



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

[REDACTED]
Phillis W.,¹
Complainant,

v.

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

Appeal No. 0120180863

Agency No. 200H-0405-2016102584

DECISION

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 December 4, 2017 final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission MODIFIES the Agency's final decision.

BACKGROUND

Complainant worked as a Support Assistant, GS-0621-05, at the Agency's Medical Center in White River Junction, Vermont. On June 29, 2016, Complainant filed an EEO complaint alleging that the Agency subjected her discrimination on the bases of sex (female) and disability (chronic repetitive motion disorder affecting the neck, shoulders, and upper extremities) when management failed to provide her with the reasonable accommodation that she and her doctors requested. More specifically, Complainant claimed that the Agency failed to provide her with an ergonomic chair between March 25, 2015 through May 2016, thereby denying reasonable accommodation for approximately 14 months.

Complainant's condition was diagnosed in 2000 and caused her to experience acute neck, shoulder, back, and arm pain; severe headaches; and depression as a result.

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.

The Agency acknowledged that her condition is permanent, and that she was restricted from pushing, pulling, lifting more than five pounds, twisting for more than five hours, sitting, standing, climbing, or reaching above her shoulders for more than five hours, and from repetitive wrist and elbow movements in excess of five hours. She had been provided with a reasonable accommodation in the form of an ergonomic chair in December 2011, but in March 2015, the chair was accidentally thrown away after the office underwent a remodeling. Sometime that month, Complainant resubmitted her request for a reasonable accommodation in the form of a modified workstation and ergonomic chair to replace the one that had been discarded.

On March 25, 2015, in response to Complainant's accommodation request, the Agency issued her a new ergonomic chair. Complainant notified the Industrial Hygienist responsible for providing the accommodation that the chair was inadequate because it did not roll under the table. After checking with Complainant's medical provider, the Hygienist suggested installing a keyboard tray as an alternative accommodation. However, the medical provider had explicitly informed the Hygienist that a keyboard tray would be an ineffective accommodation and reiterated Complainant's need to be able to rest her arms on her desk. In April, July, and August 2015, after having received no further response from the Agency regarding her accommodation, Complainant resubmitted her request along with supporting medical documentation. Ultimately, Complainant did not receive her accommodation until May 2016, approximately two months after she had contacted an EEO counselor. Damages Investigative Report (DIR) 31.

In its June 22, 2017 final decision on liability, the Agency found that management failed to demonstrate a good faith effort to reasonably accommodate Complainant given her undisputed need for effective reasonable accommodation, the numerous times she complained about the need for a chair that would allow her to rest her arms on her desk, management's failure to effectively address her request for accommodation for approximately 13 months, and the Agency's failure to provide an interim accommodation. To remedy the discrimination², the Agency ordered a supplemental investigation into Complainant's entitlement to compensatory damages; restoration of lost leave; payment of attorneys' fees and costs incurred; training for the responsible officials; consideration of disciplinary action for the responsible officials; and posting of notice that discrimination had occurred at the facility.³

In accordance with its remedial order, the Agency conducted a supplemental investigation on the issue of compensatory damages.

² Having found that Complainant had been subjected to disability discrimination, the Agency determined that it did not need to additionally analyze whether Complainant also established sex discrimination as no additional remedial relief would stem from such a finding.

³ Complainant did not file an appeal regarding the June 22, 2017 final decision. Accordingly, the scope of this decision and order will be confined to the issue of compensatory damages as addressed in the December 2017 final decision. We advise the Agency to provide Complainant with the remaining elements of its June 22, 2017 order to the extent that it has not already done so.

In its ensuing final decision on damages issued on December 4, 2017, the Agency ultimately awarded Complainant \$2,000.00 in non-pecuniary compensatory damages that it determined were proven to have been the proximate harm to Complainant caused by the Agency's failure to provide her with a reasonable accommodation. Complainant filed the instant appeal without submitting any arguments or contentions in support.

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”).

