



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

[REDACTED]  
Kathleen R.,<sup>1</sup>  
Complainant,

v.

Antony Blinken,  
Secretary,  
Department of State,  
Agency.

Appeal No. 2022004472

Hearing No. 570-2021-01171X

Agency No. DOS-0007-21

**DECISION**

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 June 22, 2022, final decision 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. For the following reasons, we AFFIRM the Agency's final decision.

**ISSUE PRESENTED**

The issue presented is whether the Agency correctly determined that Complainant was not subjected to discrimination based on her sex and in reprisal when it allegedly subjected her to various acts of discrimination.

---

<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.

### BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Visa Assistant, Local Employee Staffed (LES), GS-7, at the U.S. Consulate General in Montreal, Canada.

On November 26, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of sex (female) and in reprisal for prior protected EEO activity<sup>2</sup> when on October 13, 2020, she was placed on administrative leave and subsequently terminated from her position.

The investigation into the complaint revealed that the responsible management officials were the Regional Security Officer (Officer), the Human Resources (HR) Officer, and the Consular Section Chief (Chief). All were aware of Complainant's sex, but only the Chief stated her belief that Complainant may have participated in prior EEO activity, though she was not certain. ROI1 at 174. ROI2 at 3; 37.

On June 19, 2019, Complainant went out on maternity leave. Report of Investigation, Volume 1 (ROI1) at 175. The Officer stated that upon Complainant's request to return to work, a meeting was arranged on October 13, 2020, to address an outstanding security issue pertaining to unresolved legal charges against Complainant's husband. Report of Investigation, Volume 2 (ROI2) at 39, 57-63. The Officer stated that Complainant was aware of the issue since early 2019 and was informed that she needed to address the matter, or it would impact her ability to maintain a security certificate. The Officer stated that the issue was not resolved during their meeting. The Officer explained that due to Complainant's "position and access to sensitive information within the Consulate and that she would be vulnerable to compromise...[Complainant] was relieved of her security certificate due to her known and continued association and cohabitation with a known fugitive." ROI2 at 39. The Officer noted that Complainant was given "well over a year and a half to help her spouse address the issue or make decisions in her personal life to maintain her security certificate" but Complainant maintained that the issue was that of her spouse and not her. ROI2 at 40.

---

<sup>2</sup> In 2017, Complainant asserted that she was part of a group of 10 to 12 employees that filed a joint EEO complaint involving claims of sex (pregnancy) based discrimination claims. We note that the named responsible officials in that complaint are not the same as the officials named in the present complaint. Report of Investigation, Volume 1 (ROI1) at 59-61.

The Officer stated that the information, that her husband was a known fugitive of a foreign nation, was verified by himself, the previous Regional Security Officer, the former Assistant Regional Security Officer Investigator, and the Consul General. ROI2 at 39; 46.

Based on the events, the Officer was unable to approve of Complainant's security renewal. Since it was determined that Complainant was not eligible for security renewal, the HR Officer placed Complainant on paid administrative leave. While on leave, Complainant did not have access to the building or any work-related materials. ROI1 at 176-78.

On November 13, 2020, Complainant was terminated as she was unable to be cleared for a security renewal. ROI1 at 180. The HR Officer made the termination recommendation based on the Officer's review and with the concurrence of the Consular Section Chief (Chief). ROI1 at 180; ROI2 at 9. The Chief stated that a security clearance is a condition of employment and without it, continued employment is not possible. ROI2 at 10. Officials denied Complainant's claim that the matter was initiated due to her pregnancy or in reprisal. ROI1 at 184; ROI2 at 3; 12; 37.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the ROI and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing but subsequently withdrew her request. Consequently, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b), which concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged. The instant appeal followed.

#### CONTENTIONS ON APPEAL

Complainant did not provide an appellate statement.

In response, the Agency argues that Complainant failed to show that any actions taken were based on her sex or prior protected EEO activity. Further, the Agency contends that Complainant failed to rebut the articulated legitimate, nondiscriminatory reasons for placing her on administrative leave and ultimately terminating her, namely, the loss of her security certification due to her husband's criminal activity.

### STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chap. 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that EEOC "review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law").

### ANALYSIS

#### *Security Clearance*

The Commission will not review an agency's determination regarding the substance of a security clearance decision or as to the validity of the security requirement itself. See Policy Guidance on the Use of the National Security Exception Contained in § 703 (g) of the Civil Rights Act of 1964, as Amended, EEOC Notice No. N-915-041 (May 1, 1989); see also Dep't of the Navy v. Egan, 484 U.S. 518 (1987); Off. of Pers. Mgmt. v. Conyers, 692 F.3d 1223 (Fed. Cir. 2012); Litton v. Dep't of Just., EEOC Appeal No. 0120131279 (July 17, 2013). Accordingly, to the extent that Complainant is challenging the substance of the security clearance determination under Title VII, the Commission is statutorily barred from ruling on that claim.

