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

[redacted]
Wayne C.,[1]
Complainant,

v.

Elaine L. Chao,
Secretary,
Department of Transportation,
Agency.

Appeal No. 0120182783

Hearing No. 470-2012-00233X

Agency No. 2012-24323-FAA-04

DECISION

On August 30, 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 July 18, 2018 final order concerning an 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. The Commission accepts the appeal in accordance with 29 C.F.R. § 1614.405.

BACKGROUND

In September 2011, Complainant was hired as an Airway Transportation Systems Specialist (ATSS) for the Agency's Cleveland System Support Center in Oberlin, Ohio. Complainant's job duties included installing and maintaining electronic equipment and lighting aids associated with facilities and services required for aviation navigation. The position involved working with radar, communications, computers and navigational aids. It was considered a Safety Sensitive Position, subjected to an Alcohol and Drug Testing Program.

Complainant's work hours were 7:00 a.m. to 5:30 p.m., Monday through Thursday. On four occasions, between October 31, 2011 and November 16, 2011, Complainant was significantly

[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.

late in reporting to work. On November 17, 2011, Complainant informed his supervisor that he was a disabled veteran and suffered from depression, anger issues, and anxiety. Further, Complainant explained that since he had run out of his medications[2] he was having difficulty awakening in the morning.

Because of these circumstances, Complainant asked his supervisor if he could either: (1) change his shift to 1:00 p.m. to 11:00 p.m. or (2) start an hour later, at 8:00 a.m. The supervisor denied both requests. The supervisor stated that, as a new hire, Complainant needed to work administrative hours until he obtained equipment certifications and could stand watch. As to the later start time, the supervisor reasoned it would not be fair to the other employees. Alternatively, the supervisor suggested that Complainant work eight-hour days, instead of his current ten-hour days. This proposed modification, however, would not alter his 7:00 a.m. start time. Complainant was also offered an 8:00 a.m. start, but he would have to use an hour of leave. Complainant rejected the offers.

From November 17, 2011 to December 20, 2011, Complainant was not late. On December 19, 2011, Complainant was sent a letter written by an Agency Human Resources Specialist, referencing his November 17, 2011 meeting with his supervisor, and asking whether Complainant was seeking a reasonable accommodation. If so, Complainant needed to provide medical documentation and a list of his current medications. The next day Complainant submitted a letter from his physician, stating that Complainant was being treated for depression and identified which medications he was taking. On the same day, December 20, 2011, Complainant also met with his supervisor and explained that because he was now taking his medications, he was no longer having difficulties getting to work on time. He was no longer requesting any accommodations.

However, on December 21, 2011, Complainant was late to work. Complainant did not call his supervisor until 8:30 a.m., and then asked for the rest of the day off. A week later, Complainant was terminated due to excessive tardiness.

On April 15, 2012, believing that he was subjected to discrimination based on his disability (depression, sleep apnea), Complainant filed a formal EEO complaint.

The Agency framed the claims as follows:

1. Since his date of hire on September 19, 2011, Complainant was denied a reasonable accommodation.

2. On or about December 28, 2011, he was terminated from his position of ATSS, FV-2101-F, during his probationary period.

[2] According to the Report of Investigation, Complainant had previously obtained therapy and medication from the Columbus VAMC. When he relocated to Cleveland for this position, the Cleveland VAMC required a reassessment before allowing him to receive his medication.

After an investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. Following a one-day hearing on June 26, 2013, by video conferencing, the AJ issued a decision on October 1, 2014. The AJ concluded that Complainant did not establish he was denied a reasonable accommodation or was discriminatorily terminated. On October 9, 2014, the Agency issued a final order fully implementing the AJ's finding of no discrimination.

