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*"Justice delayed is justice denied."*  
 -William Gladstone

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March 30, 2017


Equal Employment Opportunity Commission  
 Office of Federal Operations  
 P.O. Box 77960  
 Washington, DC 20013-8960

**RE: Ramsey Tuaua and Alex Rodriquez, as class representatives of similarly situated employees v. United States Marshal's Service (USMS), Agency no. USM-2010-0422, EEOC number 570-2010-01061X**

Dear OFO:

Attached is a case that came down from EEOC finding that class status for a case of racial discrimination against the Marshal's Service should be granted. It is significant because one of our claimants with identical claims, Tracey Bryce, is a class representative in that case as well as in the above referenced case that is on appeal before you with class claims of racial discrimination in promotion and hiring. These overlapping claims in both cases make this ruling relevant to the appeal.

Very truly yours,  
 SCOTT J. BLOCH, PA



Scott J. Bloch

xc: Steven Roque, Esq.  
 Mark L. Gross  
 Cyra O'Daniel, Esq., Agency EEO Director/Attorney:  
 Ramsey Tuaua; Alex Rodriquez, Tracey Bryce, and other class representatives  
 William Bloch, Esq.  
 Barbara Figari, Esq.

*Agency Ex. 4*

**SEE EEOC OFO  
DECISION  
BELOW  
DATED  
JANUARY 09,  
2018**



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

**Ramsey Tuaua et al., a/k/a**

**Valentine F.,<sup>1</sup>**

**Complainant,**

**v.**

**Jeff Sessions**

**Attorney General,**

**Department of Justice**

**(U.S. Marshals Service),**

**Agency.**

**Appeal No. 0120152623**

**Hearing No. 570-2010-01061X**

**Agency No. USM20100422**

**DECISION**

On July 21, 2015, Complainant, as putative class agent, timely filed an appeal from the Agency's April 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 **VACATES** the Agency's final decision and **REMANDS** the class complaint for further discovery.

**ISSUE PRESENTED**

The issue is whether the Administrative Judge (AJ) should have allowed additional discovery in this matter before ruling on whether to certify the class.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Detention Enforcement Officer (DEO) at the Agency's Los Angeles, California facility. The record reflects that the Agency has 94 Districts, corresponding to the federal judicial districts, throughout the United States and its territories. The Agency headquarters are located in

<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.

Arlington, Virginia. See Agency's Motion Opposition to Class Certification at p. 3 (Bates # 00054).

On May 7, 2010, Complainant contacted an EEO Counselor and requested counseling for a class complaint of discrimination. On or about July 9, 2010, Complainant filed a formal class complaint on behalf of DEOs at the Agency who were subjected to discrimination on the bases of their race (Non-Caucasian), age (over 40) and disability when:

1. USMS created policies, procedures, guidance and fitness standards which keep DEOs at low wages and encourage districts to utilize contract guards and deputies to take control over DEO duties;
2. DEOs were not given the same opportunity for advancement as Aviation Enforcement Officers (AEOs) even though they share the same GS-1802 series and are basically performing the same duties; and
3. The USMS created a fitness policy which makes it impossible for the majority of the GS-1802s to become deputies since the average DEO is over 40 years of age.

On August 3, 2012, an EEOC AJ granted Complainant's motion to amend the class complaint. Complainant attached 13 affidavits to its amended complaint, reiterating the above described issues and adding the following claims:

4. Class members have been treated less favorably in jobs, promotions, benefits, and duties when compared to similarly-situated individuals outside the protected class. Respondents have intentionally discriminated against the class on the bases of race, national origin and age;
5. Respondents' actions have created a disparate impact on class members by shutting them out of opportunities for promotion, overtime, pay increases, retirement benefits, duties, bonuses, awards and other privileges and benefits of employment on the bases of race, national origin and age;
6. Respondents have retaliated against class members including: writing them up, demoting them, singling them out for disciplinary treatment and threats and statements that they should retire early; and
7. Respondents have repeatedly refused to accommodate the class members and have retaliated against them due to operations, medical treatment or their need to take leave, and in other ways due to their disability.

