



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

[REDACTED]
Trey M.,¹
Complainant,

v.

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

Appeal No. 0120180781

Hearing No. 430-2017-00478X

Agency No. 4K-270-0057-17

DECISION

Complainant timely filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's November 27, 2017, 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. For the following reasons, the Commission REVERSES the Agency's final decision.

ISSUES PRESENTED

Whether the Agency correctly issued a decision finding that Complainant failed to establish that he was subjected to harassment on the bases of his race, sex, and/or prior EEO activity in violation of Title VII.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier at the Agency's Durham East Station in Durham, North Carolina. Complainant believed that he was

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.

subjected to sexual harassment by a female coworker (Coworker). He noted that on July 2, 2016, she left him a note indicating her wish to pursue a romantic relationship with him. She provided him her telephone number. He responded that he was not interested. Complainant reported the incident to the Supervisor of Customer Service (Supervisor1) (African-American female) and the Manager of Customer Service (Manager SC) (Puerto Rican female).

The Coworker began sending Complainant text messages. When he informed management of the text messages, management deemed the matter to be personal and not work-related. Complainant asserted that, following his reporting of the incidents with the Coworker, he was threatened with relocation, transfers, or termination if he persisted with his complaints about the Coworker. He claimed that the threats were issued by the Manager SC and the Manager of Post Office Operations (Manager POO) (Black female). Complainant informed the Agency that his wife began receiving text messages from unidentified numbers. Complainant believed that the messages were coming from the Coworker and her boyfriend (Boyfriend), who was not an employee with the Agency. The Coworker persisted in texting Complainant on June 24, July 11, August 20, August 24, August 25, and August 29, 2016.

Complainant indicated that additional strange events occurred. In September 2016, due to an anonymous tip, the Vice Squad appeared at Complainant's home and searched it for drugs. The tip indicated that Complainant had been taking packages from his customers and selling the drugs. Complainant also informed the Agency's Inspection Services of the Coworker's texts. He asked management to initiate a threat assessment. The Manager CS stated that she was not going to do a threat assessment. Complainant had to raise the matter with the Postal Inspector himself. Complainant continued to raise these events with management. However, management did not respond to Complainant's concerns. In December 2016, Complainant had to obtain a protective order against the Boyfriend. The Boyfriend appeared at Complainant's home on two occasions and had been acting in a threatening manner. These incidents continued into February 2017 and March 2017. Complainant continued to raise with management his concerns about his safety and the safety of his family based on the continuous harassment by the Coworker and the Boyfriend.

On February 16, 2017, Complainant was informed that the Coworker was assigned to his route. She was also assigned his route on March 21, 2017. Complainant complained to management about the assignment. Supervisor1 and another Supervisor of Customer Service (Supervisor2) assured Complainant that he would not have to speak with the Coworker. He would pull down the route and give it to the Coworker. Complainant walked off and objected to the Coworker working his route. They advised him that he had no say in the matter and that he could "bid out."

After Complainant raised the issue with the Postmasters, the Agency conducted an Initial Management Inquiry (Inquiry). The Inquiry also learned of a letter found addressed to Complainant in November 2016 which appeared to be from the Coworker. The Inquiry recommended that the Coworker receive employee assistance program (EAP) help and Supervisor1 confirmed that the Coworker received the EAP information.

On June 6, 2017, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (African-American), sex (male), and in reprisal for prior protected EEO activity arising under Title VII when he was subjected to harassment. In support of his claim, Complainant alleged that the following events occurred:

1. On July 2, 2016, a co-worker (Coworker) left a note indicating that she wanted to pursue a romantic relationship with Complainant;
2. On August 19, 2016, September 8, 2016, September 13, 2016, and September 19, 2016, Complainant has been harassed and threatened by the Supervisor and the Manager;
3. On August 19, 2016, September 8, 2016, September 13, 2016, and September 19, 2016, after reporting that Complainant was receiving unwanted text messages and/or notes and felt threatened, management failed to properly address the matter;
4. On August 19, 2016, September 8, 2016, September 13, 2016, September 19, 2016, after contacting the Office of Inspector General (OIG) to report that Complainant received unwanted text messages and/or notes, and felt threatened, the OIG failed to properly address the matter;
5. On February 16, 2017, Coworker was assigned to assist Complainant on his route; and
6. On February 19, 2017, and February 20, 2017, Complainant's personal vehicle was vandalized.

