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

Gerald A. Lewis a/k/a
Huey B.,[1]
Class Agent,

v.

Pete Buttigieg,
Secretary,
Department of Transportation
(Federal Aviation Administration),
Agency.

Appeal No. 2020000382
Hearing No. 560-2006-00235X
Agency No. 5-98-5097

DECISION

On August 8, 2019, Complainant, the putative Class Agent, through class counsel, filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from an EEOC Administrative Judge's Order dated May 13, 2019, concerning a class complaint of unlawful 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., decertifying the class. For the reasons that follow, the Commission AFFIRMS the Administrative Judge's Order.[2]

ISSUE PRESENTED

The issue presented is whether the EEOC AJ properly decertified the class due to failure to meet the regulatory criteria for a class complaint set out in 29 C.F.R. § 1614.204(a)(2).

BACKGROUND

Class Agent (CA1), a Procurement Analyst in the Small and Disadvantaged Business Utilization Program at the Agency's Mike Monroney Aeronautical Center (MMAC), in Oklahoma City, Oklahoma, filed a formal EEO complaint dated April 17, 1998, alleging that the Agency

[1] This case has been randomly assigned a pseudonym which will replace Class Agent's name when the decision is published to non-parties and the Commission's website.

[2] Because the Agency did not issue a final order within the time allotted by regulation, the decision of the Administrative Judge became binding on the Agency effective July 10, 2019. See EEO Management Directive for 29 C.F.R. Part 1614 (EEO MD-110) Chap. 9, § II(A)(1)(c).

discriminated against him on the bases of race (African American) and in reprisal for prior protected EEO activity when, on January 28, 1998, "Team Coordinators in AMQ-110, 200, and 300 were upgraded and promoted to FG-1102-14s, while my position which by law provides oversight over the Procurement function at the MMAC for the Small & Disadvantaged Business Utilization Program was not."

At the conclusion of the investigation, Class Agent was provided a copy of the investigative report and requested a hearing before an EEOC Administrative Judge (AJ). Prior to his hearing date, Class Agent moved to file a class complaint of discrimination. In a Motion to Intervene and for Class Certification, Class Agent identified a proposed class as all African American employees employed by the Federal Aviation Administration at the MMAC in a permanent position during the period of November 1, 1997, until the date of certification who were denied competitive and/or noncompetitive promotion to a GS-5 or higher position.

On August 26, 2003, an AJ denied class certification. On September 28, 2005, the Commission reversed the decision and granted class certification. Lewis v. Dep't of Transp., EEOC Appeal No. 01A40442 (Sept. 28, 2005); req. for recons. denied, EEOC Request No. 05A60191 (Nov. 29, 2005). We remanded the complaint to the Dallas District Office, directing the AJ to "issue a decision on the class complaint." Id. However, we noted that the AJ retained the discretion to redefine a class, subdivide it, or recommend dismissal upon discovery that there is no longer a basis to proceed as a class complaint. Id.

On January 4, 2007, the class definition expanded to include a class of African American external applicants asserting claims of discrimination in hiring decisions at the MMAC after February 6, 2001. A second putative class agent (CA2) was added.

The current class definition is as follows:

> Whether the Federal Aviation Administration at the Mike Monroney Aeronautical Center (MMAC) in Oklahoma City, Oklahoma discriminated against African American applicants during the period beginning February 6, 2001 to the present and African American employees occupying permanent positions during the period November 1, 1997 to present, who were denied [1] employment (in either temporary or permanent GS-5 or higher positions) or [2] promotion to a GS-5 or higher position (either competitively or non-competitively) due to the disparate impact of subjective promotion practices on the basis of their race.

Although the class certification order did not formally certify subclasses, the parties and the administrative judges presiding over the case referred to these as the "Hiring Class" and "Promotions Class," respectively.

As summarized in the class certification order, the Class Agents' theory of the case was that the adoption of the FAA Personnel Management System (FPMS) and bulletins implementing that system "gave the local employing agency so much 'flexibility' that they were completely

subjective without any meaningful standards." Lewis v. Dep't of Transp., EEOC No. 01A40442 (Sept. 28, 2005). According to Class Agents, this extreme flexibility resulted in both disparate treatment and disparate impact in the hiring and promotion decisions made by various hiring officials across the MMAC.

