



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

████████████████████
Colby P,¹
Complainant,

v.

Steven T. Mnuchin,
Secretary,
Department of the Treasury
(U.S. Mint),
Agency.

Appeal No. 2019001963

Agency No. MINT-19-0460-F

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated February 15, 2019, dismissing a formal 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.

BACKGROUND

During the period at issue, Complainant worked for the Agency as a Police Officer in Fort Knox, Kentucky.

On January 25, 2019, Complainant filed a formal EEO complaint. Complainant claimed that the Agency subjected him to discrimination in reprisal for prior protected EEO activity when, on October 22, 2018, Complainant was informed that a co-worker filed a hostile work environment claim against him and, during a meeting, management did not provide him an opportunity to defend himself against the accusations.

On February 15, 2019, the Agency issued a final decision. The Agency dismissed the formal complaint for failure to state a claim, pursuant to 29 C.F.R. § 1614.107(a)(1).

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.

The instant appeal followed. On appeal, Complainant argues, in pertinent part, that the Agency “distorted” his formal complaint in the final decision. Complainant states that he claimed that he was retaliated against “management by their actions with an undocumented and unsupported claim of hostile working conditions by another employee.”

ANALYSIS AND FINDINGS

The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that an agency shall dismiss a complaint that fails to state a claim. An agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that Agency because of race, color, religion, sex, national origin, age or disabling condition. 29 C.F.R. §§1614.103, 106(a). The Commission’s federal sector case precedent has long defined an “aggrieved employee” as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Dep’t of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994).

Our review of the formal complaint, as well as Complainant’s statements on appeal, indicate that Complainant is alleging retaliation due to the Agency’s investigation of a co-worker’s harassment claim made against him. As we have previously held, a complainant fails to state a viable claim of retaliation when alleging the agency was investigating the discrimination allegations of another employee who has named the complainant as the perpetrator. See Bingham v. Dep’t of Veterans Affairs, Appeal No. 01A51782 (May 3, 2006), req. for recon. den’d, Request No. 05A60783 (Aug. 28, 2006) (citing Blinco v. Dep’t of the Treasury, EEOC Request No. 05940194 (May 25, 1994)). Without more, this principle applies squarely to Complainant’s complaint and he has failed to state a viable claim of retaliation.

The Agency’s final decision dismissing the formal complaint for the reasons discussed above is **AFFIRMED**.

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

October 11, 2019

Date