Complainant seeks certification of a class pursuant to 29 C.F.R. Section 1614.204 with the class defined as all individuals who:

1. Applied for promotion to Senior or Supervisory Detention Enforcement Officer (DEO), Deputy United States Marshall (DUSM), or other 1811 classifications permitting advancement or promotion from DEO (GL-7 to GS-9, up to GL-11 to 13), and were not granted promotion or eligibility at any time in their careers from 1998 to the present.

2. Are members of those racial or ethnic groups, including African-American, Samoan, Asian-American, or Hispanic that the Agency treated less favorably with regard to their pay, promotions, duties, and other privileges and benefits of employment;
3. Are members of that class of persons over the age of forty, that the Agency treated less favorably in considering their pay, promotions, duties, and other privileges and benefits of employment.
4. Are members of that class of persons with qualified disabilities or handicapping conditions that the Agency treated less favorably in considering their pay, promotions duties, and other privileges and benefits of employment.

On August 3, 2012, the AJ also granted Complainant's Motion for Provisional Class certification on behalf of the class and ordered the parties to complete discovery. The AJ then ordered supplemental briefings on class certification. Complainant on behalf of the class submitted a Memorandum of Points and Authority in support of Complainant's Class Certification on July 24, 2014 and the Agency filed its Motion Opposing Class Certification on July 31, 2014. On August 20, 2014, Complainant on behalf of the class submitted a Reply to the Agency's Opposition.

#### *AJ Decision on Class Certification*

On February 18, 2015, the AJ issued a decision denying class certification. The AJ noted that the putative class alleged both systemic policy and practice allegations, as well as "across the board" allegations of discrimination. Specifically, the AJ found that complainant's policy and practice allegations were based on the following theories:

1. The Agency assigned Aviation Enforcement Officer (AEOs) a new job series (GS-1801) with a pay range of GS-7 to GS-12, while DEOs were limited to the GS-7 to GS-9 range;
2. The Agency's Fitness in Total (FIT) program, which requires applicants for DUSM positions to meet or exceed a 70% score on a Physical Efficiency Battery (PEB) consisting of a 1.5 mile run sit ups and push-ups, created a disparate impact on DEOs;
3. The Agency requirement that DEOs supervise at least three employees prior to promotion prevents DEOs from advancing into DUSM positions; and
4. The Agency policy that removed certain duties from DEO position descriptions, but required DEOs to continue to perform for lower pay, prevents DEOs from being promoted.

#### *Systemic Policy and Practice Claims*

In his decision, the AJ determined that the putative class failed to satisfy the typicality requirements for class certification with respect to its systemic policy and practice claims. The putative class alleged that the conversion of AEOs from the 1802 series to the 1801 series resulted in promotions for the AEO, whereas the DEOs were not similarly promoted. However, the AJ found no statistical evidence which would support an inference of

discrimination with respect to those AEOs who were converted versus those DEOs who were not converted. The AJ found no evidence which would demonstrate that there was an improper classification of the AEO position, or that it resulted in a disparate impact on any bases.

As for the claim with regard to the FIT program, the putative class alleged that the FIT standards created a disparate impact on DEOs who wished to be promoted to DUMS positions, because DEOs are disproportionately older and disabled. They further contend that they routinely perform DUSM job duties as DEOs, rendering the FIT standards unnecessary. However, after reviewing the claim regarding the FIT standards, the AJ found it was not timely raised with an EEO Counselor. Specifically, the AJ found that the FIT standards date back to 1995, and were later updated in 1999, 2003, and 2008. Accordingly, Complainant's EEO Counselor contact of May 7, 2010, was not timely with regard to this claim.