From 2006 to 2010, the parties engaged in fact discovery, including the production of thousands of documents and over 60 depositions. The parties conducted expert witness discovery from 2016 to 2017.

In 2011, the Agency sought decertification of the class under the Supreme Court's decision in Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011). The presiding AJ did not grant or deny the Agency's motion, finding that it was premature to rule conclusively on the motion to decertify prior to expert discovery.

In 2016, as part of their opposition to a motion to compel discovery filed by the Agency, the Class Agents represented "that the overall Personnel Management System is responsible for the discriminatory effect upon the class as a whole, and that this system, as such, is incapable of separation by specific policy." Relying on that representation, the AJ denied the Agency's motion to compel and ordered that "[a]ny effort by the Class Agents to initiate a focus on specific policies within the PMS after the Agency submits expert discovery responses must clearly demonstrate the basis for this shift in focus," and that "[s]hould the Class Agents later offer an evidentiary change of argument to include any specific focus on any policies within the PMS as discriminatory, apart from the whole PMS, there must be sufficient detail to demonstrate why any change in argument or position was not originally considered, what necessitated any change in position, and when such a change in argument occurred."

In 2018, the parties filed dispositive motions, including a renewed motion to decertify the class and motion to exclude Class Agents' expert witness. The presiding AJ did not rule on the motions prior to his retirement and the case was reassigned to a new AJ (AJ2) on July 30, 2018.

On May 13, 2019, AJ2 granted the Agency's motion to decertify the class and recommended that the class be decertified because Class Agents did not meet the class certification requirement of commonality as to either the Promotions Class or the Hiring Class, and further failed to meet the requirement of numerosity as to the Hiring Class.

With respect to commonality, AJ2 found the evidence underlying the disparate impact claims to be of questionable value as it related to the Promotions Class, and fatally defective as it related to the Hiring Class. In support, AJ2 stated that the Class Agents' expert utilized methods and data sets that depart from Commission expectations. Although AJ2 stated that he considered the expert's analysis, AJ2 did note that the Class Agents' expert was a professor of public affairs, not a labor economist, and this case was her first experience conducting statistical analysis. Additionally, AJ2 found that Class Agents failed to show that the subjectivity resulting in the disparate impact was exercised in a common way. Although Class Agents had claimed in their 2018 opposition to the Agency's motion for decertification that the question was whether "the

failure of MMAC management to properly train, review, or monitor in connection with the new discretion under the FPMS [led] to a disparate impact disfavoring African-American candidates selection decisions," AJ2 found that Class Agents had not timely attacked training, review, or monitoring and that, in any event, such claims would fail.

AJ2 found additional fatal defects with both the Hiring and Promotions Classes.

As to the Promotions Class, AJ2 found that Class Agents had failed to establish commonality because the class included both class members who were up for promotions and supervisors or managers who decided those same promotions. This created "inherent conflicts" of interest, given that "non-supervisory employees who were considered for certain promotions are in the position of alleging that other class members, who tended to be supervisors/managers, discriminated against them through their involvement in the decisionmaking process for those same promotions."

As to the Hiring Class, AJ2 found that numerosity had not been established, because the Class Agents had failed to show that more than two Hiring Class members could be identified even though discovery had concluded nearly a decade ago, in spite of relatively simple and inexpensive methods to identify additional class members.

CONTENTIONS ON APPEAL

On appeal, Class Agents contend that the AJ erred by decertifying the classes. First, Class Agents argue that the AJ violated the "law of the case" doctrine by overruling the prior decision certifying the class complaint, because the policy at issue and the way in which it was implemented remain the very same as when the Commission reviewed the matter. Second, Class Agents challenge the AJ's substantive conclusions. They assert that there is strong statistical evidence supporting continued certification of the class, as well as anecdotal evidence to support findings of class-wide disparate impact and disparate treatment. Additionally, Class Agents assert that AJ2's decision rejects the unifying claim: that the failure of MMAC management to properly train, review, or monitor in connection with the new discretion under the FAA Personnel Management System (FPMS) disparately impacted the selection of African American candidates at the MMAC. Class Agents do not challenge the holdings that conflicts of interest preclude certification of the Promotions Class and that they failed to establish numerosity for the Hiring Class

In response, the Agency contends that AJ2 properly decertified the class. The Agency asserts that statistical evidence does not support commonality and that AJ2 correctly found Class Agents' statistical evidence to be unreliable. Moreover, the Agency contends that AJ2 accurately found that there is no common selection process at the MMAC. According to the Agency, AJ2 properly rejected Class Agents' "training and monitoring" claim because Class Agents did not raise the claim until 2018, well after the close of discovery. The Agency asserts, however, that even if Class Agents could bring a new claim of a lack of training or monitoring, the record belies the claim because training and monitoring took place. Finally, the Agency maintains that AJ2 properly recognized that class conflicts preclude certification, and that the Hiring Class does not satisfy numerosity.

