



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Washington, DC 20507**

[REDACTED]  
Bart M.,<sup>1</sup>  
Complainant,

v.

David Bernhardt,  
Secretary,  
Department of the Interior  
(Bureau of Land Management),  
Agency.

Appeal No. 0120160543

Agency No. DOI-BLM-15-0116

DECISION

On November 6, 2015, 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 October 1, 2015, final decision concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. For the following reasons, the Commission REVERSES the Agency's final decision.

ISSUE PRESENTED

The issue presented is whether the preponderance of the evidence in the record establishes that Complainant was subjected to discrimination based on sexual orientation when he was not selected for an Assistant Fire Operations Supervisor position.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Supervisory Fire Engine Captain, 0455, GS-7, at the Agency's Twin Falls District facility in Kimberly, Idaho. Complainant's first-line supervisor was a Fire Operations Supervisor (S1), and his second-line supervisor was an Assistant Fire Management Officer (S2). According to Complainant, S1 became his first-line supervisor in the summer of 2014.

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<sup>1</sup> 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.

Complainant is homosexual.<sup>2</sup> According to Complainant, rumors about his sexual orientation began spreading shortly after he started working for the Agency in 2001. Complainant stated that since then he has taken his husband to office parties.

On October 6, 2014, S1 issued Complainant his fiscal year 2014 performance evaluation with an overall rating of Superior and a rating of Fully Successful on the critical element of “Managing for Excellence; Strategic Management of Human Capital.” The narrative for this critical element does not highlight any areas for growth or improvement. S1 wrote, “[Complainant] does a good job mentoring and motivating. He is willing to voice his opinion and does so in a constructive manner. He also does a good job training his staff along with others within the yard.” Report of Investigation (ROI) at 83. According to Complainant, when he asked S1 how he could improve in these areas, S1 stated, “You are sexist toward men! You’re too easy on women, and too hard on men!” ROI at 261. Complainant stated that he asked S1 for an example, since there are no females assigned to his engine, but that S1 could not provide an example. Complainant averred that this statement was evidence of S1’s discriminatory animus against him, based on a stereotype of what he was like based on his sexual orientation. Complainant averred that he asked S1 why he did not note these issues on his performance evaluation and that S1 responded, “you can’t put stuff like that” in a performance evaluation. Id.

In October 2014, Complainant timely applied for three Assistant Fire Operations Supervisor (AFOS) positions advertised under vacancy announcement number ID-Merit-2015-0003. Complainant was deemed qualified based on his application and was referred for selection consideration. S2 stated that he was the selecting official for these three vacancies. S2 selected three candidates other than Complainant for the vacancies (C1, C2, and C3).

S2 selected four people to serve on a panel to review the applications of the qualified candidates and conduct first-round interviews: a Human Resources Liaison (P1), an Emergency Stabilization and Rehabilitation Specialist (P2), a Minidoka Ranger District Fire Management Officer (P3), and a Vale District AFOS (P4). S2 stated that he asked P1, as the panel lead, to recommend six to seven candidates to him for further consideration. On November 6, 2014, Complainant had a first-round interview with the panel. The panel conducted 13 first-round interviews and recommended seven candidates to S2. According to P1, Complainant was ranked first of the seven candidates based on his average application score combined with his average interview score, for a total of 46.75 points. The highest possible application score was 27 points, and the highest possible interview score was 28 points. C1 and C2 were tied for third place among the seven recommended candidates with 45.25 points, and the panel did not recommend C3 for further consideration based on his score of 35.55 points.

After receiving the panel’s recommendations, S2 decided to “add an additional 5 candidates to the panel recommendations in order to increase the depth and add diversity since there are 3 vacancies.” ROI at 429. S2, along with S1 and two other Fire Operations Supervisors (S3 and S4), conducted reference checking on the seven candidates recommended by the panel and the five

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<sup>2</sup> “Homosexual” is the term that Complainant used to characterize his sexual orientation.

additional candidates. S2 stated that four references were contacted for each of these 12 candidates and that, for the internal candidates, S1, S3, and S4 provided three of the four references. According to S2, each reference check was given a possible score of 60 points and the score for each reference check was added to the average application and interview scores. S4 later stated that the reference check score was typically the average of all reference check scores, not a combined cumulative score.

