



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

[REDACTED]  
Harlan P.,<sup>1</sup>  
Complainant,

v.

Gary Ashworth,  
Acting Secretary,  
Department of the Air Force,  
Agency.

Appeal No. 20-2400-5105

Agency No. 7W1M2400322

**DISMISSAL OF APPEAL**

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) on September 10, 2024, from the Agency's decision dated August 16, 2024, in which it partially dismissed her 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

At the time of events giving rise to this complaint, Complainant worked as Chief of Information Protection within the Headquarters of the 96th Test Wing at Eglin Air Force Base in Florida. On July 25, 2024, Complainant filed a formal EEO complaint in which she alleged that the Agency discriminated against her on the bases of race (Native American), sex (female), religion (Bahai), disability (unspecified mental and physical), age (54), and reprisal (prior protected EEO activity) as evidenced by multiple incidents.

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<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.

On August 16, 2024, the Agency issued a notice accepting eight of Complainant's claims and dismissing the remaining claims for failure to state a claim. The notice provided Complainant with appeal rights to the Commission. As a result, Complainant filed the instant appeal.

However, EEOC Regulation 29 C.F.R. § 1614.107(b) provides that where the agency believes that some but not all of the claims in a complaint should be dismissed, the agency shall notify the complainant in writing of its determination, the rationale for that determination, and that those claims will not be investigated. A determination under this paragraph is reviewable by an Administrative Judge if a hearing is requested on the remainder of the complaint but is not appealable until final action is taken on the remainder of the complaint.

Although the Agency erroneously advised Complainant that she needed to appeal the partial acceptance/partial dismissal within 30 days, we find, based on 29 C.F.R. § 1614.107(b), that her appeal is premature.

There is no record that the Agency has issued a final decision on the accepted allegations comprising the remainder of her complaint. Accordingly, Complainant's appeal is premature. Sylvester C. v. Dep't of the Navy, EEOC Appeal No. 2024003435 (Oct. 21, 2024) citing Victor S. v. Dep't of the Army, EEOC Appeal No. 2020004468 (Nov. 19, 2020). Complainant is advised that she may file a new appeal that includes the issue of partial dismissal when the Agency takes final action on her complaint.

### CONCLUSION

For the foregoing reasons, Complainant's September 10, 2024, appeal is hereby DISMISSED. See 29 C.F.R. § 1614.403(c).

### STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0124.1)

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

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

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.** A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

Complainant should submit their request for reconsideration, and any statement or brief in support of their request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>. Alternatively, Complainant can submit their request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files their request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the request for reconsideration.** The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(f).

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

You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision.

If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by their full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

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

FOR THE COMMISSION:



Carlton M. Hadden, Director  
Office of Federal Operations

February 10, 2025

Date