However, the AJ found that, assuming that the putative class had timely contacted an EEO Counselor, it nonetheless failed to satisfy the typicality requirements for class certification because the class failed to provide factual evidence supporting the notion that members applied for DUSM positions, but were rejected due to the Agency's FIT standards. The AJ also noted that there was no statistical evidence which would demonstrate that older and/or disabled DEO applicants were denied promotion to DUSM positions more often due to their failure to pass FIT standards. The AJ further found that there was insufficient evidence suggesting that DEOs with disabilities had a harder time passing the FIT standards. In sum, the AJ found the claim was based only on speculation and was largely unsubstantiated.

Likewise, the AJ also found the putative class's allegations regarding the "Rule of 3" and the agency's policy of hiring contract guards in lieu of promoting DEOs to be speculative and unsupported by evidence. The AJ noted that the class failed to provide factual evidence regarding incidents where class members were denied Lead or Supervisory DEO positions because of the Agency's alleged improper use of the "Rule of 3." Accordingly, the AJ found that the putative class agent failed to establish that his claims were typical of the putative class.

The final policy or practice claim alleged that the Agency reduced the DEO duties in its formal position descriptions, but required them to continue performing these duties. For example, the putative class alleged that it performed courtroom security, transportation of prisoners, warrant execution and even trained DUSMs; all duties they allege were not listed in their position descriptions. However, the AJ found insufficient evidence of any policy as described by the class.

### *Across the Board Claims*

Complainant also alleged that the class was subjected to "across the board" discrimination based on race, ethnicity, age, disability and reprisal. Specifically, Complainant alleged discrimination in promotion, pay, training, assignment of duties, benefits, failure to accommodate, retaliation, demotion, performance ratings and threats of discipline.

The AJ examined the affidavits submitted by thirteen of the class members and addressed whether there were any common issues of fact within each District they worked. The affiants worked in the Central District of California, District of Arizona, Eastern District of Missouri, District of Nevada, Southern District of New York, and the District of Columbia Superior Court. The affiants described promotions they were denied for various reasons, discipline they were issued, overtime they were denied, and other alleged discrimination. The putative class members averred that they were denied promotions and awards and were also subjected to retaliation. One class member alleged that he was denied promotions dating as far back as 2004, and was not selected for a DUSM position in 2011. Other putative class members did not provide facts detailing when they were denied promotions or when they failed their FIT tests.

After review of the evidence, the AJ concluded that Complainant failed to provide evidence that would establish there were common questions of fact throughout the class. The AJ found no evidence that any of promotional decisions were made by a centralized administration or other common decision makers. The AJ found no evidence of any similarly-situated individuals treated better, and in many cases, the class members failed to provide dates when they allegedly suffered discrimination. In sum, the AJ found that the class failed to satisfy the commonality and typicality requirements of certification. The AJ did not issue a ruling with respect to numerosity and adequacy of representative.

### CONTENTIONS ON APPEAL

On appeal, Complainant asserts the AJ erred when he determined the FIT claims were untimely filed, as it was the use of the FIT policy which triggered the time requirements. Complainant also argues that the AJ erred when he determined the class lacked commonality and typicality. Complainant asserts that statistics are not necessary in light of the evidence of policies and practices which resulted in a disparate impact on non-white DEOs who are over 40 and suffer from disabilities. Specifically, he contends that DEOs, which he claims as a group are 80% non-Caucasian, suffer from discrimination in pay and promotional opportunities due to the agency's creation of a new series and higher pay for AEOs but not for DEOs. He further contends that opportunities for promotion within the DEO (1802) series are limited by the agency's use of contract guards. Furthermore, he asserts that, although DEOs routinely perform DUSM jobs, they are not promoted to DUSM positions because of the agency's requirement that candidates pass the FIT test, which he asserts is unnecessary for the performance of the DUSM job. Complainant asserts that the agency has a nationwide practice of limiting of job functions in the DEO position descriptions, yet requires DEOs to work

outside of their position descriptions, often performing the same duties as DUSM but for less pay. Complainant contends that the remaining requirements for class certification also have been satisfied.