S2 averred that after conducting reference checks for these 12 candidates, he decided to conduct second-round interviews with the top six candidates. Complainant received 160 points from his reference checks, for a total of 206.25 points. After factoring in reference checking, Complainant was the eighth-ranked candidate, and he was not offered a second-round interview. S2 stated that Complainant's references did not rate him favorably in supervisory skills, verbal communication, or the ability to get along with coworkers. S1 stated that he did not give Complainant a favorable rating because of his tendency to have a condescending, "know-it-all" attitude, which hinders his ability to supervise and to get along with his coworkers. S3 stated that Complainant's weaknesses include his ability to relay or receive information in a professional manner. S4 averred that Complainant can be dismissive or argumentative and mentioned that subordinates have asked to be reassigned away from Complainant in the past.

According to Complainant, when he asked S2 why he was not given a second interview, S2 told him that reference checks revealed issues with his supervisory and interpersonal skills. Complainant averred that there are only two occasions on which his supervisory and/or interpersonal skills have been addressed. Complainant stated that in 2013, when S1 was a coworker, S1 told him that sometimes when he talked, he tended to rush people. According to Complainant, he had a difficult employee (E1) on his crew in 2013, who tended to shirk his duties and perform his work in a sloppy manner. Complainant averred that E1 ended up being terminated. Complainant stated that morale among other employees had declined and that another employee (E2) asked to be reassigned to a different crew at the end of the season.

Complainant alleged that none of the references listed on his application were contacted, including his previous first-line supervisors. One of Complainant's former first-line supervisors (S5) stated that he never had to talk to Complainant about his interactions with other people. S5 averred that only one employee had a hard time working with Complainant and that "that individual did not get along well with others" and asked not to be reassigned to Complainant's team. ROI at 330. According to S5, if he had been contacted, he would have highly recommended Complainant. Another former first-line supervisor (S6) stated that Complainant was a top supervisor and that he was not aware of Complainant being harsh or condescending towards anyone. According to S6, if he had a choice between Complainant and C1, who he had also supervised, he would choose Complainant because of his longer and broader experience.

C1 received 227 points for reference checking, C2 received 224 points for reference checking, and C3 received 222 points for reference checking, making them the first-, third-, and fifth-ranked candidates, respectively, after the completion of reference checking. Complainant stated that he is more qualified than C1 because he has three more years of experience and has a more diverse

background of projects, including coordinating state-wide training courses. The record reflects that Complainant began working for the Agency in 2001, while C1 began working for the Agency in 2004, C2 began working as a firefighter in 2002, and C3 began working as a firefighter in 2004. According to the record, C1 and C2 were GS-7 Engine Captains at the time of their applications, and C3 was a GS-6 Lead Forestry Technician/Fire Engine Operator. Complainant averred that at least two of the selectees, C1 and C2, were heterosexual males who were married to females.

On January 19, 2015, Complainant filed an EEO complaint alleging that the Agency discriminated against him based on sexual orientation (homosexual) when on December 11, 2014, he learned that he was not selected for the Assistant Fire Operations Supervisor position advertised under vacancy announcement ID-Merit-2015-0003.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation<sup>3</sup> and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged. The instant appeal followed.

#### CONTENTIONS ON APPEAL

On appeal, Complainant contends that his low reference check scores were pretextual. Complainant argues that emphasizing the reference checks by making that worth 240 points when the application and first interview combined were only worth 55 points was unfair. Complainant also notes that the Agency failed to include the reference checking sheets in the ROI. According to Complainant, it was suspicious that the Agency failed to contact any of the references he listed on his application. Complainant contends that his positive performance evaluation from S1 contradicts S1's negative reference for Complainant. According to Complainant, S1 and the other supervisors subject him to stereotypes based on his sexual orientation because he is more interested in talking about cooking and fashion than sports, the most common subject of conversation among employees. Complainant denies that S1 counseled him about his communication and supervisory skills.

The Agency makes no contentions in response to Complainant's appeal.

#### ANALYSIS AND FINDINGS

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9,

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<sup>3</sup> When he received the report of investigation, Complainant sent the Agency a letter outlining several perceived deficiencies, including the lack of the scoring sheets for the reference checks. The Agency declined to conduct a supplemental investigation.

§ 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”).

Complainant alleged that he was discriminated against based on sexual orientation when he was not selected for one of the AFOS positions. Title VII makes it an “unlawful employment practice for an employer to . . . discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . sex[.]” 42 U.S.C. § 2000e-2(a)(1).

