



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Odell H.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2023000064

Hearing No. 410-2019-00281X

Agency No. 200I-0509-2018104408

**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 September 2, 2022, final order concerning his 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 order finding no discrimination.

At the time of events giving rise to this complaint, Complainant worked as a Psychiatrist, GS-15, at the Agency's Medical Center in Augusta, Georgia.

On September 5, 2018, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (Caucasian) and in reprisal for prior protected EEO activity when:

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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.

1. In or around April 2016, the Mental Health Service Line Executive (Complainant's second line supervisor) dismissed Complainant's concerns about discrimination and retaliation, stating: (a) he "would be the only burned out Anglo here"; (b) he "doesn't have the time for (his) EEO concerns"; and (c) "we'll see how your claim turns out."
2. On March 9, 2018, Complainant was mocked by his second-line supervisor (S2) for pursuing an EEO case concerning unequal pay when he called his name and approached him in a crowded room, took out his wallet, gestured as if he were giving him money, and laughed about it with a group of other employees.
3. On April 12, 2018, after Complainant requested official duty time to attend his own deposition and that of a witness, S2 antagonized him about the request and told him he had never seen or been aware of official duty time being granted for a deposition.
4. On April 12, 2018, management, including S2, failed to reschedule Complainant's patients after approving his request for official duty time.
5. On April 12, 2018, the EEO Manager told Complainant that she was actually the person who approves requests for official duty time and that his request to attend his own deposition and a witness' deposition relating to his EEO case was denied.
6. On April 16, 2018, S2 met with Complainant to defend the EEO Manager's conduct and to tell him he was "only trying to sue for peace."
7. On April 16, 2018, Complainant was compelled to complete documentation certifying that specific patients scheduled to be seen by him received services while he was on approved official duty time in connection with his pending EEO case.

8. The Agency's conduct, as stated in Claims 1-7 above, forced Complainant to retire from federal service effective January 31, 2020.<sup>2</sup>

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing. Over Complainant's objections, the AJ granted the Agency's April 19, 2022, motion for a decision without a hearing and issued a decision without a hearing finding no discrimination on August 31, 2022.

The AJ found that Complainant failed to establish a prima facie case of hostile work environment or discrimination based on race or retaliation. The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected him to discrimination as alleged. Complainant filed the instant appeal.

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 13, 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).

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.

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<sup>2</sup> Claim 8 was added by the AJ pursuant to Complainant's July 14, 2021, amendment request.

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.

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. Complainant failed to establish that he was subjected to discrimination or harassment based on his race or reprisal.

Regarding Claims 1 and 2, S2 denied making any of the alleged comments implicitly or explicitly. ROI at 81. Regarding Claim 3, S2 denied antagonizing Complainant and asserts he responded to Complainant's email and asked for clarity regarding the official duty time request for the deposition. ROI at 82, 87. Complainant asserts that once he asked his legal representative to intervene, he was granted official duty time. ROI at 60.

Regarding Claims 4 and 7, Complainant alleges that S2 failed to reschedule his patient appointments after approving his request for official duty time and he was subsequently asked to complete documentation regarding the appointments as if he saw the patients. S2 indicated that he directed Complainant to work with his first line supervisor (S1) and the Service Administrative Officer to manage his patients. The record indicates Complainant's patients were rescheduled or seen by other providers. ROI at 83. S2 reported he had no recollection of Complainant being asked to complete paperwork for patients he had not seen. Complainant has not provided any evidence to verify this allegation.

Regarding Claim 5, Complainants alleged that EEO Manager told him she was responsible for approving official duty time for EEO matters and that his request to attend depositions for his EEO complaint were denied. EEO Manager denied this, and Complainant has not provided any evidence to support the allegation that he was denied official time such as a denied leave request. ROI at 92.

Regarding Claim 6, S2 stated that he met with Complainant to discuss the reported incivility Complainant showed toward EEO Manager. ROI at 84. S2 asserts EEO Manager told him Complainant was rude to her. S2 stated he met with Complainant to get his side of the story and to "mend fence and offer apology to [EEO Manager]."

S2 asserts Complainant ended the meeting to consult his legal representative. However, the meeting was never resumed and Complainant never brought the conversation up again. ROI at 84.

Regarding Claim 8, Complainant asserts the events of the complaint forced him to retire. However, Complainant's final allegation of discrimination was from April 2018, but he did not retire until January 2020. In addition, S2 was no longer working for the facility after January 7, 2019. ROI at 79. We find that the alleged incidents were not sufficiently severe to amount to a constructive discharge. Furthermore, none of the alleged incidents have been shown to be discriminatory or retaliatory.

Complainant has not presented any evidence other than his own belief that the Agency was motivated by his protected classes. Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable factfinder could not find in Complainant's favor. There is no indication that any Agency action raised in this complaint was motivated by discrimination.

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)

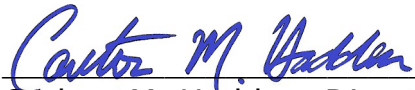
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department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

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 4, 2025  
Date