Entitlement to Compensatory Damages

Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes unlawful intentional discrimination under Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. may receive compensatory damages for past and future pecuniary losses (i.e., out-of-pocket expenses) and non-pecuniary losses (e.g., pain and suffering, mental anguish) as part of “make whole” relief. 42 U.S.C. § 1981a(b)(3). In West v. Gibson, 527 U.S. 212 (1999), the Supreme Court held that Congress afforded the Commission the authority to award compensatory damages in the administrative process. For an employer with more than 500 employees, such as the Agency, the limit of liability for future pecuniary and non-pecuniary damages is \$300,000. 42 U.S.C. § 1981a(b)(3). Here, the Agency acknowledged its liability for compensatory damages to Complainant because the named management officials had not demonstrated a good faith effort to reasonably accommodate her disability. Darla W. v. Dep’t of Veterans Affairs, EEOC Appeal No. 0120160042 (Dec. 12, 2017).

To receive an award of compensatory damages, Complainant must demonstrate: that she has been harmed as a result of the Agency's discriminatory action; the extent, nature and severity of the harm; and the duration or expected duration of the harm. Complainant v. Dep’t of the Navy, EEOC Appeal No. 01934157 (July 22, 1994), req. for recon. den’d, EEOC Request No. 05940927 (Dec. 8, 1995); EEOC's Enforcement Guidance: Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.002 at 11-12, 14 (July 14, 1992) (“Enforcement Guidance”). Complainant is required to provide objective evidence that will allow an Agency to assess the merits of her request for damages. See Complainant v. Dep’t of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993).

Furthermore, the award should take into account the severity and duration of the harm. Carpenter v. Dep't of Agric., EEOC Appeal No. 01945652 (July 17, 1995).

Complainant may not recover damages for any harm that she could have avoided or minimized with reasonable effort. Enforcement Guidance, *supra* at 9. However, it is the Agency that has the burden of showing that Complainant failed to exercise reasonable diligence to mitigate her damages. *Id.*

Past Pecuniary Losses

Damages for past pecuniary losses will not normally be awarded without documentation such as receipts, records, bills, cancelled checks, or confirmation by other individuals of actual loss and expenses. Margaret L. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120150582 (April 17, 2018); Drew N. v. Dep't of Homeland Sec., EEOC Appeal No. 0120160208 (Jan. 11, 2018); Melina K. v. Dep't of Def., EEOC Appeal No. 0120152834 (Aug. 10, 2017). The Agency denied Complainant's claim for \$494.98 in its entirety, finding that Complainant provided no objective evidence in support of her claim. Complainant identified her claim for past pecuniary losses on a handwritten note with a date stamp of August 22, 2017. Her list of claimed expenses included the following:

- \$200.00 Lawyer
- \$35.98 Wrist Splint
- \$259.00 Pool

DIR 31-32, 63. As to her claim for legal expenses, Complainant submitted neither a claim for attorney's fees nor an appeal brief addressing the issue of attorney's fees in connection with her claim for damages. We therefore find that the Agency properly disallowed this expense. As to the wrist splint and the pool, the record does not include receipts for these expenses or medical documents establishing that Complainant incurred these expenses as a result of the Agency's failure to timely provide her with a reasonable accommodation. The only reference to a wrist splint in the record is a workers' compensation claim form from the State of New Hampshire dated May 17, 2017, approximately one year after Complainant received her accommodation, indicating that a wrist splint was part of Complainant's treatment plan. DIR 98. Accordingly, we find that the Agency properly disallowed these expenses as Complainant failed to demonstrate that these expenses were incurred as a result of the Agency's discrimination.

Future Pecuniary Losses

Future pecuniary losses are out-of-pocket expenses that are likely to be incurred after the resolution of the complaint. Guajardo-Hartley v. Dep't of Agric., EEOC Appeal No. 01A02073 (July 24, 2003); McGuire v. Dep't of Agric., EEOC Appeal No. 01A04942 (May 12, 2003).

