



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

[REDACTED]
Angella F.,¹
Complainant,

v.

Dr. Mark T. Esper,
Secretary,
Department of the Army,
Agency.

Appeal No. 0120172081

Hearing Nos. 490-2013-00198X, 490-2016-00148X, 490-2017-00031X

Agency Nos. ARCELROCK12JUN02357, ARCELROCK12JUN02357,
ARCELROCK12JUL02808, ARCELROCK13JAN00270, ARCELROCK15MAR01253,
ARCELROCK15MAY01983

DECISION

On May 25, 2017, 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 April 28, 2017 final decision concerning her equal employment opportunity (EEO) complaints 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. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. The Commission's review is de novo. For the following reasons, the Commission AFFIRMS the Agency's final decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Management Analyst, GS-11, at the Agency's U.S. Army Corps of Engineers, Resource Management Office in Little Rock, Arkansas.

This decision addresses several complaints Complainant filed with the Agency. A brief overview of the procedural history is warranted before we address the claims and facts. After Complainant

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

requested a hearing on her earliest complaints, Complainant requested permission several times from the EEOC Administrative Judge (AJ) to amend her complaint. Often, the AJ concluded that Complainant's request was more properly a request to file a new complaint and directed the Agency to process these claims as such. After the Agency completed its investigation into these later complaints, Complainant requested a hearing. To promote judicial efficiency, all complaints, which were variously assigned the three hearing numbers captioned above, were consolidated before the same AJ. We now turn to the allegations posed by each complaint.

ARCELROCK12JUN02357, ARCELROCK12JUL02808, ARCELROCK13JAN00270

In these three complaints, the earliest of which was filed on July 27, 2012, Complainant alleged that the Agency discriminated against her on the bases of race (African-American), sex (female), color (Brown), age (51), and in reprisal for prior protected EEO activity when:

1. Negative comments were made regarding her age and the need to babysit her.

Complainant avers that she was subjected to mocking and laughing by employees in her work area. Complainant specifies that her immediate supervisor (S1) said that he needed to babysit Complainant during an assignment. On May 9, 2012, S1 asked Complainant if she was feeling old the day after her birthday. Complainant claimed she reported these remarks to her second-line supervisor (S2), but nothing was done.

S1 discussed the "babysitting" remark and said that he was trying to leave for the day and catch his carpool when Complainant tried to keep him at work. S1 then uttered the remark. S1 denied that he meant it as an insult, but rather as a term indicating careful step-by-step instructions to help understand a procedure. S2 concurred in S1's version of the events and believed S1 was frustrated because he needed to catch his carpool. The record contains an email from S2 to Complainant explaining that if she felt like she was subjected to unlawful harassment, she should contact the Agency's EEO office.

Complainant's fourth-line supervisor (S4) was informed of Complainant's allegations that she was being subjected to a hostile work environment. He informed the Agency's EEO department and ensured that a Commander's informal inquiry was conducted. According to S4, the inquiry did not yield any evidence of harassment.

2. Complainant was denied training.

Complainant stated that S1 approved her request to go to Enhanced Defense Financial Management Training in April 2011. Complainant was not initially accepted into the class, but received last minute notification that a slot was available for her on June 7, 2012. However, S1 denied Complainant's request to attend training at that time.

S1 explained that the Agency had a comprehensive request for manpower data that fell in Complainant's area of expertise and required her assistance. Because the timing of this request

conflicted with the course, S1 made the decision to deny Complainant's request to attend the course. S2 concurred with S1.

3. Complainant's position description (PD) was not reviewed for an upgrade.

Complainant explained that she had been working with S1 and S2 to submit a revised position description to determine whether she was doing work that warranted a promotion to the GS-12 level. Complainant contended the position description she was working under did not accurately reflect her duties.

S1 explained that he attempted to work with Complainant over a period of time to update her job description. When it came time to submit the revised description, Complainant wanted to make last minute changes. This resulted in multiple email exchanges and revisions between Complainant and S1 over what was properly in the position description. S1 and Complainant could not agree on these changes so they presented the issue to S2.