The Agency accepted claims 1 – 4 for investigation. The Agency dismissed claims 5 and 6. The Agency noted that claim 5 was dismissed pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim. The Agency indicated that this constituted a collateral attack against OIG. Further, the Agency determined that claim 6 was not a separate actionable claim as Complainant failed to show that he was aggrieved in relation to his employment by the vandalism of his personal vehicle because it occurred while off Agency property.

Prior to the conclusion of the investigation, Complainant requested a hearing before an EEOC Administrative Judge (AJ) on July 24, 2017. The Agency filed a motion to dismiss the hearing request as premature, noting that the Agency had not been provided with 180 days to conduct its investigation. As such, the AJ dismissed the hearing request on the grounds that the hearing request was premature. The AJ remanded the complaint to the Agency. The Agency completed the investigation.

The Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b) stating that the final action was ordered by the AJ.² The Agency concluded therein that Complainant failed to prove that the Agency subjected him to harassment as alleged. This appeal followed.

CONTENTIONS ON APPEAL

Complainant appealed the Agency's decision, asserting that he had established a prima facie case of harassment. As such, he argued that the Commission should issue a decision finding that he had been subjected to harassment.

The Agency asked that the Commission affirm its decision finding no harassment. The Agency argued that the issues Complainant raised with his coworkers involved "personal" problems and were not work-related.

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 (EEO 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").

Partial Dismissal

The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that an Agency shall dismiss a complaint that fails to state a claim. An Agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that agency because of race, color, religion, sex, national origin, age or disabling condition. 29 C.F.R. §§ 1614.103, .106(a). The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (April 21, 1994).

Upon review of the record, we find that the Agency listed six separate events as comprising Complainant's claim of harassment.

² We note that the AJ issued the dismissal of the hearing and ordered the Agency to complete its investigation. The AJ did not order the Agency to issue a final action. As such, we find that the Agency erred in issuing a final action without first providing Complainant with the right to a hearing as required by 29 C.F.R. § 1614.605(d). However, on appeal, Complainant has not asserted that he wanted a hearing. As such, we will not vacate the final action in this instant case.

As such Complainant's legal claim of harassment was fragmented, or broken up, during EEO complaint processing. We determine that the Agency has compromised Complainant's ability to present an integrated and coherent claim of unlawful employment discrimination. See EEO MD-110, at 5-5. Here, the dismissed claims (claims 5 and 6) should be considered with the remaining claims when evaluating Complainant's allegations of ongoing harassment. In claim 5, Complainant asserted that he raised his claim of harassment with the Agency's OIG in order to stop the sexual harassment. However, the Agency failed to take the appropriate action to address the alleged sexual harassment. Further, in claim 6, Complainant raised another incident of harassment which he alleged occurred because he rejected the Coworker's advances.

Accordingly, we find that the Agency's dismissal of claims 5 and 6 was not appropriate. However, despite the Agency's dismissal of these events, Complainant raised these incidents in his affidavit as part of his claim of harassment. Therefore, we find that Complainant had provided sufficient information to consider these events as part of his claim of harassment.

Further, as a point of clarification, we find that in claim 4, Complainant has not only alleged that this event as part of his claim of harassment, he has also asserted that this event occurred in retaliation for his complaints about the Coworker sexually harassing him. As such, we will address this claim as part of Complainant's claim of sexual harassment as well as a separate claim of unlawful retaliation.

Sexual Harassment

In Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993), the Supreme Court reaffirmed the holding of Meritor Savings Bank v. Vinson, 477 U.S. 57, 67 (1986), that harassment is actionable if it is "sufficiently severe or pervasive to alter the conditions of [a complainant's] employment and create a hostile or abusive working environment." The Court explained that an "objectively hostile or abusive work environment [is created when] a reasonable person would find [it] hostile or abusive" and the complainant subjectively perceives it as such. Harris, 510 U.S. at 21-22. Whether the harassment is sufficiently severe to trigger a violation of Title VII must be determined by looking at all the circumstances, including "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Id. at 23.

To establish a claim of sexual harassment, Complainant must show that: (1) he belongs to a statutorily protected class; (2) he was subjected to unwelcome conduct related to his sex, including sexual advances, requests for favors, or other verbal or physical conduct of a sexual nature; (3) the harassment complained of was based on sex; (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, in other words, did the agency know or have reason to know of the sexual harassment and fail to take prompt remedial action. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); Humphrey v. U.S. Postal Serv., EEOC Appeal No. 01965238 (Oct. 16, 1998).

The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the complainant's circumstances. Enforcement Guidance on Harris v. Forklift Systems Inc., EEOC Notice No. 915.002 (Mar. 8, 1994).