ANALYSIS AND FINDINGS

A class complaint is a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that: (1) the class is so numerous that a consolidated complaint of the members of the class is impractical; (2) there are questions of fact common to the class; (3) the claims of the agent of the class are typical of the claims of the class; and (4) the agent of the class, or, if represented, the representative, will fairly and adequately protect the interests of the class. 29 C.F.R. § 1614.204(a)(2).

EEOC Regulation 29 C.F.R. § 1614.204(d)(2) provides that a class complaint may be dismissed if it does not meet each of the four requirements of a class complaint or for any of the procedural grounds for dismissal set forth in 29 C.F.R. § 1614.107. The class agent, as the party seeking certification of the class, carries the burden of proof, and the class agent's obligation to submit sufficient probative evidence to demonstrate satisfaction of the four regulatory criteria. William G. v. U.S. Postal Serv., EEOC Appeal No. 2019001459 (May 23, 2019); Mastren, et al. v. U.S. Postal Serv., EEOC Request No. 05930253 (Oct. 27, 1993).

As noted in the prior decision, "the AJ retains the discretion to redefine a class, subdivide it, or recommend dismissal if it is discovered that there is no longer a basis to proceed as a class complaint." Lewis, et al. v. Dep't of Transp., EEOC Appeal No. 01A40442 (Sept. 28, 2005). While the Class Agents argue that AJ2 violated the law of the case by "simply look[ing] at the same information that OFO already determined to be sufficient for certification and overrule[d] OFO's decision," this is not a fair characterization of the decertification order. Our prior decision was based solely on the allegations and arguments prior to discovery, and did not preclude AJ2 from considering whether the full record after fact and expert discovery revealed that Class Agents could not satisfy one or more of the class certification requirements. See, e.g., Crazythunder v. Leavitt, EEOC Appeal No. 0120043485 (Aug. 23, 2007) (affirming decertification despite prior Commission order certifying class where "after completing discovery in this case, the class agent failed to satisfy the requirements of class certification").

Following a review of the voluminous record, we agree with AJ2's finding that after completing discovery in this case, the class agent failed to satisfy the requirements of class certification.

Hiring Class

AJ2 found that Class Agents failed to establish either commonality or numerosity for the Hiring Class.

Commonality requires that there be questions of fact common to the class; that is, that the same agency action or policy affected all members of the class. 29 C.F.R. § 1614.204(a)(2)(ii); Belser, et al. v. Dep't of the Army, EEOC Appeal No. 01A05565 (Dec. 6, 2001). The Class Agents must establish some evidentiary basis from which one could reasonably infer the operation of an overriding policy or practice of discrimination. Belser, et al. v. Dep't of the Army, EEOC Appeal

No. 01A05565 (Dec. 6, 2001). The underlying rationale of the commonality requirement is that the interests of the class members be fairly encompassed within the class agent's claim. Gen. Tel. Co. of Southwest v. Falcon, 457 U.S. 147, 156. (1982).

Class Agents' expert report was their principal evidence proffered to establish a basis for inferring class-wide discrimination. While federal courts of appeals are split on whether the admissibility test of Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), applies in full at class certification,[3] all appear to agree that, at a minimum, courts "should analyze the 'persuasiveness of the [expert] evidence presented' at the Rule 23 stage" and "may consider whether the plaintiff's proof is, or will likely lead to, admissible evidence," Sali, 909 F.3d at 1006 (quoting Ellis v. Costco Wholesale Corp., 657 F.3d 970, 982 (9th Cir. 2011)).