In Bostock v. Clayton County, the Supreme Court held that discrimination based on sexual orientation or transgender status violates Title VII’s prohibition on discrimination “because of . . . sex.” 590 U.S. ---, 140 S. Ct. 1731 (2020).<sup>4</sup> The Supreme Court reasoned that “[f]rom the ordinary public meaning of the statute’s language at the time of the law’s adoption, a straightforward rule emerges: An employer violates Title VII when it intentionally fires an individual employee based in part on sex.” Id. at 1741. The Court concluded that “homosexuality and transgender status are inextricably bound up with sex.” Id. at 1742; see also id. at 1741 (“it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”). As a result, “[f]or an employer to discriminate against employees for being homosexual or transgender, the employer must intentionally discriminate against individual men and women in part because of sex.” Id. at 1743. “This Court has explained many times over many years that, when the meaning of the statute’s terms is plain, our job is at an end.” Id. at 1749. Discrimination because of sex “has always been prohibited by Title VII’s plain terms[.]” Id. at 1743.

To prevail in a disparate treatment claim such as this, Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). He must generally establish a prima facie case by demonstrating that he was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Co. v. Waters, 438 U.S. 567, 576 (1978). The prima facie inquiry may be dispensed with in this case, however, since the Agency has articulated legitimate and nondiscriminatory reasons for its conduct. See U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 713-17 (1983); Holley v. Dep’t of Veterans Affairs, EEOC Request No. 05950842 (Nov. 13, 1997). To ultimately prevail, Complainant must prove, by a preponderance of the evidence, that the Agency’s explanation is a pretext for discrimination. Reeves v. Sanderson

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<sup>4</sup> In 2015, the Commission held that sexual orientation discrimination states a claim of sex discrimination under Title VII. See Baldwin v. Dep’t of Transportation, EEOC Appeal No. 0120133080 (July 15, 2015). The Commission articulated several arguments and justifications for this conclusion, including that sexual orientation is inherently a sex-based consideration. Id. The Court did not address the alternate bases for the Commission’s holding in Baldwin.

Plumbing Products, Inc., 530 U.S. 133 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993); Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 256 (1981); Holley, supra; Pavelka v. Dep't of the Navy, EEOC Request No. 05950351 (Dec. 14, 1995).

Pretext can be demonstrated by showing such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the Agency's proffered legitimate reasons for its action that a reasonable fact finder could rationally find them unworthy of credence. Opore-Addo v. U.S. Postal Serv., EEOC Appeal No. 0120060802 (Nov. 20, 2007), request for reconsideration denied EEOC Request No. 0520080211 (May 30, 2008). In nonselection cases, a complainant could demonstrate pretext by showing that his qualifications for the position were plainly superior to those of the selectee. Hung P. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120141721 (Dec. 3, 2015). Other indicators of pretext include discriminatory statements or past personal treatment attributable to those responsible for the personnel action that led to the filing of the complaint, comparative or statistical data revealing differences in treatment across various protected-group lines, unequal application of Agency policy, deviations from standard procedures without explanation or justification, or inadequately explained inconsistencies in the evidentiary record. Mellissa F. v. U.S. Postal Serv., EEOC Appeal No. 0120141697 (Nov. 12, 2015).

Complainant established a prima facie case of discrimination, but the Agency provided a legitimate, nondiscriminatory reason for its actions. The Agency's legitimate, nondiscriminatory reason for its actions is that reference checking revealed issues with Complainant's supervisory and communication skills. Therefore, we consider whether Complainant has established that this legitimate, nondiscriminatory reason is pretextual.

Here, S2 specifically instructed P1 to narrow the field to approximately six or seven candidates. P1 and the other panelists recommended seven candidates for further consideration, and Complainant was the top-ranked candidate. S2 then decided to expand the field to 12 candidates for "diversity" purposes since there were three vacancies, even though there had been three vacancies since the beginning of the hiring process.

Moreover, the Agency deviated from standard procedure without explanation in weighting the reference checks such that each reference check was worth more points than the scores from the first-round interview and the review of the application materials combined. S2 essentially negated the extensive work the panel undertook in reviewing applications and conducting interviews. By weighting the references so highly, Complainant slipped from the top-ranked candidate to the eighth-ranked candidate, and he did not make the cut for a second-round interview. In contrast, C3, a candidate who was not recommended by the panel, was afforded a second interview, despite having less experience than Complainant and having limited supervisory experience. Complainant also had more experience than C1 and C2.

