



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

[REDACTED]
Doria R.,¹
Complainant,

v.

France A. Cordova,
Director,
National Science Foundation,
Agency.

Appeal No. 0120181319

Hearing No. 570-2014-00321X

Agency No. NSF-EO-10-002

DECISION

On March 6, 2018, 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 February 12, 2018, final order 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., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

BACKGROUND

During the relevant time, Complainant worked as a GS-13 Grant and Agreement Specialist/Grants Officer in the Agency's Division of Grants and Agreements at the Office of Budget, Finance, and Award Management in Arlington, Virginia.

Factual Background

In 1997, Complainant was diagnosed with breast cancer, which went into remission. In 2009, she learned that the cancer returned and had metastasized to her bones, causing fractures in her spine.

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.

In January 2010, Complainant requested reasonable accommodations that included two core days of telework a week. In support of this request, Complainant's physician noted that her medication caused back pain, depression, nausea and fatigue. Additionally, the physician explained that Complainant's three-hour commute threatened to aggravate her injured spine.

On February 13, 2010, Complainant was in a car accident which worsened her spinal fractures. Her doctor advised that she avoid excessive travel as she was at risk for paralysis. Complainant therefore requested full-time telework. In the months that followed, the Agency did not grant the requests but instead sought additional medical documentation. In early April 2010, Complainant underwent spinal surgery and was off from work until July 13, 2010. Upon her return, Complainant reiterated her request for a third day of telework. Once again, the Agency requested medical documentation, which Complainant's attorney argued had already been provided. In October 2010, Complainant submitted an updated medical report supporting one additional day per week of telework. It was not until November 9, 2011 that the Agency granted the additional, "floating," day of telework.

On November 29, 2013, Complainant died.

Procedural Background

On May 14, 2010, Complainant filed a formal EEO complaint based on disability (breast cancer and spine injury), age, and reprisal. Complainant alleged that the Agency subjected her to a hostile work environment and denied her reasonable accommodations for her disability. Following an investigation, Complainant timely requested a hearing before an EEOC Administrative Judge (AJ).

On February 9, 2012, the AJ granted the Agency's motion for summary judgment and issued a decision finding no discrimination. Complainant appealed the decision to the Commission. The Commission found that the AJ erred in issuing a decision by summary judgment, as genuine issues of material fact existed. Complainant v. National Science Foundation, EEOC Appeal No. 0120121886 (Dec. 11, 2013). Among other things, the Commission found that the sufficiency of the medical documentation submitted by Complainant to the Agency was unresolved, as was the reasonableness of the Agency's delay in responding to the requests. See id. The case was remanded for a hearing. See id.

Consistent with the Commission's order, a hearing was held October 21 – 23, 2014. Thereafter, however, the AJ dismissed the hearing and remanded the matter to the Agency for a decision due to the conduct of Complainant's lead counsel (hereinafter "Attorney G"). In her March 18, 2015 Order, the AJ observed that Attorney G "engaged in aggressive and belligerent behavior" while questioning a witness; "continued to badger . . . and kept raising his voice"; "shouting at the top of his voice", "gesticulated with his hands and arms in a very aggressive manner"; and slammed doors. The AJ observed further that Attorney G's behavior continued even following admonishments and opportunities to take time to compose himself.

On July 30, 2015, the Agency issued a decision finding no discrimination. Complainant appealed the determination to the Commission.

In Doria R. v. National Science Foundation, EEOC Appeal No. 0120152916 (Nov. 9, 2017), the Commission concluded that the Agency violated the Rehabilitation Act when it unduly delayed providing telecommuting as a reasonable accommodation. Specifically, the decision concluded the documentation submitted by Complainant in February 2010 was sufficient to substantiate the request for additional telework days. Further, there was no indication that granting the additional days would have imposed an undue hardship on the Agency. The Agency's ten-month delay was found to be unreasonable and a denial of a reasonable accommodation. Among the remedies awarded, the Agency was ordered to process the claim for fees and costs from the attorney representing Complainant's estate. While making a finding that the Agency violated the Rehabilitation Act with regard to her reasonable accommodation claim, the Commission also concluded that the weight of the evidence did not establish Complainant's harassment claim.

On February 12, 2018, the Agency issued a decision on Complainant's fee petition. The request indicated that 16 attorneys, 22 paralegals, and one law clerk worked 806.5 hours on the case. After deducting 139.1 hours, for a revised total of 675.6 hours, Complainant sought \$263,397 in attorney's fees. The Agency applied various deductions for pre-complaint work, clerical expenses, excessive hours, and unsuccessful claims to determine that Complainant's attorneys were entitled to \$96,537.50. The Agency also granted \$2,851.38 in costs.