The Commission finds that AJ2 correctly concluded that deficiencies in Class Agents' expert evidence render it incapable of providing evidence of discrimination against the Hiring Class on a common basis. The Class Agents' expert compared the Agency's hiring to a proxy pool of all African-American residents in or near Oklahoma City, rather than comparing its hiring to qualified personnel on a position-by-position basis. In this case, given the number of positions within the Hiring Class that require specialized training or licensing (such as engineers, physicians, and pilots), the general labor market "was not the relevant labor market for the analysis since it contains individuals lacking the minimal qualifications for [many of the positions], which require[] special skills in a highly technical area." Kimble v. Daley, EEOC Appeal No. 1943056 (June 20, 1997). As AJ2 explained, "treat[ing] all African-American residents of Oklahoma City and the surrounding areas as equally qualified for the MMAC's warehouse and physician positions alike, regardless of their actual levels of education, training, and experience, artificially inflated the number of hypothetical African-American applicants eligible for the positions at issue to an unreasonable degree, and therefore invalidated the statistical conclusions drawn from [the expert's] analysis."

In response, Class Agents criticize the Agency's expert's approach of comparing positions "job category by job category" to the Census 2000 Special EEO File (now known as the EEO Tabulation), which is a "benchmark for comparing the racial, ethnic and gender composition of an internal workforce, within a specified geography and job category, and the analogous external labor market." U.S. Census Bureau, About the Equal Employment Opportunity Tabulation, https://www.census.gov/topics/employment/equal-employment-opportunity-tabulation/about.html. Class Agents argue that this approach ignores "the regularity with which people move from one job category to another." But as already explained, the Hiring Class here was not limited to positions with comparable prerequisites, and Class Agents' expert made no effort to distinguish between positions that required special qualifications and those that did not.[4]

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[3] Compare, e.g., Sali v. Corona Regional Med. Ctr., 909 F.3d 996, 1004-06 (9th Cir. 2018), with Prantil v. Arkema Inc., 986 F.3d 570, 575-76 (5th Cir. 2021)

[4] Class Agents alternatively argue that any shortcomings in their proxy pool should be excused as a sanction for alleged spoliation. As explained by AJ2, however, the record does not support Class Agents' allegations.

Thus, even if there may be cases in which grouping positions is appropriate, Class Agents did not establish that the class in this case can reasonably be analyzed in such a fashion.

As for numerosity, class agents must show that the class is likely so numerous that a consolidated complaint of the class members is impractical. 29 C.F.R. § 1614.204(a)(2)(i). While there is no minimum number required to form a class, and an exact number need not be established prior to certification, courts have traditionally been reluctant to certify classes with fewer than 30 members. See Carter v. U.S. Postal Serv., EEOC Appeal No. 01A24926 (Nov. 14, 2003). The Commission has held that the relevant factors to determine whether the numerosity prerequisite has been met are the size of the class, the geographical dispersion of the class, the ease with which class members may be identified, the nature of the action, and the size of each member's claim. Id.

AJ2 found that Class Agents had identified only two members of the Hiring Class by the close of discovery, and thus found the numerosity requirement unsatisfied despite Class Agents' estimate that the class likely contained 80 or more individuals. In general, class agents do not need to provide an exact number of class members or individually identify all class members in order to certify a class, and courts may "draw reasonable inferences from the facts presented to find the requisite numerosity." Barrett v. Garage Cars, LLC, 2024 WL 4069066, --- F. Supp. 3d ----, at *2 (D. Mass. Sept. 5, 2024) (quoting McCuin v. Sec'y of Health & Hum. Servs., 817 F.2d 161, 167 (1st Cir. 1987)). However, as the Commission has previously explained, "the ease with which class members may be identified" may in some circumstances be relevant to the numerosity inquiry. Carter v. Potter, EEOC Appeal No. 01A24926 (Nov. 14, 2003).

In their appeal, Class Agents do not offer *any* argument for overturning the AJ's conclusion that, on the unique facts of this case, the failure to identify more than two applicants after the conclusion of all discovery vitiates any reasonable inferences regarding numerosity. Accordingly, they have waived any such challenge. See, e.g., Renteria v. Donley, EEOC Appeal No. 0120071044 (May 15, 2009) ("We consider the failure to brief this issue on appeal as a waiver of these claims."). Further, even if not waived, we agree with AJ2's conclusion that the Class Agents have failed to establish that the class is so numerous that a consolidated complaint of the class members would be impractical. See 29 C.F.R. § 1614.204(a)(2)(i).