The Agency concluded that Complainant failed to establish a claim of harassment because he failed to show that that he was subjected to severe or pervasive treatment so as to create an unlawful work environment on any basis. We note that the Agency's final decision addressed events 1 – 4 as four separate claims of harassment. As noted above, we find that the Agency's analysis fragmented Complainant's claim of harassment. Upon our review of the record, we disagree with the Agency's determination that Complainant failed to establish that he was subjected to a hostile work environment.

In his complaint and affidavit, Complainant asserted that the Coworker left him a note indicating that she sought to pursue a romantic relationship with him. We find that Complainant has established that he is a member of a protected group on the basis of his sex. Further, he was subjected to unwelcome conduct by the Coworker, who pursued him romantically based on his sex.

We turn to whether Complainant has shown that he was subjected to harassment which had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment. Complainant indicated that the Coworker first gave him a note expressing her romantic interest in him. Despite Complainant's rejection of the sexual advance, she continued to text Complainant six times from June 24, 2016, through August 29, 2016. Complainant raised this incident with various management officials and the Agency's Inspector General's office. Complainant noted that he stopped communicating with the Coworker and only communicated with management. The Agency conducted inquiries into the actions of the Coworker. She had been referred to EAP. However, the only action taken by management was to provide EAP information to the Coworker in August 2016.

Despite the EAP information, the Coworker continued to pursue Complainant, as evidenced by the personal note from the Coworker to Complainant dated November 2016. Further, the Coworker's pursuit of Complainant resulted in the Boyfriend becoming hostile towards Complainant. He threatened and harassed Complainant to the point that Complainant had to obtain a restraining order to protect himself and his family. We also note that Complainant reported that his car was vandalized. The record reflects that the vandalism was carried out by the Boyfriend.³ We find that the Coworker's pursuit of Complainant and the Boyfriend's reactions to her pursuit of Complainant created a hostile work environment. These actions began in June 2016 and continued through March 2017. We note that the Agency's investigation of Complainant's complaint did not obtain an affidavit from the Coworker.

³ Supervisor2 averred that she saw a letter from the Coworker to Complainant stating that she was upset at how the Boyfriend was harassing Complainant.

As such, there is no evidence to contradict Complainant's version of events. Therefore, based on a review of the record as a whole, we conclude that the Coworker created a hostile work environment for Complainant.⁴

Agency's Affirmative Defense

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 be shown that it took immediate and appropriate corrective action. See Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors, EEOC No. 915.002 (June 18, 1999). An agency can raise an affirmative defense when it shows that it took immediate and appropriate corrective action. Id. 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. Taylor v. Dep't Of Air Force, EEOC Request No. 05920194 (July 8, 1992).

The record clearly shows that Complainant made management aware of the actions of the Coworker. It appears that the only action taken was to provide the Coworker with information regarding EAP. The Agency officials refused to take any other action against Coworker. It appears that the Agency officials erroneously believed that the matter was "personal" and did not involve the workplace. Further, instead of corrective action, Complainant was subjected to threats of relocation, transfer, and termination by management. In addition, despite the months of complaints by Complainant regarding the harassment, management assigned the Coworker to work Complainant's route. Again, when Complainant complained about the situation, Complainant was threatened and told to "bid out" if he did not want to work the Coworker.

Therefore, we find that the Agency's response was inadequate. In essence, the fact that the harassment recurred after Complainant reported the harassment indicates that the Agency's response was neither prompt, nor effective, nor appropriate. See Lemons v. Dep't of Justice, EEOC Appeal No. 0120081287 (Apr. 23, 2009) (the fact that harassment of prison guard recurred and escalated after she reported inmate's repeated harassment indicates that agency's response was not prompt, effective, or appropriate); Logsdon v. Dep't of Agriculture, EEOC Appeal No. 07A40120 (Feb. 28, 2006) (taking only some remedial action does not absolve the agency of liability where that action is ineffective). Accordingly, because the Agency has not satisfied the affirmative defense, we find that it is liable for the harassment of Complainant.

Retaliation

As noted above, we found that event 4 should be considered as part of Complainant's claim of sexual harassment as well as a separate claim of unlawful retaliation.

⁴ As we have found that Complainant established a claim of sexual harassment, we need not address the bases of race and/or retaliation with respect to the claim of harassment.

In event 4, Complainant alleged that, after he complained of the sexual harassment by the Coworker, management retaliated against him by assigning the Coworker to work on Complainant's route.

