



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

[REDACTED]  
Elayne C.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2023000235

Hearing No. 520-2022-00178X

Agency No. 200H-0630-2021103084

**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 26, 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. 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 Nurse Educator in the Patient Services Education (PSE) Department for the New York Harbor Healthcare System Manhattan Campus located in New York, New York.

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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 May 5, 2021, Complainant filed an EEO complaint, which was subsequently amended, alleging that the Agency subjected her to a hostile work environment in reprisal for prior protected EEO activity when:

1. From July 7, 2020, until February 26, 2021, Person A, Education Chief and Person B, Resource Manager monitored Complainant's time and program activities.
2. On July 20, 2020, Complainant was denied copies of her previous proficiencies, and the proficiencies were not uploaded to her Employee Official Personnel Folder (eOPF).
3. On September 14, 2020, Person A and Person C, Associate Director for Patient Services (ADPCS), Chief Nurse failed to inform Complainant of a change regarding non-citizen students doing affiliation at the Agency.
4. On October 9, 2020, Person A deferred a PACE University student issue to Complainant on Complainant's day off and did not share information with Complainant.
5. On September 22, 2020, Person A and Person C failed to acknowledge Complainant's letter of appreciation by Doctor after Complainant was invited as a national speaker for the monthly education session of Nurse Informatics. No response was sent to the organizer of the Nursing Informatics program who sent the thank you note.
6. In December 2020 and January 2021, Person C asked Complainant not to stay during Person C's presentation in the Service Specific Orientation (SSO).
7. On December 1, 2020, Person C boycotted the award ceremony when Complainant was recognized as Employee of the Month and did not acknowledge and announce the employee of the month celebration during the morning report as Person C normally does.
8. On January 1, 2021, Complainant was denied an alternate and request for assistance when Complainant was given extra assignments.
9. In January 2021, Person A yelled and verbally harassed Complainant in front of other nurses.

10. On February 5, 2021, Person A sent Complainant an email micromanaging Complainant's work.
11. On February 9, 2021, Person A moved Complainant temporarily without discussing the move with Complainant in advance and did not inform Complainant or provide a reason Complainant was being replaced by another educator in 4W to monitor the new nursing orientee for medication administration pass.
12. On February 18, 2021, Person A removed Complainant as the National Nursing Education Initiative Scholarship Program Fund Certifier because Person A felt it was a clerical responsibility.
13. On February 26, 2021, Person A made the Agency Nurses Training without discussing or confirming Complainant's availability.
14. On February 27, 2021, Person A denied Complainant overtime after Person A recruited Complainant to work overtime, but then informed Complainant she was not needed and then Person A sent Complainant home.
15. In March 2021, Complainant received an unequal distribution of assignments, decisions were made that dismissed Complainant's input and there was a lack of communication with Complainant.
16. On March 2, 2021, Complainant was "continuously" asked to give the EKG class and excluded from emails sent to nurse managers about Complainant's program.
17. On March 5, 2021, and March 15, 2021, Person A failed to communicate and coordinate with Complainant prior to making a decision on Complainant's programs.
18. On March 9, 2021, and March 12, 2021, management held information for Complainant's program that included the onboarding list of new nurses.
19. On March 16, 2021, and April 29, 2021, Complainant was sent several emails and a memorandum to relocate to a smaller office that had dirty carpeting and needed repainting. Person A declined

Complainant's request to delay the transfer to another office despite 86-90-degree temperature in the room.