S2 explained that Complainant's suggested edits to the PD did not accurately describe her duties, and he provided Complainant with a PD that she could submit. Complainant chose not to submit the PD.

4. Complainant was not reimbursed for a textbook.

The record reveals that Complainant purchased two textbooks and S2 approved reimbursement for the textbooks. However, when the reimbursement form was submitted to the Agency's finance center, the finance center denied the reimbursement because Complainant was not in an approved degree program. The record demonstrates that S2 made several attempts to assist Complainant with her reimbursement to no avail.

5. Complainant received confrontational emails from her supervisor (S1).

In this claim, Complainant alleged that on October 26, 2012, S1 jumped up from his desk, was angry, and threatened Complainant. Complainant then asked coworkers if they heard S1, but they refused to acknowledge the situation. After Complainant provided management with a doctor's note indicating she was suffering increased stress from the workplace environment and would benefit from a transfer, the Agency worked out a temporary detail, and Complainant began working under another supervisor.

S1 denied sending Complainant confrontational emails or being confrontational with Complainant. Rather, Complainant was confrontational with him and called him the "devil." The record contains multiple emails between Complainant and S1. The record also contains statements from two of Complainant's co-workers who confirm that she called S1 the "devil."

6. On December 13, 2012, S1 lowered Complainant's performance rating from a 2, denoting "Excellence," to a 3, denoting "Success All or Excellence," in reprisal for filing her prior complaints.²

Complainant contends that S1 improperly lowered her performance rating because her work did not change and she still produced the same quality work.

S1 disputed that her work did not change and avers that each annual rating is based on the work done that year, without regard to the work done in previous years. S1 stated that Complainant had documented performance deficiencies and complaints from customers. S2 concurred with S1 regarding Complainant's performance and the rating issued.

ARCELROCK15MAR01253, ARCELROCK15MAY01983

In these complaints, Complainant alleged that she was discriminated against and subjected to a hostile work environment based on her age, sex, and in reprisal for prior protected EEO activity when:

7. On March 10, 2015, the Agency did not select Complainant for the Management Analyst, GS-11/13 position, Vacancy Announcement NCFL143991581268886.

The selecting official (SO) provided a narrative regarding her consideration for this position. She held two 30-minute telephonic interviews with all four candidates. Three members of her staff conducted the first interview, and she conducted the second interview with two members of the prior panel and another member of her staff. Each candidate was asked the same set of questions. At the end of the second interview, she informed each candidate that she would be contacting the candidate's supervisor for references. Each supervisor was asked the same set of questions. She received mixed references for the selectee. As to Complainant, she received nothing negative that would have swayed her decision. SO stated that Complainant contacted her first to say that she had filed an EEO complaint and asked that she not contact Complainant's current supervisor. Additionally, each member of the interviewing panels scored each candidate according to a matrix. The selectee scored the highest on the matrix while Complainant scored the lowest. In the days prior to making an offer to the selectee, SO stated that she received unsettling emails from Complainant, and attached them for the record. In one of these emails, the SO indicated that Complainant called her at home regarding the interviews.

Complainant insisted that she informed SO not to contact her supervisor, S1, and that S1 was biased against her.

² The record indicates that the Agency's rating scale ranges from "Excellence" or 1 to "Fails One or More Objectives" or 5. An overall rating of 1, 2, or 3 falls in the "Successful" range, a 4 equals "Fair," and a 5 is "Unsuccessful."

8. On April 1, 2015, the Chief of the Resource Management Office, Complainant's second-line supervisor at the time (Chief), stated that the Agency's organizational chart had numerous errors and instructed Complainant not to distribute it but Complainant had already distributed the chart.

Chief affirmed that Complainant's allegation was false, and that it was Chief's responsibility to give instructions to a subordinate.

9. On April 2, 2015, Chief accused Complainant of not doing her work and attempted to charge Complainant with Absent Without Leave (AWOL) when Complainant asked to use the conference room for EEO business.

This claim appears to be the same claim as alleged in claim (13).

10. On April 6, 2015, Chief interceded in granting Complainant an extension until April 24, 2015, regarding the Manpower Control Little Rock District 570 Regulation, and acted as though an explanation from Complainant was argumentative.

