



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Melania U.,¹
Complainant,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service
(Eastern Area),
Agency.

Appeal No. 0120180092

Agency No. 1C-171-0054-16

DECISION

On September 27, 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 August 25, 2017, final decision 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. 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

Whether the Agency discriminated against, and harassed Complainant, based on her age, color, race, religion, and sex when it did not select her for various positions; allegedly made her look incompetent; moved her from a supervisory position; issued her a Letter of Warning; ended a detail assignment; denied her requests for Sundays off; and denied her request to serve a detail assignment.

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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Supervisor, Distribution Operations at the Agency's Lehigh Valley Processing & Distribution Center in Bethlehem, Pennsylvania. Complainant reported to her first line supervisor (S1) (age 33, unspecified color, Hispanic, Christian, male), and her second line supervisor (S2) (age 45, white, Caucasian, Free Methodist, male).

Complainant applied for Manager, Distribution and Operations (MDO) positions on November 23, 2014 (Vacancy No. NC81966205), April 12, 2015 (Vacancy No. NC85663364), and May 5, 2015 (Vacancy No. NC87084451). Complainant was not selected for any of these positions. Report of Investigation (ROI) at pgs. 114-116. On August 2, 2016, Complainant applied for a position as the Postmaster in Bartonsville (Vacancy No. 10034548). Complainant stated that she was granted an interview but was not selected for the position. ROI at pgs. 199-200.

Complainant stated that she was the supervisor in Automation Operations since 2013, and on August 5, 2016, she was moved from the Automation Operations area. On August 15, 2016, some mail was left behind on the dock. On August 21, 2016, Complainant stated that she was removed from the Acting MDO position, which she occupied since 2014. ROI at pgs. 117, 168, 169.

On August 29, 2016, S2 emailed Complainant asking why her name continued to appear on the non-compliance training list, and he instructed her to complete the training. On September 30, 2016, Complainant stated that S1 approached her to inform her that S2 stated that if her name was on one more training list, she would be disciplined "up to removal." Complainant emailed S1 her training transcript, showing that she passed the training courses on September 29, 2016. ROI at pgs. 161, 138, 147.

On September 15, 2016, S1 issued Complainant a Letter of Warning for unsatisfactory work performance, specifically, for the late mail on August 15, 2016, when Complainant did not verify an "all clear," which caused an entire case of mail with 70 priority mail parcels to be missed. Additionally, Complainant did not inform the receiving center of the late arrival, after the mail was discovered. ROI at pgs. 484-485.

Starting on September 26, 2016, Complainant emailed S1 to request a change in her work schedule to be off on Sundays because Sunday was her day of worship and her Sabbath. Complainant resent her request on October 9, 2016, noting that she had not received a response. S1 responded that he could not change her days off to Sundays because of "the needs of the service." On January 6, 2017, Complainant sent S1 an email regarding the new work schedules. She noted that a coworker (C1) was given Sundays off, and Complainant requested to know the reason. On January 8, 2017, Complainant and S1 met to discuss her request, and she sent him a follow-up email after the meeting. Complainant stated that S1 informed her that C1 asked for the same days off as Complainant, for the same reasons. Complainant responded that she spoke with C1, who stated that she did not want those days off and she did not request them. ROI at pgs. 228, 539, 830.

On October 9, 2016, Complainant applied for a position as a Supervisor of Customer Service in Stroudsburg (Vacancy No. 10053493). Complainant was not granted an interview and on December 16, 2016, she learned that she was not selected. ROI at pgs. 203, 816-817.

On November 8, 2016, the Postmaster (PM) (age 39, white, White, Christian, female) of the East Stroudsburg office informed Complainant that they had a detail opportunity for her and asked if she was still interested; Complainant responded that she was interested. PM then emailed S2, who responded that he could not release anyone to go on a detail assignment until the peak season was over. ROI at pgs. 543, 546.