Complainant appealed the decision to the Commission. The Commission found that Complainant's termination was not discriminatory. However, the Commission disagreed with the AJ's conclusion that the Agency had met its reasonable accommodation obligation when it offered Complainant an 8:00 a.m. start time with the use of one hour of his leave. See Complainant v. Dep't of Transportation (FAA), EEOC Appeal No. 0120150325 (August 17, 2017); EEOC Request No. 0520180011 (Feb. 28, 2018) (req. for reconsid. denied). Citing previous Commission cases, the Commission specifically noted that, "forcing an employer to take leave when another accommodation would permit an employee to continue working is not an effective accommodation." See id. To have enabled Complainant to continue working a full day, with the 8:00 a.m. start, would not have created an undue hardship. See id. Further, the supervisor's concern that allowing such a schedule change for Complainant "would not be fair to the other employees" also fails to establish an undue hardship. See id. The Agency was found to have denied Complainant a reasonable accommodation from November 17, 2011 through December 20, 2011. Accordingly, the matter was remanded to the Agency for a supplemental investigation regarding Complainant's entitlement to compensatory damages. Complainant's attorney was advised to submit a verified statement of fees to the Agency for processing. See id.

In compliance with the Commission's orders, on July 18, 2018, the Agency issued a decision addressing compensatory damages and attorney's fees. According to the Agency, in response to its request for the fees sought, Complainant's attorney stated: "From November 17, 2011 to December 19, 2011, which is the period of violation against [Complainant], my client did not suffer and (sic) damages." The Agency stated that nothing more was provided by Complainant or his attorney regarding compensatory damages. Therefore, the Agency did not award compensatory damages.

As for attorney's fees, Complainant's counsel requested $368,550, for 819 hours at a rate of $450 per hour. Finding that Complainant's attorney failed to provide support for his hourly rate, the Agency reduced the base hourly rate to $300. As for the number of hours expended, the Agency made several deductions reasoning that the statement of hours lacked necessary detail, the entries were inflated, excessive and sometimes duplicative. Finally, the Agency applied an overall reduction of 50% based on the limited success of the complaint. The Agency awarded $29,175 in attorney's fees (194.5 hrs. x $300/hr).

Complainant filed the instant appeal.

ANALYSIS AND FINDINGS

Attorney's Fees

The Rehabilitation Act and the Commission's regulations authorize the award of reasonable attorney's fees and costs to a prevailing complainant. 29 C.F.R. § 1614.501(e); see also EEO Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at 11-1 (Aug. 5, 2015). Fee awards are typically calculated by multiplying the number of hours reasonably expended times a reasonable hourly rate, an amount also known as a lodestar. See 29 C.F.R. §1614.501(e)(ii)(B); Blum v. Stenson, 465 U.S. 886, 899 (1984); Hensley v. Eckerhart, 461 U.S. 424, 435 (1983).

All hours reasonably spent in processing the complaint are compensable, but the number of hours should not include excessive, redundant or otherwise unnecessary hours. EEO MD-110 at 11-15. A reasonable hourly rate is based on prevailing market rates in the relevant community for attorneys of similar experience in similar cases. Id. at 11-6. An application for attorney's fees must include a verified statement of attorney's fees accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services. Id. at 11-9.

An attorney is not required to record in detail the way each minute of his or her time was expended. The attorney, however, does have the burden of identifying the subject matters on which he or she spent his or her time by submitting sufficiently detailed and contemporaneous time records to ensure that the time spent was accurately recorded. See Complainant v. Dep't of the Treasury, EEOC Appeal No. 07A10035 (May 6, 2003). The attorney requesting the fee award has the burden of proving, by specific evidence, entitlement to the requested fees and costs. Complainant v. U.S. Postal Serv., EEOC Request No. 05A20843 (Feb. 18, 2003).

As noted above, Complainant prevailed in EEOC Appeal No. 0120150325 when the Agency was found to have denied him a reasonable accommodation from November 17, 2011 through December 20, 2011. Based on Complainant's success, in prevailing with claim (1), he is entitled to attorney's fees.