20. On March 19, 2021, Person C did not inform Complainant when she would be available for the SSO, which caused Complainant to re-arrange the schedule on a short notice.
21. On March 23, 2021, Complainant received a Written Counseling.
22. On March 30, 2021, Person A and Person C failed to include Complainant in an Academic Affiliation Meeting and did not give Complainant credit for revising the policy.
23. On April 5, 2021, Person A allowed an educator to exclude Complainant from an email thread related to department programs.
24. On April 6, 2021, Person A yelled outside of Complainant's office regarding an IV pump and the whereabouts of the Agency RN orientees and asked Complainant to repeat the IV pump demo which represented double work asked on Complainant, not imposed on other educators.
25. On April 9, 2021, Person D, Manager did not provide Complainant with all the information Complainant needed to investigate a needle stick.
26. On or about April 23, 2021, Complainant was denied awards and possible promotions and job opportunities.
27. On April 23, 2021, Complainant was issued a Satisfactory proficiency rating which was lower than she believed she deserved.
28. On April 29, 2021, Person A failed to communicate with Complainant which caused Complainant to be blindsided when staff asked Complainant questions.
29. On April 30, 2021, Person D was used to "spy" on Complainant for Person A and Person D did not support Complainant as an educator, carbon copied Person A on emails when reporting Complainant, did not provide Complainant advance notice to give in-service presentations, and did not support Complainant with new orientees.

30. On April 30, 2021, Person A changed Complainant's proficiency rating date to April 23, 2021, without including the comments provided by Complainant when the proficiency rating was uploaded to the eOPF.
31. On June 9, 2021, Person A increased the number of Complainant's staff attendees for the EKG class from the maximum of five attendees to seven attendees.
32. On June 22, 2021, Person A deleted Complainant's name from the report of the classes provided and acknowledged the names of the other educators whereas there was no acknowledgement of Complainant during the NEC meeting report.
33. In August 2021, Person A refused to cover Complainant's program or assign coverage and delayed the start of the affiliation clinics until Complainant returned from vacation.
34. On September 21, 2021, Person A micromanaged and monitored Complainant's programs and made decisions without Complainant's input or feedback.
35. On September 24, 2021, Person A instructed Complainant to review documentation needed for an affiliation process/onboarding and requested an affiliation virtual meeting with Person E, Brooklyn Affiliation Coordinator.
36. On October 5, 2021, Person A excluded Complainant, for a second time, from a meeting that was scheduled with all affiliate school coordinators.
37. On October 6, 2021, Person A, ignored Complainant's calendar invite for SSO.
38. On October 8, 2021, Person A and Person B accused Complainant of creating anxiety with team members and sent Complainant a "hostile" email.
39. On October 15, 2021, Person A and Person C denied Complainant's request for a detail assignment to Central Office of Nursing Services.

40. On October 22, 2021, Person A, micromanaged Complainant's SSO program.

The Agency accepted the overall harassment claim consisting of 40 events. Events 14, 21, 27, 36, and 39 were accepted as independently actionable claims (discrete incidents).

At the conclusion of the investigation on her complaint, 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 on her complaint. While the case was pending before the AJ, the Agency filed a motion for summary judgment. Complainant filed a Response opposing summary judgment. Over Complainant's objections, the AJ assigned to the case granted the Agency's motion and issued a decision without a hearing on September 20, 2022.

The AJ noted Complainant could not meet her burden of establishing that any of the Agency's alleged actions had any nexus with her protected EEO activity. Further, the AJ determined Complainant could not establish a *prima facie* case of disparate treatment for the five discrete incidents. Specifically, she did not name similarly situated comparatives who were treated more favorably than her or other circumstances from which an inference of discrimination could be drawn. Additionally, the AJ found that the Agency presented legitimate, nondiscriminatory reasons for its actions which Complainant did not show were a pretext for discrimination.

Regarding her harassment claim, the events, assuming they happened as alleged, involved time monitoring, performance evaluations, recognition of performance, workspace issues, communication issues, and workload/work assignments. The events constituted common workplace tribulations and the exercise of managerial prerogative which did not amount to a hostile work environment. The AJ noted Complainant failed to offer evidence to establish a nexus between her protected activity and the Agency's actions.

The Agency subsequently issued a final order on September 26, 2022. The Agency's final order fully implemented the AJ's finding that Complainant failed to prove that the Agency subjected her to harassment 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. (as revised, August 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*).

Upon review, we find the record in the present case was fully developed. We note on appeal, Complainant has not challenged the framing of the claims in her complaint.

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 fully 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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

March 4, 2025

Date