Furthermore, the Agency failed to contact any of the references listed on Complainant's application, including S5 or S6. Although it was logical to consult S1 because he was Complainant's current first-line supervisor, it strains credulity that S3 and S4, who had only supervised Complainant sporadically and indirectly, could provide more relevant information than

S5, who had served as his first-line supervisor through March 2014. Additionally, the negative references provided by S1, S3, and S4 are not supported by Complainant's positive performance evaluation, which was issued approximately one month before the references were provided. The negative references are also directly contradicted by the testimony of S5 and S6. Accordingly, we find that the Agency's legitimate, nondiscriminatory reason is pretext because it is unworthy of credence and that Complainant therefore established that he was subjected to discrimination based on sexual orientation when he was not selected for one of the AFOS vacancies.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency's final decision finding no discrimination and REMAND the matter for further processing in accordance with this decision and the ORDER below.

### ORDER

The Agency is ORDERED to take the following remedial action within one hundred and twenty (120) calendar days of the date this decision is issued, unless otherwise specified:

1. The Agency shall offer Complainant the position of Assistant Fire Operations Supervisor, GS-7 with promotion potential to GS-8, or a substantially equivalent position, in the Agency's Twin Falls District retroactive to the date of his nonselection. Complainant shall have fifteen (15) days from the date of the offer to accept or decline the position. If Complainant should decline the position, that date of the rejection of the offer shall be the end date for any back pay due Complainant.
2. The Agency shall determine the appropriate amount of back pay, with interest, and other benefits due Complainant, pursuant to 29 C.F.R. § 1614.501. Complainant shall cooperate in the Agency's efforts to compute the amount of back pay and benefits due and shall provide all relevant information requested by the Agency. The Agency shall also pay compensation for the adverse tax consequences of receiving back pay as a lump sum. Complainant has the burden of establishing the amount of increased tax liability, if any. Once the Agency has calculated the proper amount of back pay, Complainant shall be given the opportunity to present the Agency with evidence regarding the adverse tax consequences, if any, for which Complainant shall then be compensated. The Agency shall provide to Complainant a clear and detailed plain language explanation of its back-pay calculations, including the calculation of all benefits provided to Complainant. The Agency shall also provide documentation supporting its calculations and information concerning who prepared the computations and any relevant Agency policy or Office of Personnel Management guidelines. The Agency shall provide Complainant with a reasonable opportunity to respond to its back pay and other calculations. Complainant must cooperate with the Agency in providing information requested by the Agency where the information is appropriate and relevant to calculating a back pay determination. If there is a dispute

regarding the exact amount of back pay and/or benefits, the Agency shall issue a check to Complainant for the undisputed amount. Complainant may file a petition for enforcement or clarification regarding the amount in dispute. The petition for clarification or enforcement must be filed with the Compliance Officer at the address referenced in the statement entitled "Implementation of the Commission's Decision."

3. The Agency shall conduct and complete a supplemental investigation on compensatory damages, including providing Complainant an opportunity to submit evidence of pecuniary and non-pecuniary damages. For guidance on what evidence is necessary to prove pecuniary and non-pecuniary damages, the parties are directed to EEOC Enforcement Guidance: Compensatory and Punitive Damages Available Under § 102 of the Civil Rights Act of 1991 (July 14, 1992) (available at [eeoc.gov](http://eeoc.gov)). The Agency shall issue a final decision appealable to the EEOC determining the appropriate amount of damages.
4. Within thirty (30) days of the date this decision is issued; the Agency shall post a notice in accordance with the statement entitled "Posting Order."
5. The Agency shall provide a minimum of eight hours of in-person EEO training to the responsible management officials, including S1, S2, S3, and S4.
6. Within sixty (60) days of the date this decision is issued, the Agency shall consider discipline against the responsible management officials, including S1, S2, S3, and S4. The Commission does not consider training to be a disciplinary action. The Agency shall report its decision to the Compliance Officer. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If the responsible management officials have left the Agency's employ, the Agency shall furnish documentation of their departure date(s).

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

#### POSTING ORDER (G0617)

The Agency is ordered to post at its Bureau of Land Management Twin Falls District facility copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital



format and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

#### ATTORNEY'S FEES (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), he is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of receipt of this decision. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

#### IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

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

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

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 (M0620)

The Commission may, in its discretion, reconsider this appellate decision if the complainant or the agency submits a written request that contains arguments or evidence that 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 for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration**. A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within 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).

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>.

Alternatively, complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless complainant files his or her request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the 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:

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RACHEL SEE  
Date: 2021.01.14  
16:07:26 -05'00'

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Rachel V. See  
Acting Executive Officer  
Executive Secretariat

January 14, 2021