The Agency responds by arguing that there is no evidentiary basis supporting Complainant's claims, and asserts that the only unifying characteristic is that all class members are DEOs. The Agency asserts that AEOs do not perform the same job as DEOs, and that the reclassification was approved by the Office of Personnel Management. With respect to the FIT test, the Agency concurs with the AJ's finding that this claim was untimely filed. The Agency urges that, even if this claim were timely filed, Complainant failed to provide any documentary evidence that any member of the class was rejected from a DUSM position because he or she failed the FIT test. Likewise, Complainant failed to provide persuasive statistical evidence supporting his claim that 80% of DEOs are minorities, or were over 40 years of age at the time of their application to DUSM. In that regard, Complainant failed to provide evidence of non-Caucasians who applied for DUSM positions but were rejected; or the number of non-Caucasians who applied, were selected, but rejected those offers. The Agency maintains there is no centralized management over DEOs within the separate Districts and, consequently, all employment actions, including promotions, occur autonomously within each District. With respect to the disability claims, the Agency maintains there is no commonality as the members of the class all have different impairments and some suffer from no impairments at all. As for their age claims, the Agency notes there is insufficient evidence that the class members were over 40 at the time of their application for promotion.

### ANALYSIS AND FINDINGS

#### *Timeliness of Appeal*

As a preliminary matter, we note that the Agency filed a Motion to Dismiss the Appeal because it was untimely filed. In response, Class counsel submitted a declaration stating that the AJ issued his decision on February 18, 2015, but he did not receive the agency's Final Order until July 14, 2015. He added that he had informed the Class Agents that they could not appeal until the Agency issued its Final Order. Hearing nothing from the Agency, the Class Agent ultimately contacted a Senator for assistance. On July 13, 2015, the Class Agent was informed by the Senator's office that a decision had been issued on April 2, 2015. On request from Class counsel, the Agency counsel sent Class counsel the final order on July 14, 2015. This appeal followed on July 21, 2015. The Agency argues that the appeal is untimely and should be dismissed. We disagree. The Agency concedes that it initially mailed its Final Order to an outdated address for Class Counsel. When a Complainant is represented by an attorney, the 30-day time period to file an appeal is calculated from the attorney's receipt of the required document. 29 C.F.R. § 1614.402 (b). When there is an issue of timeliness, the "agency always bears the burden of obtaining sufficient information to support a reasoned determination as to timeliness." Kelly v. U.S. Postal Serv., EEOC Request No. 05A00985 (Sep. 26, 2002) (quoting Guy v. Dep't of Energy, EEOC Request No. 05930703 (Jan. 4, 1994)). Further, "the agency has the burden of providing evidence and/or proof to support its



final decisions.” Kelly, EEOC Request No. 05A00985. Although the Agency provided a declaration from staff purporting to prove that it personally handed a copy of the Final Order to one of the Class Agents on or about April 11, 2015, we are not persuaded. We find there is insufficient evidence that Class counsel received the Final Order until July 14, 2015.

#### *Timeliness of EEO Counselor Contact – FIT Standards*

In his decision, the AJ found that Complainant did not timely contact an EEO Counselor to allege that the Agency’s FIT program was discriminatory. However, the Commission finds that the AJ erred in so finding. The regulation set forth at 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination be brought to the attention of an Equal Employment Opportunity Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) days of the effective date of the action. The Commission has adopted a reasonable suspicion standard (as opposed to a “supportive facts” standard) to determine when the forty-five (45) day limitation period is triggered. See Howard v. Dep’t of the Navy, EEOC Request No. 05970852 (Feb. 11, 1999). Thus, the time limitation is not triggered until a complainant reasonably suspects discrimination, but before all the facts that support a charge of discrimination have become apparent. Although the AJ found that the Agency’s medical standards were created years before Complainant contacted an EEO Counselor, one of the putative class members alleges that he was recently denied a promotion because of his failure to meet FIT standards due to his disability. We therefore find that the Agency has not met its burden of proving that this claim was untimely raised. See Kelly, EEOC Request No. 05A00985.