Complainant filed the instant appeal, challenging the Agency's award of fees and costs.

ANALYSIS AND FINDINGS

An agency is required to award attorney's fees for the successful processing of an EEO complaint in accordance with existing case law and regulatory standards. 29 C.F.R. § 1614.501(e); Bernard v. Dep't of Veterans Affairs, EEOC Appeal No. 01966861 (July 17, 1998). Attorney's fees are computed by determining the lodestar, i.e., the number of hours reasonably expended multiplied by a reasonable hourly rate. 29 C.F.R. § 1614.501(e)(2)(ii)(B); EEO Management Directive for 29 C.F.R. Part 1614 (MD-110) at 11-5 (citing Hensley v. Eckerhart, 461 U.S. 424, 434 (1983)). All hours reasonably spent in processing the complaint are compensable, and the number of hours should not include excessive, redundant or otherwise unnecessary hours. MD-110 at 11-5 (citing Hensley, 461 U.S. at 434; and Bernard, EEOC Appeal No. 01966861). The presence of multiple counsel at a hearing may be considered duplicative in certain situations, such as where one or more counsel had little or no participation. MD-110 at 11-5 (citing Hodge v. Dep't of Transportation, EEOC Request No. 05920057 (Apr. 23, 1992)).

A reasonable hourly rate is based on prevailing market rates in the relevant community for attorneys of similar experience in similar cases. MD-110 at 11-6 (citing Cooley v. Dep't of Veterans Affairs, EEOC Request No. 05960748 (July 30, 1998)). In the instant case, the parties do not dispute the hourly rate utilized in the fee petition.

Fees for Pre-complaint

EEOC Regulation 29 C.F.R. § 1614.501(e)(1)(iv) provides, in pertinent part, that agencies are not required to pay attorney's fees on services performed during the pre-complaint process. An attorney may reasonably expend up to two hours to determine whether to represent a complainant. Nenita S. v. Dept. of Veterans Affairs, EEOC Appeal No. 0120151925 (May 23, 2017). Here, Complainant's attorneys claimed a total of 8.1 hours prior to the filing of the formal complaint. We therefore agree with the Agency's reduction by 6.1 hours, pursuant to our precedent.

Excessive Hours

As noted above, the Agency concluded that various entries were improper and excessive in a number of areas. We shall consider each in turn.

Clerical Work

The Commission has held that clerical expenses are generally viewed as part of the attorney's overhead, and as such these expenses are not reimbursable. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), Chap. 11 § VI.E.3 (Aug. 5, 2015) (citing Missouri v. Jenkins, 491 U.S. 274 (1989)); Cole v. U.S. Postal Serv., EEOC Request No. 05910450 (Aug. 5, 1991)).

The Agency excluded 43.4 hours (\$7,482.40) as clerical expenses. The tasks omitted included the following: serving documents, forwarding correspondence to Complainant, scheduling calls, faxing, updating the litigation plan, printing and copying, assembling binders and exhibits, and saving transcripts. Complainant's attorney argues on appeal that the Agency's definition of "clerical expenses" is too broad. For example, he argues that time expended reviewing Complainant's discovery responses or drafting HIPAA releases are not clerical in nature. Complainant's attorney contends further that updating litigation plans "pertains to the development of case strategy and analysis."

However, a review of one such "update litigation plan" entry reveals that the "updates," performed by a junior paralegal, were simply including dates, deadlines, and upcoming events. Such actions are hardly part of the case strategy. Similarly, according to Complainant, preparing binders "is a necessary task to ensure that attorneys are properly prepared for hearing." While we agree that many clerical tasks are indeed "necessary", they are nonetheless considered part of the attorney's overhead and not separately reimbursable. See Jacobsen and Taft, EEOC Appeal No. 0720100046 (Sep. 7, 2012) (reduction in fee petition where complainant's counsel charged time for actions such as "organize file", faxing documents, and arranging depositions); Anish v. Nat'l Sec. Corp., No. 10-80330-CIV, 2014 WL 5034720, (S.D. Fla. July 3, 2014) (finding that counsel improperly billed for clerical tasks, including preparing exhibits and filing a motion).

The Agency's exclusion of services such as serving a motion, walking to a mailbox, correcting addresses, creating a table of contents, or calling to follow-up on a request for documents was proper.

Duplicative Work

The Agency deducted \$12,424.60, for 32.6 hours, as duplicative hours expended for conferences and phone calls between attorneys and paralegals conferring on the same matter where each individual billed separately, as well as the presence of two attorneys at four depositions.