Promotions Class

AJ2 found that Class Agents failed to establish commonality for the Promotions Class. AJ2 based this conclusion on several grounds, including that Class Agents did not sufficiently demonstrate that the subjectivity in the FPMS was exercised in a common way; that the Promotions Class evidence, while not fatally flawed in the same way as the Hiring Class evidence, was so limited as to be "of minimal value"; and that intraclass conflicts prevented certification. Because the last of

these grounds, which Class Agents do not challenge on appeal, independently requires decertification, we need not reach the first two.[5]

As explained in the decertification order, the Promotions Class consisted not only of "employees who had been denied promotions, purportedly because of race discrimination," but also "supervisors/managers who made or in some manner contributed to the same purportedly discriminatory promotion decisions." "Without exception, these supervisors/managers testified that they did not discriminate in the course of their participation in the purportedly discriminatory promotion processes in question."

The Commission has previously held that classes challenging promotion decisions may suffer from fatal conflicts of interest where a substantial number of supervisors who made the challenged promotion decisions are within the proposed class. See Aleshia C. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120132664 (May 18, 2018). While there could be some circumstances in which a promotions class could be certified despite the presence of supervisors in the class, Class Agents do not suggest any basis for distinguishing Aleshia C. here. Indeed, they do not cite Aleshia C. at all, despite the decertification order's substantial reliance on the case, nor do they otherwise challenge or even acknowledge AJ2's conflict-of-interest holding. Accordingly, not only does this claim fail on the merits, but Class Agents have waived any such challenge. See, e.g., Renteria, EEOC Appeal No. 0120071044.

CONCLUSION

We find that the putative class does not meet the prerequisites for class certification, and therefore AFFIRM AJ2's decision to decertify the class due to failure to satisfy the regulatory requirements

[5] We do note one significant error in AJ2's analysis. AJ2 correctly found that Class Agents' arguments based on the Agency's alleged failure to train, monitor, or review personnel making hiring and promotion decisions were not timely raised. But the decertification order went on to assert that those theories could not support a discrimination claim even if timely raised, because "[t]raining officials not to use their subjectivity in a discriminatory manner, when employment discrimination is already prohibited by Agency policy and applicable federal civil rights laws, would have been an exercise in futility" and "monitoring/reviewing … would have occurred *after* any improper employment discrimination; as such, it could not have caused a disparate impact." This does not accurately reflect the law or the Commission's prior guidance. The existence of rules against discrimination on paper does not obviate the need to train employees on how to implement those rules. Similarly, monitoring and reviewing compliance can decrease the likelihood that violations will occur in the first place or go uncorrected. Cf., e.g., Vance v. Ball State Univ., 570 U.S. 421, 449 (2013) (noting relevance of "[e]vidence that an employer did not monitor the workplace"); Faragher v. City of Boca Raton, 524 U.S. 775, 808 (1998) (employer did not exercise reasonable care to prevent and correct discrimination where it "made no attempt to keep track of the conduct of supervisors"); see generally Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (Apr. 29, 2024), § IV.C.2-3 (discussing ways in which training and monitoring are relevant to an employer's liability).

of numerosity and commonality. The related individual complaint is REMANDED for further processing in accordance with the ORDER below.

ORDER

Within thirty (30) calendar days of the date this decision is issued, the Agency is directed to provide Complainant written notification that it will (or has already begun to) process his complaint in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall issue Complainant a copy of the investigative file with a notification of the appropriate rights within one hundred fifty (150) calendar days of the date this decision is issued, unless the matter is otherwise resolved prior to that time. If Complainant requests a final decision without a hearing, the Agency shall issue a final decision within sixty (60) days of receipt of Complainant's request.

A copy of the Agency's written notification of processing to Complainant and a copy of the notice that transmits the investigative file and notice of rights must be sent to the Compliance Officer as referenced below.

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 (M0124.1)

The Commission may, in its discretion, reconsider this appellate decision if 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 their request for reconsideration, and any statement or brief in support of their request, via the EEOC Public Portal, which can be found at https://publicportal.eeoc.gov/Portal/Login.aspx. Alternatively, Complainant can submit their 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, a 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 their 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(f).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0124)

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. 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 their 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:

RAYMOND WINDMILLER Digitally signed by RAYMOND WINDMILLER Date: 2024.12.30 12:02:55 -05'00'

Raymond Windmiller
Executive Officer
Executive Secretariat

December 30, 2024
Date