Chief stated that Complainant was granted an extension by the Budget Officer until April 17, 2015, but Chief had no other involvement in the matter.

11. On April 14, 2015, the Budget Officer (BO), Complainant's first-line supervisor at the time, told Complainant not to communicate and disseminate with District Managers, Programs and Project Management Division (PPMD) Chiefs and Programs and Project (P2) Schedulers regarding the Fiscal Year (FY) 2016 Corps of Engineers Report assignment, which Complainant believed was conflicting guidance.

BO stated that Complainant had previously been told by S1 and Chief to ensure that all work-related emails should be reviewed by BO or Chief prior to dissemination.

12. On April 15, 2015, Chief forwarded Complainant an email instructing that she was only to list training on her Individual Development Plan, and BO was hostile in her email communications and falsely accused Complainant of having wrong formulas in a template created by S1.
13. On April 17, 2015, Chief required Complainant to use an OPM Form 71 to complete EEO matters/leave and stated, "your time away is considered AWOL," but on the same date, the EEO Specialist intervened to prevent this from happening.

In this email, Chief references Army Regulation 690-600. According to Chief, AR 690-600 only permitted EEO time if Complainant requested the absence in advance on a Form OPM-71, and Complainant's supervisor approved the absence. If Complainant failed to follow these procedures, Chief said that Complainant's time would be considered AWOL. Complainant explained that she

received a phone call from the EEO office and needed to step away for privacy. However, Chief explained – and Complainant does not deny – that Complainant told Chief she needed privacy for a “work phone call.”

The emails in the record demonstrate that, contrary to Complainant’s statement, Complainant was aware in advance that she needed the conference room a day in advance. The EEO investigator emailed Complainant seeking an appointment to discuss the case, and the two scheduled the telephone call for the following day.

Chief also explained that it was her preference that any time an employee is not performing their duties, the employee needs to request time to be away, and Chief preferred to use OPM Form 71 to document such time.

14. On April 20, 2015, Chief and BO sent out the FY2016 Manpower Requirement Systems Report, Corps of Engineers Manpower Requirement Systems (CEMRS) for concurrence from Managers, but left off the justification process, causing delays and making Complainant look incapable and non-responsive.

All managers to whom the report was disseminated concurred in the report. In her response, Chief notes that, on a typical day serving as Complainant’s second-line supervisor, Chief received 10 to 20 argumentative and subordinate emails. Chief stated that she received multiple emails from Complainant about CEMRS and only responded by telling Complainant to go ahead and proceed on the matter.

15. On April 22, 2015, Chief made false statements and sent disruptive, ugly, and insulting emails to intimidate Complainant about her work; acted as though Complainant was holding up work; did not want Complainant to communicate outside the RM office; and perceived Complainant’s emails as confusing and running out of time.

In response to the email, Complainant alleged she was being subjected to retaliation and discrimination. Chief then suggested that Complainant contact the Agency’s EEO office if she felt that way. In her affidavit, Chief again denied sending disruptive emails to Complainant and clarified that she was solely concerned with Complainant sending poorly-worded emails with incorrect grammar and misspellings to district and division managers.

16. On April 23, 2015, Chief subjected Complainant to disparate treatment because she required the resubmission of Complainant’s Individual Development Plan (IDP) and still did not approve the IDP for training, and BO pretended that Complainant had not given her the update to concurrence for the CEMRS report.

On March 22, 2015, Chief informed the office that all IDPs needed to be completed and approved by April 15, 2015. Complainant did not submit anything but a draft of the IDP until late in the afternoon on April 15, 2015. Despite the lateness of her draft IDP, Chief said they continued to

work on the IDP on April 16, 2015, beyond the deadline, but Complainant did not agree with the changes in the IDP. SO explained that Complainant had listed classes that she could not take due to funding laws and she tried to work with Complainant to locate appropriate classes. Complainant never provided a corrected IDP. Regarding the concurrence for the CEMRS report, SO denied pretending that she never received anything and merely asked Complainant for an update as to who had concurred in the report.

17. On April 27, 2015, BO subjected Complainant to “supervisor’s unavailability” which resulted in Complainant being assigned work that BO’s group was responsible for.