Hourly Rate

Complainant's attorney requested $450/per hour, which the Agency reduced to $300/per hour. In so doing, the Agency reasoned that Complainant did not present any facts establishing $450 to be the prevailing market rate for the Cleveland, Ohio area. Specifically, the Agency observed that Complainant's attorney did not describe his experience and qualifications, the normal rates for attorneys with similar backgrounds in the area, nor recent fee awards. He did not submit to the Agency affidavits from other attorneys in the area regarding the prevailing market rate. Further, the Agency noted that Complainant's attorney identified his hourly rate as $375.00 in a July 26, 2013 submission to the AJ, but in his fee petition produced a December 2011 "Legal Representative Agreement" executed with Complainant that identified $450 hourly rate. In the absence of evidence from Complainant's attorney, the Agency turned to prior Commission cases.

In Complainant v. Dep't of Labor, EEOC Appeal No. 0720160020 (Feb. 10, 2017), also originating in the Cleveland area, regarding events from 2011 and a solo practitioner, the AJ found the $300 hourly rate was reasonable and consistent with the prevailing rate for the area. Therefore, the Agency concluded that $300 was the proper hourly rate.

The Supreme Court has held that a reasonable hourly rate is to be determined by the "prevailing market rates in the relevant community." Blum v. Stenson, 465 U.S. 886, at 895 (1984). The burden is on the fee applicant to produce satisfactory evidence that the rate requested is comparable to those prevailing in the relevant community. Blum, 465 U.S. at 895, n. 11. "[T]he burden is on the fee applicant to produce satisfactory evidence--in addition to the attorney's own affidavits--that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." Id. Typically, an attorney's customary billing rate for fee-paying clients is the most reliable evidence of the prevailing market rate, provided that the rate falls within the bracket of high and low market rates charged by other attorneys for similar work in the same community. See, e.g., Laffey v. Northwest Airlines, 746 F.2d 4 (D.C. Cir. 1984), cert. denied, 472 U.S. 1021 (1985).

Here, we find that Complainant's attorney has presented insufficient evidence to the Agency to establish that his requested hourly rate is reasonable. As noted above, Complainant's attorney merely provided the Agency with an approximately one-page affidavit simply stating that he had Complainant execute his standard "Legal Representation Agreement", which specified a $450 hourly rate, that he stated "is actually on the lower end for litigators on employment law matters in Ohio. This is also great reduction from my $500 to $750.00 per hour presentation rate." A review of the "Legal Representation Agreement" also indicates that Complainant "will not be invoiced for this matter" and that fees shall be sought from the Agency. Therefore, the document is not evidence of his customary billing rate for fee paying clients in employment discrimination cases. See Fuentes v. United States Postal Service, EEOC Appeal No. 0120110663 (June 11, 2012) (Commission found that fees contract was not evidence of reasonable hourly rate since it did not indicate that Complainant must pay the fees, but rather stated what would be sought from the Government). In responding to the Agency's request for fee information, Complainant's attorney did not submit corroborative evidence of billing rates (i.e. affidavits from one or more attorneys in the same community who were engaged in a similar practice). While he attested that his hourly rate is $450 per hour, Complainant's attorney did not include such evidence in his fee petition.

The Commission has previously held that the most reliable evidence for establishing reasonable hourly rates for private attorneys is the hourly rate customarily charged by those attorneys for fee-paying clients. Cooley v. Department of Veterans Affairs, EEOC Request No. 05960748 (July 30, 1998); Chris v. Central Intelligence Agency, EEOC Appeal No. 01956844 (July 19, 1996). Documentary evidence to show the reasonableness of an hourly rate include the following: an affidavit stating that the requested rate is the attorney's normal billing rate; a detailed affidavit of another attorney in the community familiar with prevailing community rates for attorneys of comparable experience and expertise; a resume; a list of cases handled; or a list

of comparable cases where a similar rate was accepted. EEOC Management Directive 110, Chapter 11, § VII.A. (November 9, 1999).