EEO Complaint

On October 12, 2016, Complainant filed an EEO complaint alleging that the Agency discriminated against, and harassed her, on the bases of race (African-American), sex (female), religion (Christian), color (Black), and age (50) when:

1. she was not selected for three (3) manager positions in 2014 and 2015;²
2. S1 and S2 treated her less favorably than her peers, conspired to make her look incompetent, and threatened her job;
3. on August 5, 2016, she was moved from supervising the Automation Operations;
4. on August 21, 2016, she was issued a Letter of Warning;³
5. on August 21, 2016, her detail position as the MDO ended;
6. on October 9, 2016, S1 informed her that he would not give her Sundays off to observe her religious beliefs;
7. on November 8, 2016, she was denied a detail assignment;
8. on an unspecified date, she was not selected for the position as Postmaster in Bartonsville; and
9. on December 16, 2017, she learned that she was not selected for a supervisor position in Stroudsburg.

² On December 29, 2017, the Agency informed Complainant that claim 1 was untimely because she did not initiate EEO counseling within 45-days. However, the Agency would consider these events as part of Complainant's overall claim of harassment. ROI at pg. 38.

³ The record shows that this occurred on September 15, 2016.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the ROI and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

For claims 3-9, the Agency found that Complainant had not established a prima facie case of discrimination based on her age, color, race, religion, or sex; however, the Agency assumed that she had, for the sake of argument. The Agency then found that management officials articulated legitimate, nondiscriminatory explanations for their actions. The Agency determined that Complainant had not shown that the management's stated reasons were pretext for discrimination.

Regarding claim 6, the Agency analyzed it as a claim of a failure to provide a religious accommodation and determined that Complainant did not establish a prima facie case of discrimination. The Agency found that Complainant had a bona fide religious belief that conflicts with an employment requirement, and that she informed the Agency of her belief and the conflict. The Agency then found that S1 denied her requests because he was unable to cover the building operations with three, out of four, supervisors off on Sundays since two supervisors already had Sundays off, which was determined by seniority. The Agency determined that granting Complainant's request would have created an undue burden and/or caused the Agency to violate the collective bargaining agreement.

The Agency also determined that Complainant had not shown that she was subjected to a hostile work environment because she did not demonstrate that any of the unwelcome harassment was based on her protected classes. The Agency further noted that the incidents were neither severe nor pervasive, either individually or collectively, when judged by a reasonable person's standard. The Agency concluded that the evidence did not support a finding that Complainant was subjected to discrimination as alleged.

Complainant filed the instant appeal but did not submit a statement in support of her appeal. The Agency urged the Commission to affirm its final decision.

ANALYSIS AND FINDINGS

Standard of Review

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

Disparate Treatment

Generally, claims of disparate treatment are examined under the analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Hochstadt v. Worcester Found. for Experimental Biology, Inc., 425 F. Supp. 318, 324 (D. Mass.), aff'd, 545 F.2d 222 (1st Cir. 1976). For Complainant to prevail, she must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. McDonnell Douglas, 411 U.S. at 802; Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978). Once Complainant has established a prima facie case, the burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). If the Agency is successful, the burden reverts back to Complainant to demonstrate by a preponderance of the evidence that the Agency's reason(s) for its action was a pretext for discrimination. At all times, Complainant retains the burden of persuasion, and it is her obligation to show by a preponderance of the evidence that the Agency acted on the basis of a prohibited reason. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993); U.S. Postal Service v. Aikens, 460 U.S. 711, 715-716 (1983).

As an initial matter, we note that the Agency dismissed claim 1 as a discrete claim of discrimination for untimely contact with an EEO counselor. We find that the three non-selections occurred more than 45 days prior to Complainant's initial contact on August 29, 2016, and we AFFIRM the dismissal.

Assuming, arguendo, that Complainant established a prima facie case of discrimination based on her age, color, race, religion, and sex, we find that the management officials articulated legitimate, nondiscriminatory reasons for their actions.