Complainant has presented neither receipts documenting past or current medical expenses nor statements from health care providers or other evidence establishing that she will, in fact, be

incurring such expenses in the future. However, on the same handwritten note in which she argued her claim for past pecuniary losses, Complainant stated:

- Salary – If I would be able to work another 10 years, my salary at \$41,000 per year – total \$410,000 [with] interest over 10 years.

DIR 63. Complainant demonstrated no rationale justifying this request. Insofar as we can tell, Complainant seems to be arguing that her capacity to earn a living had been impaired by the Agency's unreasonable delay in providing her with her requested accommodation, and that she is entitled to recover 10 years' worth of her salary up front. An award for the loss of earning capacity considers the effect that an injury from discrimination has on the complainant's ability to earn a salary comparable with what she earned before the injury. Blanca B. v. Dep't of State, EEOC Appeal No. 0120171031 (Aug. 16, 2018). Proof of entitlement to loss of future earning capacity involves evidence suggesting that an individual's injuries have narrowed the range of economic opportunities available to her. Id. Complainant must produce evidence that the impairment of earning capacity be shown with reasonable certainty or reasonable probability and there must be evidence which will permit the fact finder to arrive at a pecuniary value for the loss. Brinkley v. U.S. Postal Serv., EEOC Request No. 05980429 (Aug. 12, 1999). Complainant has satisfied neither evidentiary burden. As the Agency pointed out, she was still employed by the Agency at the time she made the request and there are no indications in the record that she could no longer work as a result of the Agency's delay in delivering the accommodation. We therefore find that the Agency correctly rejected this claim.

Non-Pecuniary Losses

Section 102(a) of the 1991 Civil Rights Act authorizes an award of compensatory damages for non-pecuniary losses, such as, but not limited to, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to character and reputation, and loss of health. We note that damage awards for emotional harm are difficult to determine and that there are no definitive rules governing the amount to be awarded in given cases. A proper award must meet two goals: that it not be "monstrously excessive" standing alone, and that it be consistent with awards made in similar cases. See Cygnar v. City of Chicago, 865 F.2d 827, 848 (7th Cir. 1989).

Non-pecuniary losses are not subject to precise quantification, i.e., emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, injury to credit standing, and loss of health. See EEOC Notice No. 915.302 at 10 (July 14, 1992). There is no precise formula for determining the amount of damages for non-pecuniary losses except that the award should reflect the nature and severity of the harm and the duration or expected duration of the harm. See Loving v. Dep't of the Treasury, EEOC Appeal No. 01955789 (Aug. 29, 1997).

Evidence from a health care provider or other expert is not a mandatory prerequisite for recovery of compensatory damages for emotional harm. See 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

(Jan. 5, 1993)). Objective evidence of compensatory damages can include statements from Complainant concerning 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. Id. Statements from others including family members, friends, health care providers, and 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. Id. Complainant's own testimony, along with the circumstances of a particular case, can suffice to sustain her burden in this regard. Id. The more inherently degrading or humiliating the defendant's action is, the more reasonable it is to infer that a person would suffer humiliation or distress from that action. Id. The absence of supporting evidence, however, may affect the amount of damages appropriate in specific cases. Id.

Complainant has the burden of proving the existence, nature and severity of the alleged emotional harm. Man H. v. Dep't of Homeland Sec., EEOC Appeal No. 0120161218 (May 2, 2017). Complainant must also establish a causal relationship between the alleged harm and the discrimination. Id. Absent such proof of harm and causation, a Complainant is not entitled to compensatory damages, even if there were a finding of unlawful discrimination. Id. See also e.g. Wilda M. v. U.S. Postal Serv., EEOC Appeal No. 0120141087 (Jan. 12, 2017) (awards for emotional harm are warranted only if Complainant establishes a sufficient causal connection between the Agency's illegal actions and her injury).