For the first time on appeal, Complainant submits additional evidence regarding his hourly rate[3]. It is only now that Complainant submits a more detailed affidavit, dated August 30, 2018, describing his education and experience. Therein, he also states that his current hourly rate ranges from $500 to $750, but that he lowered the rate to ensure it was consistent with the customary rate in the Columbus area and in order to take on Complainant as a client. As for the discrepancy in requested rates, Complainant's attorney attested that he simply used an old template used "a few years before for another client". He also proffered four affidavits, taken in August 2018, from attorneys who practice in the local area. It was Complainant's burden to establish the reasonableness of his rate *when he submitted his fee petition to the Agency*. It is inappropriate to submit such evidence for the first time on appeal, in contesting the Agency's determination based upon the submissions provided by Complainant at that time. Therefore, we shall not disturb the Agency's finding that the reasonable hourly rate is $300.

Amount of Billable Hours

In his fee petition, Complainant's attorney requested compensation for 819 hours of work. The Agency, in its decision, reduced the time to 194.5 hours. According to the Agency, the reduction was based on non-compensable pre-complaint work, partial success, as well as redundant and excessive hours.

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). On appeal, Complainant's attorney acknowledges that he is not entitled to all his pre-complaint work. Consequently, he "retracted all of my billable hours from January 8, 2010 to January 24, 2012" (31 hours), noting that on January 26, 2012, he notified the Agency that he was representing Complainant. Complainant's deduction, however, incorrectly ends at the time of EEO Counselor contact. The record reflects that the formal complaint was not filed until April 15, 2012.

[3] On appeal, Complainant's attorney asserts that he could have provided these additional details to the Agency *if* they had requested. Complainant's attorney is reminded that it is his burden to provide evidence to support his requested fees and costs.

Therefore, the correct pre-complaint time period spans from December 26, 2011[4] through April 15, 2012. While Complainant claims 78.5 hours were expended during that time, only two hours shall be compensated (and 76.5 hours deducted from the total).

Partial Success

Attorney's fees may not be recovered for work on unsuccessful claims. Hensley v. Eckerhart, 461 U.S. 424, 434 (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).

Reasoning that Complainant only prevailed on one of the two claims, the Agency applied an overall reduction of 50%. On appeal, Complainant contends that the reasonable accommodation claim, rather than the termination, "consumed the vast majority of the time to argue this case." Specifically, he states that the Commission should grant him 75% of his requested hours as this properly reflects the time spent on addressing Complainant's disability and the denial of a reasonable accommodation. The Commission agrees, and shall reduce the total compensable hours (742.5 post-formal complaint) by 25% (185.6 hrs.).

Duplicative and Excessive Billing Entries

In its July 18, 2018 decision, the Agency provides numerous examples of what it labels as redundant and excessive hours. For example, prior to the hearing, Complainant's attorney claims to have spent over 200 hours. In drafting Complainant's "affidavit and interrogatories" alone, he seeks payment for 81.5 hours. A review of the resulting fifteen-page affidavit, addressing two claims, supports the Agency's characterization. While Complainant contends on appeal that "each page of a finished document can easily take between two or three hours to polish or complete," we disagree. Similarly, in a matter that only required one day of hearing, Complainant's attorney claims more than 330 hours. Moreover, while he attempts to provide more details, for the first time, on appeal, the entries submitted to the Agency are inadequate ("draft rebuttal", "review ROI"), particularly in light of the number of hours described. We are not persuaded by the many arguments presented by Complainant's attorney on appeal, including the following: Complainant's disability required him to "repeat things and take things slowly"; the EEO process "is far more demanding and labor intensive than any other civil rights process"; and the Agency's "obstructionist conduct"[5]. Given the attorney's more than twenty years of experience, issues that were not novel or overly complex, and the limited number of claims, we find the requested hours are excessive and duplicative.

[4] Complainant's attorney erroneously reasoned that the six hours spent on December 26 and 27, 2011, (meeting with Complainant, looking at documents, and reviewing the EEO complaint process in order to decide whether to take the case) were compensable.

[5] Arguing that Complainant was not disabled, that he did not require an accommodation, that he was not qualified for the position.