For claim 2, S2 stated that he contacted Complainant three or four times for failing to timely complete required training. S2 added that Complainant's action of not completing her training was unacceptable, and he instructed S1 to inform Complainant that if her name appeared on another list for incomplete training, there could be an investigation with corrective action. S1 added that he had previously spoken with Complainant several times about completing her trainings on time. ROI at pgs. 268, 292.

Regarding claim 3, S1 stated that they move supervisors based on the needs of the service, and that they moved Complainant from the Automation Operations to a more critical position. S1 added that there was no need to have a full-time supervisor present at 2 a.m. for this operation, and he no longer kept an assigned supervisor in that area. ROI at pgs. 291, 293. For claim 4, S1 stated that as the Acting MDO, Complainant was responsible for the operation, and the Letter of Warning was issued for an incident when mail was delayed. In response to Complainant's argument that the other responsible supervisors were not similarly disciplined, S1 stated that Complainant was their supervisor, and she chose not to write them up. ROI at pg. 290, 297.

With regards to claim 5, S2 stated that he decided to remove Complainant from the Acting MDO position because they needed to go in a different direction due to the “degrading” performance when there were late dispatches, all the mail was not cleared, and mail was delayed. ROI at pg. 275. Regarding claim 7, S2 stated that he informed Complainant that they could not approve a request for a detail assignment outside of the facility during the peak season. PM added that it was the busiest time of the year, and she was not surprised that S2 would not let Complainant go. ROI at pgs. 281, 352.

For claim 8, the selecting official (SO1) (age 37, white, White, Methodist, female) stated that she did not select Complainant because she did not find her qualified for the position of Postmaster. SO1 stated that the selectee had solid “OIC” experience; and knowledge in labor relations, customer service safety, and finance. ROI at pgs. 362, 364. For claim 9, the selecting official (SO2) (age 51, black, African-American, Baptist, male) stated that he did not interview Complainant because she was not recommended for an interview by the review committee. ROI at pg. 369. PM led the review committee, and she stated that Complainant was not chosen for an interview because she did not complete the “PS Form 991.” ROI at pg. 354.

Complainant has not shown that the reasons are pretext for discrimination. Complainant can establish pretext in two ways: “(1) indirectly, by showing that the employer’s proffered explanation is unworthy of credence because it is internally inconsistent or otherwise not believable, or (2) directly, by showing that unlawful discrimination more likely motivated the employer.” Chuang v. Univ. of Cal. Davis Bd. of Trs., 225 F.3d 1115, 1127 (9th Cir. 2000) (internal quotation marks omitted); see also, McDonnell Douglas, 411 U.S. at 804-05. In this case, Complainant has not presented any evidence to show that the reasons provided by S1 or S2 are unworthy of credence, or that discrimination more likely motivated them. Complainant only made bare assertions that S2 was racist and a “male chauvinist,” which is insufficient to prove pretext for discrimination. ROI at pgs. 204-205.

Additionally, in a non-selection case, pretext may be found where the complainant’s qualifications are plainly superior to the qualifications of the selectee. See Bauer v. Bailar, 647 F.2d 1037, 1048 (10th Cir. 1981); Wasser v. Dep’t of Labor, EEOC Request No. 05940058 (Nov. 2, 1995). Complainant stated that she had “just as much work experience,” and had been a supervisor for 17 years. ROI at pgs. 202, 203. However, we find that Complainant has not shown that her qualifications were plainly superior to those selected.

Further, even assuming that Complainant was just as qualified as the selectees, the Commission has previously found that an Agency has the discretion to choose among candidates whose qualifications are relatively equal as long as the decision is not premised on an unlawful factor. Devance-Silas v. U.S. Postal Service, EEOC Appeal No. 0120110338 (March 23, 2011), citing Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 252-259; Mitchell v. Baldrige, 759 F.2d 80 (D.C. Cir. 1985); Canham v. Oberlin College, 555 F.2d 1057, 1061 (6th Cir. 1981).

We note that in the absence of evidence of unlawful discrimination, the Commission will not second guess the Agency's assessment of the candidates' qualifications. Tx. Dept. of Cmty. Affairs v. Burdine, 450 U.S. at 259. As such, we find that Complainant has not shown pretext for discrimination when she was not selected for the Postmaster and supervisor positions.

