



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

[REDACTED]

Queen L,¹
Complainant,

v.

William P. Barr,
Attorney General,
Department of Justice
(Federal Bureau of Prisons),
Agency.

Appeal No. 2019004002

Agency No. BOP-2019-0094

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated May 30, 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 as an Executive Assistant, GS-15, at the Agency's Information Policy and Public Affairs Division in Washington, D.C.

On December 14, 2018, Complainant filed a formal complaint, claiming that the Agency subjected her to discrimination based on race (African-American), religion (Baptist), and in reprisal for prior protected EEO activity.

On May 30, 2019, the Agency issued the instant final decision. The Agency determined that the formal complaint was comprised of the following claims:

1. On January 23, 2018, [Complainant was] placed under an OIG investigation for contract fraud;

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.

2. On March 9, 2018, [Complainant was] reassigned from [her] position as Executive Assistant/External Liaison in the Information, Policy, and Public Affairs (IPPA) Office to [her] current position of Acting Executive Assistant in the Program Review Division. Consequently, [she was] restricted from performing [her] previous duties concerning contract reentry programs conducted at FCI Cumberland or any other BOP facility, and prohibited from having any contact with outside contract providers, BOP staff and inmates, or others concerning the Young Men Incorporated (YMI) or similar programs.
3. Following [her] reassignment, [Complainant was] subjected to demeaning and belittling restrictions such as the following: [she was] not provided with access to the Assistant Director's box to carry out [her] duties, [she was] not permitted to attend the monthly awards meetings with the other Executive Assistants, [her] access to electronic devices was restricted on January 25, 2018 preventing [her] from teleworking or accessing emails after work hours, [her] desktop was confiscated, and all references to [her] former position have been removed.

The Agency dismissed the formal complaint for untimely EEO Counselor contact. The Agency reasoned that Complainant learned on January 23, 2018, that she was placed under an OIG investigation and was issued a memorandum regarding her reassignment on March 9, 2018, but that she did not initiate EEO contact until October 30, 2018. The Agency further stated that “[b]y [Complainant’s] own admission, [she established] that [she was] the subject of discrimination and/or retaliation on June 26, 2018” but did not initiate the EEO process until four months later.

The instant appeal followed. On appeal, Complainant asserts that it was not until the June/July 2018 timeframe that she became aware of the discrimination. She asserts during this time a contractor filed a sexual harassment claim and that she became aware of messages between the contractor and her supervisor indicating an inappropriate relationship. Complainant asserts that during this period, she became aware that her supervisor orchestrated the OIG investigation to “cover her indiscretions.” Finally, Complainant states that she initiated a prior EEO case (which included the instant claims) on July 31, 2018. Complainant states that a settlement agreement was reached in October 2018 over one of the issues in her prior EEO case (her evaluation) and that “in the agreement...it was agreed that [she] would withdraw the current formal complaint and file a separate one to grieve the remaining issues.”²

² The record contains a copy of a signed settlement agreement between Complainant and the Agency dated October 2018 in settlement of one issue (annual evaluation) in a prior EEO case. Provision 2(b) of the settlement agreement provides, in pertinent part, that: “By signing this agreement [Complainant] agrees she is withdrawing her current informal complaint BOP-2018-01044 which was initiated on July 19, 2018 through [a named EEO Counselor] and will file a separate complaint to grieve the remaining issues encompassed in her current informal complaint. She agrees to bring no further administrative or judicial action against the [Agency] or any of its

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination should be brought to the attention of the 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 days of the effective date of the action.

The Agency improperly dismissed Complainant's complaint for untimely EEO Counselor contact. Complainant is alleging an ongoing harassment/hostile work environment claim. The Commission has held that "[b]ecause the incidents that make up a hostile work environment claim 'collectively constitute one unlawful employment practice,' the entire claim is actionable as long as at least one incident that is part of the claim occurred within the filing period. This includes incidents that occurred outside of the filing period that the [Complainant] knew or should have known were actionable at the time of their occurrence." EEOC Compliance Manual, Section 2, "Threshold Issues at 2-75 (rev. July 21, 2005) (citing National Railroad Passenger Corp. v. Morgan, 536 U.S. 101, 117 (2002)).

The record reflects that Complainant is alleging that she is continuing to experience incidents that are part of her overall harassment claim: she alleges that her duties have been changed and continue to be changed, that she is not allowed to telework, not allowed to attend monthly Executive Assistant award meetings, and not given access to the Assistant Director's box. We find regardless of whether we determine that Complainant initiated EEO contact on October 30, 2018 or in July 2018 (as part of her prior EEO case), her initial EEO contact is timely. We find that the alleged incidents (mentioned above) are ongoing and continued up until the 45 days preceding her EEO contact. Thus, we find Complainant's entire hostile work environment to be timely raised.

We REVERSE the Agency's final decision dismissing the formal complaint and we REMAND this matter, defined herein as a hostile work environment claim, to the Agency for further processing in accordance with the ORDER below.

ORDER (E0618)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time.

employees, in either their official or individual capacities, arising from the issuance of the [annual evaluation] as outlined in this informal EEO complaint."

If the 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.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, a copy of complainant's request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

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 CFR § 1614.503(f) for enforcement by that agency.

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)

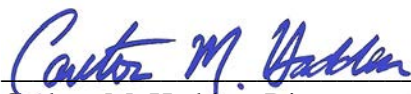
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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:

A handwritten signature in blue ink that reads "Carlton M. Hadden". The signature is written in a cursive style and is positioned above a horizontal line.

Carlton M. Hadden, Director
Office of Federal Operations

October 3, 2019

Date