#### *Class Certification*

The purpose of class action complaints is to economically address claims “common to [a] class as a whole . . . turn[ing] on questions of law applicable in the same manner to each member of the class.” Gen. Telephone Co. of the Southwest v. Falcon, 457 U.S. 147, 155 (1982). Under EEOC regulations, a class complaint must allege that: (1) the class is so numerous that a consolidated complaint concerning the individual claims of its members is impractical; (2) there are questions of fact common to the class; (3) the class agent’s claims 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). The AJ may reject a class complaint if any of the prerequisites are not met. 29 C.F.R. § 1614.204(d)(2).

#### *Commonality and Typicality*

The purpose of the commonality and typicality requirements is to ensure that a class agent possesses the same interests and has experienced the same injury as the members of the proposed class. See General Telephone Co. of Southwest v. Falcon, 457 U.S. 147 (1982). Both commonality and typicality serve as guideposts for determining whether, under the circumstances, maintenance of a class action is economical and whether a proposed class agent

and the remaining potential class members' claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence. *Id.* While these two criteria tend to merge and are often indistinguishable, they are separate requirements. *Id.* 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. *Garcia v. Dep't of the Interior*, EEOC Appeal No. 07A10107 (May 8, 2003). Typicality, on the other hand, requires that the claims or discriminatory bases of the class agent be typical of the claimed bases of the class. *Id.* A class agent must be part of the class he seeks to represent, and must "possess the same interest and suffer the same injuries" as class members. *Falcon*, 457 U.S. at 160. Moreover, claims must be sufficiently typical to encompass the general claims of the class members so that it will be fair to bind the class members by what happens with the class agent's claims. *Conanan v. Federal Deposit Insurance Corp.*, EEOC Appeal No. 01952486 (Jan. 13, 1993) (citing *Falcon*, 457 U.S. at 156). The underlying rationale of the typicality and commonality requirement is that the interests of the class members be fairly encompassed within the class agent's claim. *Falcon*, 457 U.S. at 147.

Complainant has alleged that several Agency-wide policies contributed to class discrimination: (1) conversion of AEOs to 1801 job series with a salary range of GS-7 to GS-12, whereas DEOs are limited to GS-7 to GS-9; (2) Agency FIT standards, the passage of which is required for promotion to DUSM; (3) Agency requirement that DEOs supervise three employees prior to promotion; (4) Agency policy of limiting formal job duties of DEOs while requiring them to perform the same duties of DUSMs for less pay.

After a review of the record, we find that the AJ erred in failing to certify the class of employees rejected for promotion to DUSM because they could not meet the Agency's FIT Program standards. Complainant alleges that the application of the FIT standards creates a disparate impact based on the putative class members' age and disability status. The record contains three versions of the Agency's Training Standards or Training Curriculum for all operational positions, including AEO/DEOs (Series 1801/1802), and DUSM (Series 082/1811). For those merit-promotion candidates who convert from a DEO position (series 1801/1802) to a DUSM (series 082), candidates must successfully pass the Personal Efficiency Battery (PEB). Specifically, candidates must meet or exceed the minimum score in the three core elements of the PEB: sit ups, push-ups and 1.5 mile run. See USMS Training Program Directive No. 2 (May 20, 2009).

The affidavits submitted in the record contain anecdotal testimony supporting the allegations that individuals were either rejected for the DUSM positions because of their failure to meet FIT standards, or did not apply for DUSM positions because they were told they could not pass the test. The putative class members assert that they already perform many of the job functions of a DUSM, and claim this is evidence that the FIT standard is not related to the performance of the job. The putative class members claim that the FIT standard discriminates against them because of their age and/or disability status.