We AFFRIM the Agency's finding that it did not discriminate against Complainant based on her age, color, race, religion, or sex when it did not select her for various positions; allegedly made her look incompetent; moved her from a supervisory position; issued her a Letter of Warning; ended a detail assignment; and denied her request to serve a detail assignment.

Religious Accommodation

Under Title VII, employers are required to accommodate the religious practices of their employees unless a requested accommodation is shown to impose an undue hardship. 42 U.S.C. § 2000e(j); 29 C.F.R. § 1605.2(b)(1). The traditional framework for establishing a prima facie case of failure to provide a religious accommodation requires an employee to demonstrate that: (1) she has a bona fide religious belief, the practice of which conflicted with their employment; (2) she informed the agency of this belief and conflict; and (3) the agency nevertheless enforced its requirement against the employee. Heller v. EBB Auto Co., 8 F.3d 1433, 1438 (9th Cir. 1993); Turpen v. Missouri-Kansas-Texas R.R. Co., 736 F.2d 1022, 1026 (5th Cir. 1984).

We find that Complainant established a prima facie case of failure to provide a religious accommodation because she repeatedly requested to have Sundays off to observe her religion, which S1 denied. ROI at pgs. 228, 539, 830. S1 stated that he denied Complainant's requests because two other supervisors already had Sundays off, based on seniority. S1 added that he could not approve Complainant's request and manage operations with only one supervisor. ROI at pg. 302. S2 stated that S1 asked for his input, and he received guidance from Human Resources that they could deny her request because they had "too many vacancies and holes," and they needed her to work on Sundays. ROI at pg. 278.

Once an employee establishes a prima facie case, the Agency must show that it made a good faith effort to reasonably accommodate the religious beliefs and, if such proof fails, the Agency must show that the alternative means of accommodation proffered by the employee could not be granted without imposing an undue hardship on the Agency's operations. See Tiano v. Dillard Dept. Stores, Inc., 139 F.3d 679, 681 (9th Cir. 1998); Redmond v. GAF Corp., 574 F.2d 897, 902 (7th Cir. 1978); Cardona v. U.S. Postal Serv., EEOC Request No. 05890532 (Oct. 25, 1989). Pursuant to 29 C.F.R. § 1605.2(a)-(e), the Commission's "Guidelines on Discrimination Because of Religion" (the Guidelines), alternatives for accommodating an employee's religious practices include, but are not limited to, voluntary substitutes and swaps, flexible scheduling, and lateral transfers and job changes. Undue hardship does not become a defense until the employer claims it as a defense to its duty to accommodate. Ansonia Board of Education v. Philbrook, 479 U.S. 60, 68-69 (1986). In order to show undue hardship, an employer must demonstrate that an accommodation would require more than a de minimis cost. Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 74 (1977).

We find that the Agency did not show that it made a good faith effort to reasonably accommodate Complainant's request. Neither S1 nor S2 stated that they asked for a voluntary change of work schedule from the other supervisors or explored any other type of accommodation for Complainant. The Agency then determined that granting Complainant's request would be an undue hardship. However, we find that the general statements by S1 and S2 that they had too many "holes," and could not manage operations with only one supervisor on Sundays does not adequately demonstrate an undue hardship because it is mere speculation. In this case, the Agency did not show that it made a reasonable effort to accommodate Complainant, or that providing an accommodation would establish an undue hardship. Accordingly, we REVERSE the Agency's decision and find that the Agency discriminated against Complainant when it denied her requests for a religious accommodation and ORDER the Agency to take further action in accordance with the Order below.

Harassment

Harassment is actionable if it is sufficiently severe or pervasive that it results in an alteration of the conditions of the Complainant's employment. See EEOC Notice No. 915.002, Enforcement Guidance on Harris v. Forklift Systems, Inc., at 3 (Mar. 8, 1994). To establish a claim of harassment a Complainant must show that: (1) she belongs to a statutorily protected class; (2) she was subjected to unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on the statutorily protected class; (4) the harassment had the purpose or effect of unreasonably interfering with her work performance and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. See Humphrey v. United States Postal Service, EEOC Appeal No. 01965238 (Oct. 16, 1998).