The Commission has ruled that, when reviewing fee petitions which contain many excessive, redundant, unnecessary or inadequately documented expenditures of time, in lieu of engaging in a line-by-line analysis of each charge claimed, the Commission may calculate the number of hours compensable by applying an across-the-board reduction to the number of hours requested. See Bernard v. Dep't of Veterans Affairs, EEOC Appeal No. 01966861 (July 17, 1998). Based on the instant record, the Commission finds that a 20% across-the-board reduction in fees is warranted. See Jacobsen and Taft v. Dep't of the Navy, EEOC Appeal Nos. 0720100046, 0720100047 (Sep. 7, 2012) (finding that the AJ's 10% across-the-board reduction, instead of conducting a line-by-line analysis, was not an abuse of discretion for duplicative excessive billing); Mohar v. U.S. Postal Serv., EEOC Appeal No. 0720100019 (Aug. 29, 2011), req. for recon. den'd, EEOC Request No. 0520120027 (Mar. 29, 2012) (finding that a 15% across-the-board reduction of attorney's fees was warranted when complainant's fee petition simply reflected too much time spent by too many people); Hyde v. Dep't of Justice, EEOC Appeal No. 0120073964 (Nov. 24, 2009) (finding that a 10% across-the-board reduction was appropriate when a number of billing entries were not sufficiently detailed and/or appeared inappropriate).

Compensatory Damages

Compensatory damages are awarded to compensate a complaining party for losses or suffering inflicted due to the discriminatory act or conduct. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 at Chapter 11, § VII (citing Carey v. Piphus 435 U.S. 247, 254 (1978) (purpose of damages is to "compensate persons for injuries caused by the deprivation of constitutional rights"). Types of compensatory damages include damages for past pecuniary loss (out-of-pocket loss), future pecuniary loss, and nonpecuniary loss (emotional harm). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 at Chapter 11, § VII.B; and Goetze v. Dep't. of the Navy, EEOC Appeal No. 01991530 (Aug. 23, 2001).

Non-pecuniary losses are losses that are not subject to precise quantification, including emotional pain and injury to character, professional standing, and reputation. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 at Chapter 11, § VII.B (Aug. 5, 2015). 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). The Commission notes that non-pecuniary compensatory damages are designed to remedy the harm caused by the discriminatory event rather than to punish the agency for the discriminatory action. Furthermore, compensatory damages should not be motivated by passion or prejudice or be ""monstrously excessive" standing alone but should be consistent with the amounts awarded in similar cases. See Ward-Jenkins v. Dep't of the Interior, EEOC Appeal No. 01961483 (Mar. 4, 1999).

In Complainant's April 12, 2018 response to the Agency's request for information regarding an accounting of damages and attorney's fees, Complainant's attorney expressly stated: "From November 17, 2011 to December 19, 2011, which is the period of violation against [Complainant], my client did not suffer and [sic] damages." Nonetheless, the record reflects that when the Agency failed to provide Complainant with a reasonable accommodation he, "began arriving at work between 11 p.m. and 1 a.m. and sleeping at his desk or on a couch in order to make sure he was not late to work." While the Counselor's Report and Report of Investigation fail to explicitly address the harm caused by the Agency's unlawful denial of a reasonable accommodation for a month, we find that a fair reading of Complainant's make-shift accommodation is indicative of the emotional harm suffered. Therefore, we find that that an award of $5,000 in non-pecuniary compensatory damages is appropriate.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, we **MODIFY** the Agency's decision, in accordance with the **ORDER** below.

ORDER

To the extent that it has not already done so, the Agency shall take the following action within thirty days of receipt of this decision:

(1) Pay attorney's fees in the amount of $133,656.00 (445.52 hours x $300/hr)

(2) Pay Complainant compensatory damages in the amount of $5,000.

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 payment of compensatory damages to Complainant, and other evidence showing that the corrective action has been implemented.

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 C.F.R. § 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 (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

November 29, 2019
Date