Here, Complainant claims that she is entitled to \$300,000 for "emotional pain and suffering" along with \$200,000 for "personal injury." DIR 49, 63. With regard to Complainant's claim for personal injury, we note that awards for personal injury resulting from an Agency's acts of discrimination clearly fall within the \$300,000 compensatory damages limit.

We now move on to Complainant's claim for the maximum award for non-pecuniary compensatory damages itself as requested in her handwritten note. DIR 63. The essence of this claim is that by failing to promptly replace the ergonomic chair, and by delaying that accommodation for over a year, the Agency had aggravated the effects of her pre-existing repetitive motion disorder. DIR 46-47, 78-79. The Commission has awarded non-pecuniary compensatory damages to employees whose pre-existing conditions were aggravated by an agency's denial of reasonable accommodation. See e.g. Greg M. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120160345 (Jan 31, 2018) citing Sartini v. Dep't of Veterans Affairs, EEOC Appeal No. 0120112305 (Sept. 19, 2012); Williams v. U.S. Postal Serv., EEOC Appeal No. 01990520 (Feb. 14, 2002); Ortiz v. U.S. Postal Serv. EEOC Appeal No. 01A15376 (Sept. 25, 2002).

As previously noted, Complainant had been diagnosed with repetitive motion disorder that had previously been accommodated. DIR 44-45, 78. She had also been experiencing a number of other chronic conditions not related to her reasonable accommodation request. IR 64-65. Her need for an accommodation arose again when the Agency accidentally disposed of the ergonomic

chair that she needed to minimize her discomfort while at her work station. Complainant averred that throughout the time period in question, the Head Nurse gave her work that forced her to engage in repetitive motion while giving another secretary the timekeeping function, which did not involve repetitive motion. DIR 39-41, 45-46. Complainant also averred that her conditions were aggravated when she did not get the ergonomic chair in that her head and neck were in an “up and down position” all the time, forcing her to twist in painful ways when opening file drawers or writing on her computer. DIR 47.

When asked by the EEO investigator how her family life was affected as a result of the untimely delay in receiving her accommodation, Complainant described how she would go home and go directly to bed due to headaches, some of which became migraine headaches that caused her to vomit. DIR 37-38. She also described how her husband had to do everything for her, how she was unable to pick up her 15-month old grandson, play softball or ride horses with her 10-year-old granddaughter, how she was in pain and unable to sleep most nights, how her sex life with her husband had been strained, and how she was made to feel worthless and inept at work. DIR 38-44, 50.

Complainant averred that she was on multiple medications, including Lyrica, Gabapentin, Cymbalta, and Flexeril. DIR 55-57, 65-66. It is unclear, however, which of these medications were used for her repetitive motion disorder. Complainant averred that her doctor doubled her dose of Cymbalta, from 30 milligrams to 60 milligrams due to mood changes. DIR 38. We note, however, that Complainant did not indicate whether the dosages of Cymbalta or any of her other medications were increased as a result of the aggravation of her repetitive motion disorder that occurred between March 2015 and May 2016, or when they were increased.

Complainant also averred that she had experienced other significant stressors in her life. She stated that her mother died in October 2014, that she was involved in a car accident the night she was with her mother, and that her father died on April 17, 2015. DIR 49-50. She stated that she had lost her house as a result of bankruptcy and that she and her husband had to live with her daughter’s family. DIR 51-53. It is not clear from the record exactly when some of these events occurred.

In addition to her own affidavit testimony, Complainant provided letters from her family members describing how her condition affected her while at home. Complainant’s grandson and granddaughter described how she could not do many of the things she wanted to do, including swimming in the pool, jumping on a trampoline, practicing softball, or riding horses. DIR 71. Her daughter attested to the fact that she was in constant pain in her neck, back, and right arm. DIR 72. Her husband described the loss of their sex life and her independence, and how she could no longer drive because of the limited range of motion with her head and neck. DIR 73-74.