Complainant emailed BO to say that Complainant had called BO twice and she was not at her desk. BO stated that she was in meetings all day and did not see that Complainant had called her.

18. On April 30, 2015, Chief did not allow the customer service survey Complainant developed to be used to obtain feedback of manpower and Chief sabotaged Complainant’s work and initially denied Complainant permission to submit a response to the inquiry for the CEMRS report.

Chief explained that Complainant’s survey was unauthorized, poorly formatted, and poorly prepared. Moreover, Chief stated that, to her knowledge, no employee has been authorized to develop their own surveys and send them to coworkers and supervisor at will. Chief further explained that any such surveys would have to be developed by an independent, neutral party, which Complainant was not.

19. On May 1, 2015, Chief chastised and deliberately acted hostile toward Complainant about sending the Variance Report and Justification sheets to a Management Analyst although BO gave her direction and permission to send the report.

Chief denied this allegation.

20. On May 5, 2015, Chief stated in a patronizing manner that an Integrated Manning Document (IMD) dated April 23, 2015, was posted on the Agency’s shared drive.

Chief denied any discriminatory or harassing intent and rehashed the facts as laid out in the email chain. Chief contended that Complainant was being insubordinate through this process by sending emails outside of the office without her or BO’s prior approval.

21. On May 6, 2015, Chief made demeaning comments regarding the organization charts and Manpower Control Regulation; made false, vicious statements; plotted against Complainant; provided Complainant conflicting guidance toward adherence to job standards; and subjected Complainant to disparate treatment when she denied review of the Army Management Structures Code Review (AMSCO) for Fiscal Year 2015.

Chief denied plotting against Complainant and explained that Complainant was simply told not to complete another review because she had just finished the previous quarter's review a few weeks earlier.

22. On May 15, 2015, Chief stated to Complainant, "if you have not been maintaining the organization charts current, then you have not been maintaining them in accordance with the standards of your job" and "not having the Defense Civilian Personnel Data System [DCPDS] access does not preclude you from doing your job."

Chief asserted that she was making a statement of fact.

23. On May 20, 2015, BO and S1 decided to add a memo to the routing of the FY 2016 Commander's Impact Statement, then acted like Complainant made a mistake when BO stated that Complainant had resubmitted a corrected final version of this product.
24. On May 21, 2015, Chief alleged that Complainant had not provided a corrected package for the FY 2016 Commander's Impact Statement and wanted a memo for the Commander, which was not required by the Southwest Division;

While her complaints were with the AJ, the AJ accepted the following amendments based on Complainant's race, sex, and in reprisal for prior EEO activity:

25. On June 16, 2015, Chief recommended false charges against Complainant that resulted in a three-day suspension, from June 17, 2015 to June 19, 2015;
26. On June 16, 2015, a Major issued a Decision Letter of Suspension and did not afford Complainant the opportunity to speak with him orally;
27. An Administrative Support Assistant lied with Chief, often joked with S1, and worked against Complainant to damage her career and livelihood; and
28. On August 26, 2015 through September 3, 2015, Complainant served a seven-day suspension for the false charges Chief lodged against her, and enforced by S2.

The seven-day suspension referred to many of the above discussed events. As grounds for suspension, Complainant told Chief to "just stick it." The suspension also referred to two instances in which Complainant failed to follow Chief's instructions. Complainant received a seven-day suspension because she had already been suspended for three days (as noted in claim (25)), and prior to that, had received a Letter of Reprimand on January 29, 2015, and a Letter of Counseling on December 8, 2014.

29. On September 14, 2015, Complainant learned that Chief denied Complainant's request for eight hours of sick leave and charged Complainant with AWOL although Complainant submitted a doctor's statement supporting the September 9, 2015, leave request; and
30. On September 15, 2015, Chief placed Complainant on a Performance Improvement Plan (PIP).

The PIP stated that Complainant's performance was unacceptable in eleven separate areas, and two additional areas needed improvement.

The Hearing Stage

The hearing record contains multiple discovery motions by both Complainant and the Agency. As a result of some of these motions, the AJ issued sanctions against Complainant for failure to adequately respond to the Agency's discovery requests. Part of these sanctions involved barring Complainant from presenting certain evidence in support of her case.