We find that Complainant has not shown that she was subjected to a hostile work environment based on her age, color, race, religion, or sex because she has not shown that the complained of conduct had the purpose or effect of unreasonably interfering with her work performance and/or creating an intimidating, hostile, or offensive work environment. To the extent that Complainant found her managers' actions to be harassing, we note that Title VII is not a civility code. Rather, it forbids "only behavior so objectively offensive as to alter the conditions of the victim's employment." Oncale v. Sundowner Offshore Serv., Inc., 523 U.S. 75, 81 (1998). In this case, we do not find the conduct to be objectively offensive. As such, we AFFIRM the Agency's finding that Complainant was not harassed based on her age, color, race, religion, or sex.

CONCLUSION

Based on a thorough review of the record, we AFFIRM the procedural dismissal of the untimely claim of the non-selections and the Agency's finding that Complainant was not discriminated against, nor harassed, based on her age, color, race, religion, or sex when it did not select her for various positions; allegedly made her look incompetent; removed her from a supervisory position; issued her a Letter of Warning; ended a detail assignment; and denied her request to serve a detail assignment. However, we REVERSE the Agency's decision regarding its failure to provide a religious accommodation and REMAND the matter to the Agency for further processing in accordance with this decision and the ORDER below.

ORDER

The Agency is ordered to take the following remedial action:

1. In the event that Complainant has not yet been provided a religious accommodation and still desires one, the Agency shall immediately take steps to provide Complainant with a reasonable accommodation of her religious beliefs. This shall be accomplished by having the Agency seek the voluntary swap of Complainant's Sunday work obligations with a substitute who has substantially similarly qualifications. At a minimum, the Agency shall disseminate information to all individuals who share substantially similar qualifications of the opportunity to swap Sunday work obligations with Complainant by posting the information on a bulletin board, or other means regularly used by the Agency to advertise such opportunities. The Agency shall ensure that Complainant is not placed in the position of having to seek volunteers herself. The Agency shall consider all possible methods of accommodating her religious beliefs, including voluntary substitutions or swaps, lateral transfers, or changes in job assignments or crafts.
2. Within ninety (90) calendar days from the date that this decision is issued, the Agency shall complete a supplemental investigation, and issue a decision, in order to determine Complainant's entitlement to compensatory damages incurred as a result of the Agency's unlawful denial of her request for Sundays off as an accommodation of her religious observances. The Agency shall afford Complainant the opportunity to submit evidence in support of her claim for damages within the 90-day time frame, and Complainant shall cooperate with any additional evidentiary requests made by the Agency. Within thirty (30) calendar days of the date that the Agency determines the amount of compensatory damages owed Complainant, the Agency shall pay that amount.
3. Within ninety (90) calendar days from the date that this decision is issued, the Agency shall provide appropriate remedial EEO training to the responsible management officials identified in this decision as S1 and S2, including at least eight (8) hours of in-person or interactive training on Title VII and an Agency's obligation to provide accommodations to its employees for religious observances.

4. If any of the responsible management officials have left the Agency's employ, the Agency shall furnish documentation of their departure date(s).
5. Within sixty (60) calendar days from the date this decision is issued, the Agency shall consider taking disciplinary action against the responsible management officials identified as S1 and S2. The Commission does not consider training to be disciplinary action. The Agency shall report its decision to the Compliance Officer. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If any of the responsible management officials have left the Agency's employ, the Agency shall furnish documentation of their departure date(s).

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). The report must include evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

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

IMPLEMENTATION OF THE COMMISSION'S DECISION (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.

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).

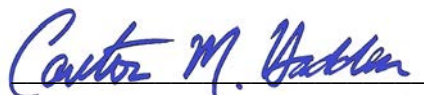
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

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

May 15, 2019

Date