According to several medical reports issued in August 2017, Complainant had swelling in her right wrist due to a ganglion cyst and a tear in her triangular fibrocartilage complex (TRCC).⁴ DIR 64,

⁴ For a description of this condition see <https://www.rushortho.com/body-part/wrist/triangular-fibrocartilage-complex-tear>.

68-69, 94, 96, 98. The authors of those reports, physicians, opined that these symptoms were made worse by her work, and recommended continued rest and minimal repetitive motion involving the right wrist. DIR 64, 78. However, one of the physicians stated:

Occupational medical opinion regarding causality: It appears the main etiology for this patient's right volar wrist swelling is likely related to her TFCC tear as described in the MRI report in addition to the DRUJ effusion and the small ganglion cyst resulting. It is more likely that the patient's history of numerous falls onto her wrists would have caused the TFCC tears than would the work station repetitive strain issues based upon the patient's descriptions of her duties. While ganglion cysts can arise from repetitive trauma such as forceful gripping and use of hand tools, it would seem less likely that the use of keyboards and mouse would result in the extensive soft tissue trauma seen on this patient's imaging. She asserted that she has had a long-standing history of tendonitis in her wrist and these may very well have been work-related. Finally, if it is true that the patient's balance issues and resulting falls have been attributed to her work-related neck surgery as she claims, then the current right wrist injury would be considered a causally-related extension of that injury. Cervical vertigo is well described, but again I could not find anything in her records available to me to confirm that as an etiology for her falls. I would be happy to evaluate any records that might help clarify that issue. Should her dizziness and disequilibrium be documented to other causes, it would follow that the falls and the injury resulting would not be work-related.

DIR 67. On the basis of this evidentiary record, the Agency awarded Complainant \$2,000.00 in non-pecuniary compensatory damages. The record consists of Complainant's own statement in which she extensively describes numerous health conditions and symptoms but identifies possible causes other than the Agency's failure to accommodate her disability, statements from family members, and several reports from treating physicians. We must now determine whether the Agency's award of \$2,000.00 is consistent with awards made in similar cases given the severity of the harm suffered by Complainant, the duration of the harm, and the causal connection between that harm and the Agency's failure to timely provide Complainant with the reasonable accommodation she had asked for.

In the instant case, Complainant's affidavit, the statements from her family members, and the medical reports all indicate that although some of the emotional harm she experienced resulted from the Agency's year-long delay in replacing her ergonomic chair, there were, multiple factors other than that failure to timely provide a reasonable accommodation, including her pre-existing physical conditions themselves, the deaths of her parents within six months of each other, the bankruptcy and ensuing foreclosure of her home, and the stress resulting from having to sort out her parents' estates in probate court. Based upon a review of the totality of the evidence and in light of Commission precedent, we find that an award of \$5,000.00 is appropriate and is consistent with that awarded in similar cases. See also Levi P. v. U.S. Postal Serv., EEOC Appeal No.

0120151113 (Nov. 9, 2017) (\$5,000.00 awarded to employee who was discriminated against when he was kept out of work for 55 days for refusing to request light duty supported by employee's own statement of emotional distress and marital discord); Kyong L. v. U.S. Postal Serv., EEOC Appeal No. 0120170623 (Feb. 21, 2019) (\$5,000.00 awarded to employee who had been discriminated against when her repeated requests for light duty were denied over a nine-month span where the employee presented evidence that she had suffered anxiety, depression, headaches, stomach pains; sleeping problems; and weight gain); Harriet M. v. Dep't of Agric., EEOC Appeal No. 0120150114 (Dec. 27, 2017) (\$5,000.00 awarded where agency's failure to accommodate exacerbated complainant's preexisting conditions of depression, sleeplessness, and suicidal thoughts). We will therefore enter an order directing the Agency to award Complainant \$5,000.00 in non-pecuniary damages.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, we MODIFY the Agency's final decision.

ORDER (C0618)

Within 60 days of the date that this decision is issued, the Agency shall pay Complainant \$5,000.00 in non-pecuniary compensatory damages.

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.

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

June 5, 2019

Date