A review of the fee petition reflects that two attorneys did work on the depositions, Attorney-DS and Attorney-AW. However, Attorney-DS appears to have done more of the preparation for the depositions, including scheduling and drafting lines of questioning, while Attorney-AW conducted the depositions. This also reflects their respective experience, as Attorney-AW was admitted to the bar ten years before Attorney-DS. As for instances billed for "conferring," the fee petition does reflect some deductions made by the firm. Therefore, we find that the hours requested were not duplicative. The Agency's deduction of \$12,424.60 was not appropriate.

Appeal Brief

Complainant requested \$34,905.48, for 102.20 hours, expended on "representation to file Notice of Appeal . . . with [the Commission], including the [appellate] brief and any other necessary pleadings." In reducing the fees for appellate work by half, the Agency reasoned that the total hours sought for an appeal brief "is excessive leading to the conclusion that Complainant's attorney failed to make a good faith effort to exclude from the fee request hours that were excessive, redundant, or otherwise unnecessary" (citing Davis v. United States Postal Service, EEOC Appeal No. 0120053186 (2007)). Specifically, the Agency stated that Attorney-MBS charged for 90 hours and a more senior attorney expended 16.4 hours reviewing and revising the brief.

In response, Complainant argues that the hours cited by the Agency are inaccurate and that Attorney-MBS only billed 43.8 hours for drafting the brief and 6.1 hours for legal research. Complainant's attorney contends that they are not unreasonable in light of a 47-page appeal brief focused on reasonable accommodation.

We decline to engage in a line by line analysis of the fee petition. We do, however, make some general observations regarding the time requested for the appeal brief. The record reflects that 68.1 hours were claimed by Attorney-MBS and the senior attorney for drafting, reviewing and revising the appeal brief. Almost nine of those hours were identified as work on the "facts" section of the appeal brief. In a case where counsel has represented Complainant from even before the filing of her formal complaint, through an investigation and hearing, we find this amount of time on an appeal brief to be excessive. The invoice for the work on appeal also includes hours spent on researching and strategizing the issue of compensatory damages in the weeks after the brief was filed.

Therefore, we find a reduction in the hours requested for the appeal brief would reflect a more reasonable expenditure of time. Although the Agency reduced the hours by half, we find that a reduction by one-third is more appropriate.² The amount of fees and costs, associated with the appeal brief, awarded to Complainant is \$23,270.48.

Conduct at Hearing

In its decision, the Agency deducted the time spent at the hearing (\$29,851.40) as a result of the AJ's dismissal of the hearing due to Attorney-G's conduct. Specifically, the Agency noted the AJ's belief that Attorney-G's disrespectful and insulting behavior rose to the level of contumacious conduct. Further, the AJ also admonished Attorney-G's two associates for failing to intervene and curb Attorney-G's unprofessional behavior.

On appeal, Complainant argues that the AJ already sanctioned counsel and that the Agency's decision to deny all fees for time spent at the hearing is an improper, additional punishment. Moreover, Complainant contends that testimony obtained at the hearing aided in establishing facts that resulted in the successful appeal brief. They seek payment for all the time spent at the hearing.

In her March 18, 2015 "Order of Dismissal of Hearing Request," the AJ sets forth in detail some of Attorney-G's actions. For example, while questioning the Agency's Director of Diversity and Inclusion, he badgered the witness by raising his voice, standing close to her, and exhibiting a confrontational demeanor. According to the AJ, "[b]ecause of his threatening conduct, I had to stop the hearing, and told [Attorney-G] to leave and take some time to compose himself." However, when he returned, the AJ stated that Attorney-G "began shouting at the top of his voice" and "gesticulate[ing] with his hands and arms in a very aggressive manner while rapidly approaching the witness." The AJ explained that she again admonished Attorney-G and asked that he leave. He did so, but "slammed the doors in such a manner that caused a loud bang and made the room walls tremble." As a result, the witness "began sobbing and shaking, fearing for her safety." Agency counsel, noted the AJ, "was also visibly shaken and distressed. . . ." Agency employees, who had heard Attorney-G's "shouting and violent slamming of the conference room doors" began gathering in front of the room to learn what happened. Even when he later returned to the conference room, the AJ observed that he "remained very upset", "spoke in a belligerent manner", and kept interrupting her in an effort to make a statement on the record. The AJ, however, closed the hearing. While preparing to leave, the court reporter described the incident as "terrifying" and commented that in all her years of court reporting she had never witnessed such outrageous behavior by an attorney.