Complainant can establish a prima facie case of reprisal discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination. Shapiro v. Social Sec Admin., EEOC Request No. 05960403 (Dec. 6, 1996) (citing McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973)). Specifically, in a reprisal claim, and in accordance with the burdens set forth in McDonnell Douglas, Hochstadt v. Worcester Found. for Experimental Biology, 425 F. Supp. 318, 324 (D. Mass.), *aff'd*, 545 F.2d 222 (1st Cir. 1976), and Coffman v. Dep't of Veteran Affairs, EEOC Request No. 05960473 (Nov. 20, 1997), a complainant may establish a prima facie case of reprisal by showing that: (1) he engaged in a protected activity; (2) the Agency was aware of the protected activity; (3) subsequently, he was subjected to adverse treatment by the Agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000). The burden of production then shifts to the Agency to articulate a legitimate, non-discriminatory reason for the adverse employment action. In order to satisfy his burden of proof, Complainant must then demonstrate by a preponderance of the evidence that the Agency's proffered reason is a pretext for reprisal discrimination.

Complainant alleged that the Coworker was assigned to his route in retaliation for raising his claim of harassment. Upon review, we find that Complainant has established his prima facie case of retaliation. Complainant engaged in protected activity when he reported the sexual harassment. The Agency officials were aware of Complainant's activity. Based on the time between the actions alleged and Complainant's report of sexual harassment, it is clear that Complainant has established a sufficient nexus between the protected activity and the Coworker's assignment to his route to state a prima facie case of retaliation.

Now we turn to the Agency to provide legitimate, nondiscriminatory reasons for its actions. Supervisor2 averred that the Coworker was on light duty due to her pregnancy. As such, Supervisor2 provided her with "overload" work from Complainant's route. She stated that Complainant was instructed to leave pieces of daily mail for the Coworker to carry. Supervisor2 and the union steward were aware of the alleged sexual harassment. However, they needed to provide the Coworker with work within her limitations. We note that there is no evidence in the record regarding the other routes within the East Durham Station. Supervisor2's responses to the investigator's questions were short and lacked specificity. Yet, despite all the information regarding the sexual harassment by the Coworker and the threats by the Boyfriend, Supervisor2 assigned the pregnant Coworker to Complainant's route. Based on the lack of specificity and responsiveness from the Agency's officials, and the inconsistency of the record, we cannot find that the Agency has provided any reason for the assignment of the Coworker to Complainant's route. Therefore, we conclude that the Agency subjected Complainant to unlawful retaliation.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we find that Complainant has established that the Agency discriminated against him based on sex when he was sexually harassed by the Coworker, and based on reprisal when he was assigned to work with the Coworker after reporting the sexual harassment. We therefore REVERSE the Agency's final decision and REMAND the matter for further processing in accordance with the Order of the Commission, below.

ORDER

The Agency is ordered to take the following remedial action:

- I. 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.
- II. The Agency is directed to conduct eight (8) hours of in-person or interactive training for Supervisor1, Supervisor2, Manager SC, and Manager POO, particularly regarding recognizing a hostile work environment and reprisal discrimination. The Agency shall address management's responsibilities with respect to eliminating harassment in the workplace. The Agency shall conduct the training within ninety (90) days from the date the decision is issued.
- III. The Agency is directed to conduct four (4) hours of in-person or interactive training for all members of the workforce at the Durham East Station, regarding anti-harassment. The Agency shall conduct the training within ninety (90) days from the date the decision is issued.
- IV. The Agency is directed to conduct eight (8) hours of in-person or interactive training for the Coworker regarding hostile work environment 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 Coworker. The Agency shall report its decision.

- VI. If the Agency decides not to discipline the Coworker, the Agency shall set forth the reason(s) for its decision not to impose any disciplinary action. If the Coworker is no longer employed by the Agency, the Agency shall furnish proof of her date of separation.
- VII. Within sixty (60) days from the date the decision is issued, the Agency shall consider taking disciplinary action against the management officials (Supervisor1, Supervisor2, Manager SC, and Manager POO) who have subjected Complainant to unlawful retaliation and failed to address the sexual harassment. 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.
- VIII. 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 Durham East Station 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)), 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.

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.

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)

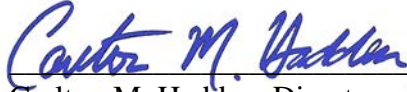
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this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



Carlton M. Hadden, Director
Office of Federal Operations

July 23, 2019
Date