Just before the hearing, Complainant retained new counsel. As a result, the AJ convened the hearing for the purpose of providing Complainant's attorney with the procedural posture of the case. The AJ also sought to impress on Complainant's attorney that the AJ had issued sanctions against Complainant and did not wish to issue further sanctions. Further, the AJ suggested that Complainant and her attorney might want to explore withdrawing the hearing request and pursuing relief in Federal Court. Subsequently, Complainant sent two emails to the AJ, her attorney, and to opposing counsel. Both emails were unprompted.

The first email contained Complainant's "corrections" to the hearing. These "corrections" contained several thinly veiled suggestions that the AJ and her own attorney acted unethically. The second notified all parties that Complainant was terminating her attorney's representation. As a result of the "corrections" email, the AJ ordered Complainant's attorney and opposing counsel to independently provide their recollections of the hearing. A review of these recollections demonstrate that they were all consistent, and collectively sharply diverge from the version presented in Complainant's email. As a result, the AJ concluded that Complainant lied to the AJ, and that her allegations "have diverted scarce judicial resources away from not only her case but also other litigants' cases." The AJ concluded that the only appropriate sanction was to dismiss Complainant's request for a hearing. The AJ remanded the complaint to the Agency.

The Agency first issued a final decision pursuant to 29 C.F.R. § 1614.110(b) on April 28, 2017, which Complainant appealed. The Agency informed the Commission that it was revising the final decision and urged the Commission to place in abeyance its decision until the Agency could issue a revised decision. On July 28, 2017, the Agency issued its revised decision. The decision concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

Specifically, the Agency concluded that Complainant did not sufficiently demonstrate that she was subjected to a hostile work environment. As to all discrete acts presented in the various complaints, the Agency concluded that Complainant failed to establish a prima facie case of discrimination, and even if she had, the individuals involved all articulated legitimate, non-discriminatory reasons for their actions. Because Complainant was unable to rebut these reasons, the Agency found that Complainant had not been subjected to discrimination, reprisal, or a hostile work environment as alleged. The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant argues that the last attorney she retained to represent her collaborated with the AJ and Agency attorneys by failing to respond to the Agency's discovery requests. Further, Complainant asserts several objections concerning the EEOC hearing process. Complainant contends that complainants are not ordinarily asked to write summary judgment motions, the AJ refused to return her telephone calls, the AJ was supposed to hold a settlement hearing, and the Agency refused to respond to discovery requests. Complainant also raises concerns about other complaints that are not currently before the Commission. For the first time in this matter, Complainant suggests that she was denied a reasonable accommodation.³

ANALYSIS AND FINDINGS

The AJ's Dismissal of Complainant's Hearing Request

As a preliminary matter, the Commission will first address the AJ's dismissal of Complainant's hearing request as a sanction for her conduct while the matter was pending before the AJ. The Commission notes that Commission regulations and precedent provide AJs with broad discretion in matters relating to the conduct of a hearing, including the authority to sanction a party for failure, without good cause shown, to fully comply with an order. See 29 C.F.R. § 1614.109(e); Equal Employment Opportunity Commission Management Directive 110 for 29 C.F.R. Part 1614 (EEO MD-110), at Ch. 7 (Aug. 5, 2015). However, such sanctions must be tailored in each case to appropriately address the underlying conduct of the party being sanctioned. A sanction may be used to both deter the non-complying party from similar conduct in the future, as well as to equitably remedy the opposing party.

We note that the attorney to whom Complainant refers in her appeal was her attorney of record for only two weeks before Complainant fired her. To the extent that Complainant is claiming ineffective assistance of counsel, the Commission notes that when a complainant has voluntarily entrusted representation to an attorney, she may not avoid the consequences of her choice by arguing that the attorney did not perform the attorney's duties in a competent manner. See Kennedy v. U.S. Postal Serv., EEOC Request No. 05950157 (Aug. 10, 1995). The Commission further

³ As this is the first time in this matter that Complainant raised the issue of any failure to accommodate, we will not address it in this decision.

emphasizes that a complainant shall at all times be responsible for proceeding with the complaint whether or not she has designated a representative. 29 C.F.R. § 1614.605(e).