The AJ in this case declined to certify the class based on this policy because he determined that the putative class did not satisfy the commonality requirement. Specifically, the AJ found that the putative class failed to provide specific description of events, including dates, times and copies of their applications, including failed FIT scores which demonstrate they applied but were rejected because of their age and/or disability status. See AJD at p. 10. However, we note that during discovery, Complainant submitted the following request for production:

REQUEST FOR PRODUCTION No. 46:<sup>2</sup>

Any and all documents that relate to rejection of any application of a DEO for promotion to DUSM since 1995.

RESPONSE:

Objection. This request is irrelevant, unduly burdensome, and seeks information not calculated to lead to admissible evidence. Without waiving objection, see attached documents for Merit Promotion Announcement Number 11-001 and Vacancy Announcement Number 10-001.

Accordingly, after a review of the record, we find that the AJ should have required the Agency to provide the requested documentary evidence, including vacancy announcements and selection criteria, relating to Complainant's claim that the Agency's policy of using contract guards limited DEOs from promotion to the DUSM position. In addition, Complainant should have an additional opportunity to conduct discovery in this matter in those areas needed with regard to the claim that AEOs were reclassified to higher grades positions, but similarly situated DEOs were not, or with regard to it claim that DEOs perform the DUSM job for less pay.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we VACATE the AJ's decision and ORDER additional discovery to be undertaken. The Agency is directed to comply with the ORDER below.

ORDER

Within 30 calendar days from the date this decision becomes final, the agency shall forward the entire record to the Hearings Unit of the Washington Field Office. In its transmittal letter, the Agency shall request that an Administrative Judge be assigned for the purpose of undertaking additional discovery and to issue a new decision on Class Certification. The AJ

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<sup>2</sup> This request appears to have been mistakenly identified as in the record as Document Request 46, instead of Document Request 48.

shall conduct additional discovery in order to obtain information currently absent from the record, including, but not limited to, documentation relating to DEO applicants who applied for promotion to DUSM but were rejected; the reason for rejection; their age and whether they had a disclosed physical or mental impairment; information concerning whether they passed the agency's FIT standards during the period of time identified by the AJ; and whether they were rejected because they did not have experience supervising the requisite number of officers. The AJ shall allow further discovery in accordance with this decision. The transmittal letter will also request that the AJ render a new decision on the issue of class certification, pursuant to 29 C.F.R. § 1614.204, upon completion of this discovery phase.

#### IMPLEMENTATION OF THE COMMISSION'S DECISION (K0617)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report within thirty (30) calendar days of the completion of all ordered corrective action. The report shall be in the digital format required by the Commission, and submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated. See 29 C.F.R. § 1614.409.

#### STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0617)

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

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

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) within thirty (30) calendar days of receipt of this decision. A party

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

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

#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

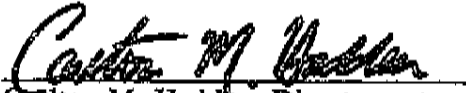
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court within ninety (90) calendar days from the date that you receive this decision. In the alternative, you may file a civil action after one hundred and eighty (180) calendar days of the date you filed your complaint with the Agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. Filing a civil action will terminate the administrative processing of your complaint.

#### RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission. The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the

time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director  
Office of Federal Operations

JAN 09 2018  
Date

**CERTIFICATE OF MAILING**

For timeliness purposes, the Commission will presume that this decision was received within five (5) calendar days after it was mailed. I certify that this decision was mailed to the following recipients on the date below:

Ramsey Tuaua  
823 N Phillips Ave  
West Covina, CA 91791

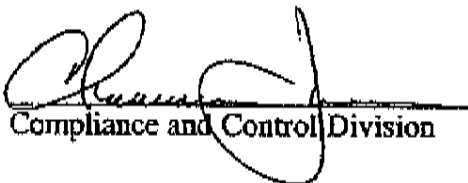
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JAN 09 2010

Date

  
Compliance and Control Division

