



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

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

v.

Rohit Chopra,  
Director,  
Consumer Financial Protection Bureau,  
Agency.

Appeal No. 2022004605

Agency No. CFPB-0003-2022

DECISION

On August 25, 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 27, 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, the Commission AFFIRMS the Agency's final decision.

ISSUES PRESENTED

Whether the Agency subjected Complainant to a discriminatorily hostile work environment when a coworker (CW1) disclosed Complainant's transgender

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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.

status and made disturbing comments toward African Americans and the LGBTQAI+<sup>2</sup> communities.

### BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an Examiner, CN-0570-53 at the Agency's Supervision, Enforcement & Fair Lending (SEFL), Northeast Region facility in Philadelphia, Pennsylvania.

On January 5, 2022, Complainant filed an EEO complaint alleging that the Agency discriminated against her and subjected her to a hostile work environment on the bases of race (African American) and sex (transgender) when:

1. on October 21, 2021, Complainant learned that, in June 2020, a coworker (CW1) disclosed Complainant's transgender status to another coworker (CW2) while using a negative connotation and without her permission; and
2. on unspecified dates, Complainant heard that CW1 made disturbing statements toward African Americans and the LGBTQAI+ communities.

In her affidavit, Complainant testifies that she learned of CW1's disclosure through a conversation with CW2. CW2 told Complainant that, in June 2020, CW1 told CW2 that Complainant "used to be a man" and disclosed her former name. Complainant said that CW2 would be able to provide more details. Complainant asserted that she reported the incident but was not told that any corrective action had been taken. Complainant was only told that the investigation was closed.

With respect to Claim 2, Complainant said she had no details and said that she had "never heard [CW1] say anything about the African Americans. Nevertheless, [she has] heard rumors."

CW2 testified that they learned about Complainant's transgender identity through a conversation with CW1 about becoming a member of the union.

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<sup>2</sup> Complainant and the Agency use the abbreviation "LGBTQAI+" to refer to the lesbian, gay, transgender, bisexual, queer, asexual, and intersex plus communities.

During this conversation, according to CW2, CW1 said that the union steward “used to be a man.” CW2 then determined that CW1 was speaking about Complainant. In their testimony, CW2 described three instances in which they believed CW1 racially harassed them.

CW1 responded that she did not specifically recall the conversation with CW2. However, CW1 recalled that Complainant’s email address in June 2020 still contained her previous name and suspected that the conversation with CW2 “was a result of explaining the differences in names from email address to signature line.” CW1 denied any malicious intent and noted that she and CW2 were friends until approximately October 14, 2021, when they had a falling out. CW1 believed CW2 disclosed their conversation at that point, sixteen months after the conversation occurred.

The record includes an internal complaint Complainant filed with the Agency on October 21, 2021, and the resulting investigation. Complainant, CW1, and CW2, provided testimony for the internal investigation that mirrored the testimony they provided in response to the instant EEO complaint.

A Labor and Employee Relationship Specialist (LERS) confirmed that she conducted an investigation by interviewing Complainant, CW1, and CW2, and concluded that the events did not rise to the level of actionable harassment because it was a one-time incident. However, LERS characterized CW1’s actions as “misconduct” and recommended that CW1 be counseled.

CW1’s supervisor, the Assistant Regional Director (ARD), averred that she was directed by LERS to counsel CW1 on the matter. ARD verbally counseled CW1 on December 15, 2021, to be mindful of conversations and her relationship with staff. ARD also provided guidance and education to CW1 about transgender issues and related sensitivities. In an email contemporaneous to the counseling, ARD wrote that CW1 “accepted the information and committed to ensuring it doesn’t recur and was apologetic that any comments she may have made offended anybody.”

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). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

In its decision, the Agency conceded that disclosure of Complainant's transgender identity without her consent is inconsistent with guidance published by the Office of Personnel Management (OPM) and by the Agency regarding employment of transgender individuals. However, the Agency found that the complaint consists of a single incident and therefore was not pervasive. Therefore, Complainant failed to demonstrate that she was subjected to an unlawful hostile work environment.

The instant appeal followed.

### CONTENTIONS ON APPEAL

On appeal, Complainant argues that she had been subjected to a hostile work environment because she experienced elevated levels of generalized anxiety.

The Agency maintains that its final decision correctly found Complainant failed to demonstrate that she was subjected to conduct that was sufficiently severe or pervasive as to establish a hostile work environment.

### 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 Chapter 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

Complainant has alleged harassment on the basis of her transgender status and race.<sup>3</sup>

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<sup>3</sup> We note that "Title VII prohibits discrimination not just because of one protected trait (e.g., race), but also because of the intersection of two or more protected bases (e.g., race and sex)." EEOC Compliance Manual, Section 15,

To establish a claim of discriminatory hostile environment harassment, Complainant must show that: (1) she belongs to a statutorily protected class; (2) she was subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on her statutorily protected class; and (4) the harassment affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the Agency. Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982), cited with approval in Meritor Savings Bank v. Vinson, 477 U.S. 57, 66-67 (1986); see generally Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (April 29, 2024).

In short, to prove her harassment claim, Complainant must establish that she was subjected to conduct that was either so severe or so pervasive that a "reasonable person" in Complainant's position would have found the conduct to be hostile or abusive. See Enforcement Guidance, § III(A) & n.127. Complainant must also prove that the conduct was taken because of a protected basis -- in this case, because of her sex or race. Only if Complainant establishes both of those elements, hostility and motive, will the question of Agency liability present itself.

As to Claim 1, other than Complainant's general assertion on appeal that she experienced elevated levels of anxiety, the record contains no additional facts from Complainant about the incident or the effects of the incident on Complainant. Rather, we are left to assess whether the environment was hostile based on testimony from CW1 and CW2. For efficiency's sake, we assume, for purposes of analysis only that Complainant has established she was subjected to harassment based on her transgender status.<sup>4</sup> However, even with this assumption, we cannot find a basis for imputing liability to the Agency because the record demonstrates that upon learning of the incident from Complainant, the Agency immediately investigated the matter. As a result of that investigation, CW1 was counseled for her actions.

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"Race and Color Discrimination," No. 915.003, at 15-4 (April 19, 2006). Therefore, we are mindful that Complainant's allegations had the potential to implicate intersectionality discrimination.

<sup>4</sup> We caution that we are not finding that Complainant was, in fact, subjected to actionable harassment. Further, we note that Complainant only provided testimony regarding CW1's statements regarding her transgender status, not her race. As such, there is no basis for us to analyze intersectionality discrimination.

Complainant does not put forth any argument or evidence tending to establish that the Agency's response to her complaint was insufficient or ineffective.

With respect to Claim 2, we find nothing in the record to establish that Complainant was subjected to a hostile work environment on the basis of her race. At most, Complainant cites "rumors." Without more, the rumors here are not sufficient evidence of a hostile work environment here.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's final decision.

### 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)

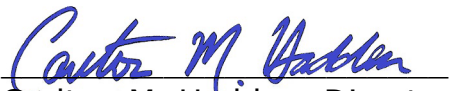
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department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

December 9, 2024  
Date