² In its February 12, 2018 decision, the Agency states that Complainant has requested \$37,864.00 for 106.4 hours. Our review of the December 13, 2017 invoice (identified as Exhibit 2, Tab C. of the Fee Petition) reflects charges of \$34,905.48 for 102.2 hours.

A review of the hearing transcript reveals that the AJ consciously chose not to issue a sanction at the time of the incident, noting that “everyone is very upset”, “everyone is very emotional right now.” Instead, she took the time to reflect upon the events, considered both a letter of apology from Attorney-G and a Motion for Sanctions by the Agency, and issued her Order months later. We agree with the AJ that Attorney-G engaged in contumacious conduct that was disrespectful, threatening, and insulting to both those participating in the hearing and the process itself. Not only did Attorney-G’s behavior rob Complainant of the fruits of the hearing, but also a possible earlier finding of discrimination by the AJ.³ As set forth in EEOC’s Management Directive 110 (MD-110), an award of attorney’s fees “may be reduced where the quality of representation was poor, the attorney’s conduct resulted in undue delay or obstruction of the process, or where settlement likely could have been reached much earlier but for the attorney’s conduct.” MD-110, Chap. 11, Section VI(F)(2)(b) (August 5, 2015), citing Lanasa v. City of New Orleans, 619 F. Supp. 39 (E.D. La. 1985); Barrett v. Kalinowski, 458 F. Supp. 689 (M.D. Pa. 1978).

Moreover, the AJ specifically found that at no point during the hearing, even in light of her repeated admonishments, did Attorney-G’s associates “try to intervene on behalf of their client to counsel [Attorney-G] on his actions and prevent further escalation of the incident.” To the extent that Complainant argues that counsel was already sanctioned by the dismissal of the hearing and the denial of associated fees would constitute an unfair, additional sanction, we disagree. The dismissal of the hearing resulted in a detriment to Complainant, while the denial of fees for the time at hearing is more appropriately directed toward Complainant’s counsel and focused upon the conduct at issue. Therefore, we find that exclusion of, not simply Attorney-G’s hours at the hearing, but all hours expended by Complainant’s counsel, is appropriate.⁴ Therefore, we find the Agency’s disallowance of the time spent at hearing was proper.

Unsuccessful Claims

Attorney's fees may not be recovered for work on unsuccessful claims. Hensley v. Eckerhart, 461 U.S. 424, at 434-35 (1983). Courts have held that fee applicants should exclude time expended on “truly fractionable” claims or issues on which they did not prevail. See Nat'l Ass'n of Concerned Veterans v. Sec'y of Defense, 675 F.2d 1319, 1327 n.13 (D.C. Cir. 1982). Claims are fractionable or unrelated when they involve distinctly different claims for relief that are based on different facts and legal theories. Hensley, 461 U.S. at 434-35. In cases where a claim for relief involves “a common core of facts or will be based on related legal theories.” However, a fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit. Id. at 435. “The hours spent on unsuccessful claims should be excluded in considering the amount of a reasonable fee only where the unsuccessful claims are distinct in all respects from the successful claims.” See EEO MD-110, Chap. 11, § 6.A.7 (citation omitted).

³ Instead, Complainant’s ultimate finding of discrimination was delayed until our decision in EEOC Appeal No. 0120152916 (Nov. 9, 2017), several years after Complainant died.

⁴ Neither the Commission nor the Agency is denying Complainant the hours spent preparing for the hearing. The deductions were limited to the work performed over the three-day hearing.

As noted above, Complainant alleged that she was subjected to harassment by her supervisor. The alleged harassment included the following matters: constant, contradictory criticism; requiring Complainant to assist others; a “Fully Successful” performance review; and the lack of notification regarding an erroneously issued monetary award. The Commission found no discrimination, noting that the Agency provided legitimate, non-discriminatory reasons for its actions and the record did not establish any nexus to a protected basis. See EEOC Appeal No. 0120152916 (Nov. 9, 2011). For example, regarding the performance appraisal, covering April 2009 through March 2010,⁵ Complainant was not given the same rating as the prior year because, like all of her colleagues, she had larger workloads and shorter time limits to complete her tasks. Her performance, however, did not increase accordingly. See id. The Commission agreed that the rating was not so unreasonable as to reflect discriminatory animus. See id. As for the failure to inform Complainant that a monetary award would need to be returned, the Agency noted that the notification was emailed to employees. During that time period, Complainant was absent and did not have access to work email. See id.