Upon review, the Commission finds that the AJ did not abuse her discretion in dismissing Complainant's request for a hearing as a sanction for Complainant's conduct. The Commission finds that the AJ properly exercised her authority to dismiss Complainant's hearing request as a sanction. A careful review of the hearing record demonstrates that Complainant's arguments on appeal are without merit. Furthermore, the Commission finds that the AJ's comment to Complainant's attorney regarding the option of withdrawing Complainant's hearing request amounted, at best, to harmless error. The record makes clear that the AJ simply acted in an effort to assist, rather than harm, Complainant's case. Accordingly, the Commission finds no evidence that the AJ abused her discretion in the manner in which she managed and adjudicated this case.

Hostile Work Environment

To establish a claim of harassment a complainant must show that: (1) she belongs to a statutorily protected class; (2) she was subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on her statutorily protected class; (4) the harassment affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982). Further, the incidents must have been "sufficiently severe or pervasive to alter the conditions of [complainant's] employment and create an abusive working environment." Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993).

Therefore, to prove her harassment claim, Complainant must establish that she was subjected to conduct that was either so severe or so pervasive that a "reasonable person" in Complainant's position would have found the conduct to be hostile or abusive. Complainant must also prove that the conduct was taken because of her protected classes. Only if Complainant establishes both of those elements, hostility and motive, will the question of Agency liability present itself.

In this case, Complainant has not shown that she was subjected to a hostile work environment. The Commission finds that the totality of the conduct at issue was insufficiently severe or pervasive to establish a hostile work environment. We have comprehensively reviewed the voluminous record and cannot discern any conduct from the Agency management officials which could be considered objectively hostile. Rather, the record indicates that Complainant's supervisors were attempting to work with a highly combative subordinate. Further, the record reveals that Complainant's supervisors were all attempting to direct Complainant's work.

Even assuming that the alleged conduct was sufficiently severe or pervasive to create a hostile work environment, there is no persuasive evidence in the record that discriminatory animus played a role in any of the Agency's actions. The record reflects that the alleged incidents were more likely the result of routine supervision, managerial discipline, and general workplace disputes and

tribulations. Moreover, to the extent Complainant claims that she was subjected to disparate treatment, the Commission finds that, as discussed above, Complainant has not proffered any evidence from which a reasonable fact finder could conclude that the Agency's explanation for its actions was pretext for discrimination or reprisal.

With regard to her non-selection claim, Complainant failed to show that her qualifications for the position at issue were plainly superior to those of the selectee. In this case, the selectee had attributes that justified his selection, and the selecting official affirmed that he believed the selectee was better equipped to meet the Agency's needs. In the absence of evidence of unlawful discrimination, the Commission will not second guess the Agency's assessment of the candidates' qualifications. Likewise, Complainant has not presented any evidence rebutting the Agency's reasons for its actions regarding discipline, training, leave, and performance rating. Accordingly, the Commission finds that Complainant was not subjected to discrimination, reprisal, or a hostile work environment as alleged.

Official Time

In claims (9) and (13), Complainant alleged that the Chief threatened her with AWOL if Complainant did not utilize an OPM Form 71 to document her official time. A complainant is entitled to a reasonable amount of official time to present her complaint and to respond to agency requests for information. 29 C.F.R. § 1614.605(b). Commission guidance dictates, however, that the Agency is permitted to establish a process for claiming or establishing official time. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), Ch. 6, § VII.C.5. In this case, Agency regulations were silent on the process for requesting official time, but Chief required Complainant to document her official time on OPM Form 71. We see nothing unreasonable in the Chief's process. Further, Complainant's allegation does not match the evidentiary record. Complainant alleged that she needed to step away to take a phone call, implying that she had no opportunity to request official time in advance. However, the record demonstrates that Complainant had a day to request official time. While Complainant asked Chief for use of the conference room, she provided shifting reasons, none of which implicated EEO matters until after the fact. Thus, we do not find a violation of 29 C.F.R. § 1614.605.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's final decision.

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 (S0610)

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 his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

December 14, 2018

Date