in the amount of \$51,480.50 for nonpecuniary and past pecuniary damages.
2. The Agency shall conduct a supplemental investigation on future pecuniary compensatory damages, including providing Complainant an opportunity to submit evidence of such damages. Specifically, Complainant will present evidence of the actual amounts that she paid or is expected to pay for the medical treatments that she underwent or is undergoing due the sexual harassment that she was subjected to from October 2011 until June 2012. For guidance on what evidence is necessary to prove pecuniary damages, the parties are directed to EEOC Enforcement Guidance: Compensatory and Punitive Damages Available

Under § 102 of the Civil Rights Act of 1991 (July 14, 1992) (available at eeoc.gov). The Agency shall complete the investigation and issue a final decision appealable to the EEOC determining the appropriate amount of damages within 90 days of the date the decision is issued. The Agency shall pay the amount determined within 30 days from the date of that determination.

3. The Agency shall restore seventy-five (75) hours of annual leave, seventy-three (73) hours of sick leave; and ten (10) hours of leave without pay.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0618)

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.

ATTORNEY'S FEES (H1016)

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

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 (R0610)

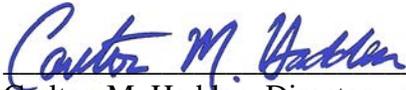
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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:

A handwritten signature in blue ink that reads "Carlton M. Hadden". The signature is written in a cursive style and is positioned above a horizontal line.

Carlton M. Hadden, Director
Office of Federal Operations

May 2, 2019

Date