While the Commission will not review the substance of security clearance decisions, it has the authority to review an agency's decision to initiate review of a complainant's security clearance status, as this decision is not the result of any substantive decision-making process. Chatlin v. Dep't of the Navy, 05900188 (June 1, 1990). Additionally, the Commission is not precluded from determining whether the grant, denial or revocation of a security clearance is conducted in a nondiscriminatory manner. Thierjung v. Def. Mapping Agency, EEOC Request No. 05880664 (Nov. 2, 1989). For example, if a complainant alleged that an agency required all female applicants to take a polygraph examination but did not do so for male applicants in a security clearance process, the Commission could review that aspect of the process. Kingan v. Nat'l Sec. Agency, EEOC Appeal No. 01996328 (Feb. 15, 2002).

### *Disparate Treatment*

A claim of disparate treatment is examined under the three-part analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). For a complainant to prevail, they must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, *i.e.*, that a prohibited consideration was a factor in the adverse employment action. McDonnell Douglas, 411 U.S. at 802, n. 13; Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978).

In order to establish a prima facie case of discrimination based on sex, a complainant must show: (1) they are a member of a protected group; (2) they were subjected to an adverse employment action; and (3) they were treated less favorably than other similarly situated employees outside of their protected groups. We note that, although a complainant bears the burden of establishing a "prima facie" case, Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 252-53 (1981), the requirements are "minimal," St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 506 (1993), and complainant's burden is "not onerous." Burdine, 450 U.S. at 253.

For a claim of reprisal, a complainant must show that: (1) they were engaged in a protected activity; (2) the agency was aware of the protected activity; (3) subsequently, they were subjected to adverse treatment by the agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000). A complainant can also establish a prima facie case of reprisal by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination. Shapiro v. Social Sec. Admin., EEOC Request No. 05960403 (Dec. 6, 1996) (citing McDonnell Douglas, 411 U.S. at 802).

The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. Burdine, 450 U.S. at 253. Once the agency has met its burden, the complainant bears the ultimate responsibility to persuade the fact finder by a preponderance of the evidence that the agency acted on the basis of a prohibited reason. Hicks, 509 U.S. at 507.

We find that Complainant has not established a prima facie case of discrimination based on reprisal. While she engaged in protected activity, the record does not clearly demonstrate that the relevant management officials were aware of such activity. Based on the record, we find that Complainant failed to demonstrate a nexus between the protected activity and the adverse treatment.

Regarding her sex, it is undisputed that Complainant is a member of a protected class by virtue of her sex, and was allegedly subjected to adverse employment actions. However, she failed to show that she was treated less favorably than other similarly situated employees outside of their protected groups. While she listed an alleged comparator, this individual was employed in a different office, in a different role, with a different chain of command, and thus is not similarly situated. ROI at 73.

Furthermore, we find that the Agency articulated legitimate, nondiscriminatory reasons for its actions. The Agency articulated that due to the unresolved legal matter associated with her husband, the Officer was unable to approve of Complainant's security clearance, leading to her subsequent termination.

Without proof of a demonstrably discriminatory motive, the Commission will not generally second-guess the Agency's personnel decisions. See Chavez v. U.S. Postal Serv., EEOC Appeal No. 0120055246 (Jan. 5, 2007); see also Carson v. Bethlehem Steel Corp., 82 F.3d 157, 159 (7<sup>th</sup> Cir. 1982) (noting that "the question is not whether the employer made the best, or even a sound, business decision; it is whether the real reason [was discriminatory]").

We ultimately find no evidence that Complainant's protected class or EEO activity were a factor. At all times, the ultimate burden remains with Complainant to demonstrate by a preponderance of the evidence that the Agency's reasons were not the real reasons and that the Agency acted based on discriminatory animus. To show that the Agency's articulated reasons are a pretext for discrimination, Complainant argued that the Agency's reasons are in retaliation for her prior EEO complaint in 2017, which also involved claims of sex discrimination and her then-pregnancy. She asserted that the Agency's actions occurred because she was again pregnant. However, the record demonstrated that the responsible management officials (RMO) named in the 2017 complaint are not the same as the RMOs named in the instant matter here. ROI1 at 59-61. Additionally, there is no indication that the Officer or the HR Officer were aware of Complainant's prior EEO activity. ROI1 at 184; ROI2 at 37. The Chief noted that she was aware of a 2017 matter in which several individuals had testified and that it was possible that Complainant was involved, but that she was not certain of Complainant's actual involvement or EEO activity. ROI2 at 3. Aside from her own assertions, Complainant failed to demonstrate that the Agency's actions were motivated by discrimination or retaliation.

Based on the record, we find that Complainant failed to demonstrate that the security clearance review process and revocation were conducted in a discriminatory manner. Specifically, there is no evidence that the security clearance review process was discriminatorily conducted. Instead, the record demonstrates that because of the security clearance review, Complainant's security clearance was not renewed, and she was placed on administrative leave. Since her position required a security clearance, she was ultimately terminated. We conclude that Complainant has not established that the Agency's action constituted unlawful sex discrimination or retaliation as alleged.

### CONCLUSION

Based on a thorough review of the record, we AFFIRM the Agency's final 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)

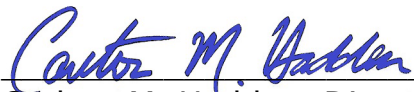
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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.**

#### 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

January 21, 2025

Date