



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

[REDACTED]
Kandi M.,¹
Complainant,

v.

Douglas A. Collins,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2022004384

Hearing No. 560-2019-00219X

Agency No. 200J-0589-2018102403

DECISION

On August 12, 2022, 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 July 19, 2022, final order concerning her 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. and the Equal Pay Act of 1963, as amended, 29 U.S.C. §206(d) et seq. For the following reasons, the Commission AFFIRMS the Agency's final order.

At the time of events giving rise to this complaint, Complainant worked as a Podiatrist, VP-0668-14, at the Agency's Medical Center in Kansas City, Missouri.

On May 7, 2018, Complainant filed a formal EEO complaint alleging the following:

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.

- A. The Agency subjected Complainant to discrimination based on sex (female), race (African American), and in reprisal for prior EEO activity when, on January 17, 2018, she became aware that her male coworker (Coworker-1) who performs the same job duties as Complainant, was being paid at a higher salary.
- B. The Agency subjected Complainant to a hostile work environment based on reprisal for prior EEO activity as evidence by, but not limited to, the following events:
1. On April 6, 2018, Complainant was subjected to a Professional Standards Board (PSB) and Executive Committee of the Medical Staff (ECMS) review due to concerns raised regarding her clinical practice;
 2. Effective April 13, 2018, Complainant's privileges were summarily suspended;
 3. Effective August 13, 2018, Complainant was removed from her position of Podiatrist, VP-0668, and her privileges were revoked; and
 4. On January 9, 2019, Complainant became aware that Coworker-1 was promoted to Section Chief of Podiatry after Complainant requested the promotion while employed, but was told she had to be recommended.

Regarding claim A, the record shows that Complainant was a Grade 14, Level 10 podiatrist earning \$134,886. Coworker-1 was a grade 15, Level 10 Podiatrist earning \$155,788. Complainant admitted that she did not have the same certifications and skills as Coworker-1. For instance, Complainant admitted that Coworker-1 is Board-Certified while she is not, and she admitted that such certification provides a two to three step increase in salary. The record shows that Coworker-1 has prior relevant experience, which Complainant did not have, as a Chief of Podiatric Surgery from June 2002 to June 2005, a Chairman of Surgery Department and Podiatric Surgeon from July 2005 to August 2007, and Chief of Podiatric Surgery from October 2009 to August 2011. The record shows that Agency management was not involved in recommending the pay for Complainant or Coworker-1; rather, the National PSB recommended the pay for newly appointed podiatrists based on the candidates' qualifications and experience.

Regarding claim B(1), the record shows that the Agency placed Complainant on a Focused Professional Practice Evaluation for cause after the PSB determined that Complainant did not meet the standard of care in several practice areas.

Regarding claims B(2) and B(3), the record shows that the PSB and ECMS recommended Complainant's privileges be suspended after external podiatrists' reviews of Complainant's clinical encounters and surgeries also determined that Complainant did not meet the standard of care required. Based on the foregoing negative review, Complainant's privileges were revoked, and she was eventually removed based on charges of substandard patient care, failure to properly document patient care, failure to safeguard patient information, and inappropriate conduct involving receipt of gifts from vendors.

Regarding claim B(4), Coworker-1 was promoted to Chief of Podiatry after Complainant's removal.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing. Over Complainant's objections, the AJ assigned to the case granted the Agency's March 31, 2021, motion for a decision without a hearing and issued a decision without a hearing finding no discrimination on July 14, 2022.

The AJ found that the Agency established an affirmative defense for the unequal pay alleged in claim A. Specifically, the pay differential was based on a factor other than sex in that Coworker-1 had higher qualifications in his past work experience and certifications supporting the higher pay. The AJ found that the record demonstrated legitimate, nondiscriminatory reasons for the adverse actions contained in the record. Complainant's loss of privileges and eventual removal was based on an external review that supported Complainant failed to meet the standard of care required. The AJ found that Complainant failed to establish a material dispute regarding whether the foregoing legitimate, nondiscriminatory reasons were pretext for discrimination or reprisal. Finally, the AJ found that the record does not contain probative evidence on which Complainant could establish discriminatory or retaliatory animus for the allegedly harassing conduct.

The Agency subsequently issued a final order fully implementing the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged. The instant appeal followed.

The Commission's regulations allow an AJ to grant summary judgment when he or she finds that there is no genuine issue of material fact. 29 C.F.R. §1614.109(g).

An issue of fact is “genuine” if the evidence is such that a reasonable fact finder could find in favor of the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A fact is “material” if it has the potential to affect the outcome of the case. In rendering this appellate decision, we must scrutinize the AJ’s legal and factual conclusions, and the Agency’s final order adopting them, *de novo*. See 29 C.F.R. § 1614.405(a)(stating that a “decision on an appeal from an Agency’s final action shall be based on a *de novo* review...”); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (Aug. 5, 2015) (providing that an administrative judge’s determination to issue a decision without a hearing, and the decision itself, will both be reviewed *de novo*).

In order to successfully oppose a decision by summary judgment, a complainant must identify, with specificity, facts in dispute either within the record or by producing further supporting evidence and must further establish that such facts are material under applicable law. Such a dispute would indicate that a hearing is necessary to produce evidence to support a finding that the Agency was motivated by discriminatory animus. Here, however, Complainant has failed to establish such a dispute.

Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable fact-finder could not find in Complainant’s favor. Upon careful review of the AJ’s decision and the evidence of record, as well as the parties’ arguments on appeal, we conclude that the AJ correctly determined that the preponderance of the evidence did not establish that Complainant was discriminated against by the Agency as alleged.

Accordingly, we AFFIRM the Agency’s final order implementing the AJ’s decision finding no discrimination.

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.**

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION-EQUAL PAY ACT (Y0408)

You are authorized under section 16(b) of the Fair Labor Standards Act (29 U.S.C. § 216(b)) to file a civil action in a court of competent jurisdiction **within two years** or, if the violation is willful, **three years** of the date of the alleged violation of the **Equal Pay Act** regardless of whether you have pursued any administrative complaint processing. The filing of the 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

March 6, 2025

Date