Additionally, Complainant claimed that she was denied a reduced workload and telecommuting as reasonable accommodations. The Commission found that Complainant failed to identify specifically how she wanted the Agency to decrease her workload, and that a reduction in production standards is not considered a reasonable accommodation. See id. Consequently, she did not prevail with respect to the Agency’s failure to decrease her workload as a reasonable accommodation. The Agency’s significant delay in providing additional telework, however, was found to be a violation of the Rehabilitation Act.

We find that the facts underlying the unsuccessful harassment claim are sufficiently distinct from Complainant’s successful reasonable accommodation claim. While Complainant was allegedly harassed by her supervisor, the denial of a reasonable accommodation was caused by several Agency officials (Director of Office of Diversity and Inclusion; an EEO Senior Advisor; the Disability Program Manager). The alleged harassment concerned contradictory criticism by her supervisor and a failure to inform Complainant that a monetary award was issued in error. Such events are factually distinct from repeated requests for medical documentation. The applicable legal theories are also unrelated.

Relying upon their opening statement at the hearing, Complainant argues that the failure to accommodate was “the primary claim in her complaint.” While we question the weight of this characterization, we agree that it was a significant claim and find reason to modify the Agency’s overall 50% reduction for the unsuccessful portion of the complaint to a 30% reduction.

⁵ Complainant first requested a reasonable accommodation in January 2010, the latter portion of the evaluation period. Further, the record showed that the time of Complainant’s sick leave absence was excluded from the evaluation.

Costs

In the Fee Petition, Complainant sought \$6,119.96 in “expenses.” The Agency awarded Complainant total costs of \$2,851.38. Specifically, the Agency granted the full amount requested for postage, copies, faxes (\$369.28); deposition transcripts (\$2,330.20); medical records (\$56.90); and the cost for one⁶ “new File Set-up” (\$95.00). The Agency denied the costs associated with online legal research (\$145.32), reasoning that such research is considered “overhead” and not separately reimbursable. The request for the cost of Hearing Transcripts (\$2,700.00) was rejected, on the grounds that the Agency already provided payment to the Complainant in accordance with the order in EEOC Appeal No. 0120152916 requiring payment of \$3051.00 for transcript costs. Finally, the costs associated with the hearing (\$211.99) were denied based upon the AJ’s sanction dismissing the hearing, as well as insufficient documentation for some of the claimed expenses.

On appeal, Complainant disputes the rejection of online legal research costs, as well as the expenses incurred at the hearing. We find that the Agency properly denied these costs. Online legal research is considered overhead that is already captured by the attorney’s hourly rate. See Bell v. Dep’t of the Navy, EEOC Appeal No. 0720080024 (June 25, 2008); see also Mohar v. United States Postal Service, EEOC 0720100019 (August 29, 2011) (acknowledging that there have been decisions awarding online legal research services as separately reimbursable, but noting that such decisions issued “some years ago”, when use of such services “was not nearly as commonplace as it is today”). Moreover, as discussed above, we find that to grant the costs associated with Complainant’s attorneys’ presence (parking, meals, time traveling) at the October 2014 hearing would be inconsistent with the AJ’s decision to dismiss the hearing based upon the conduct of those attorneys. The exclusion of such costs was proper.

SUMMARY: Fees and Costs Now Awarded

Accordingly, the Agency’s award of attorney’s fees and costs is modified as set forth below:

\$263,297.00 Requested Fees
- 1,631.60 (excessive pre-complaint hours)
- 7,482.40 (clerical)
- 11,635.16 (excessive time on appeal brief, one-third reduction)
- 29,851.40 (hours on October 2014 hearing canceled due to attorneys’ conduct)
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\$212,696.44

Reduced by 30%
Total: \$148,887.50 in Attorneys’ Fees

⁶⁶ Complainant submitted the “new File Set-Up” twice, on March 9, 2010 and on February 29, 2012. The Agency denied the second entry as duplicative cost.

The Agency's award of costs was proper. Complainant is entitled to **\$2,851.38** in costs.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, the Agency's decision on Complainant's fee petition is MODIFIED. The matter is REMANDED to the Agency in accordance with the ORDER below.

ORDER

Within thirty (30) calendar days of the date this decision is issued, to the extent it has not already done so, the Agency shall:

Pay Complainant's estate \$148,887.50 in attorney's fees and \$2,851.38 in costs.

The Agency shall submit a report of compliance, as provided in the statement entitled "Implementation of Commission's Decision". The report shall include supporting documentation verifying that the corrective action has been taken.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

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

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

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

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the Agency.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (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

September 10, 2019

Date