



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

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Taylor G.,<sup>1</sup>  
Complainant,

v.

Terence Emmert,  
Acting Secretary,  
Department of the Navy,  
Agency.

Appeal No. 2023000291

Hearing Nos. 531-2020-00363X, 531-2020-00432X

Agency Nos. 19-00174-00658, 20-00174-01370

**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 16, 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. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 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 the Branch Manager of the Command's Ballistics Test Branch (R36), a component of the Test and Evaluation Division (R3) at the Agency's Naval Surface Warfare Center Indian Head Division located in Indian Head, Maryland.

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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 February 9, 2019, Complainant filed an EEO complaint under (Agency No. 19-00174-00658) alleging that the Agency discriminated against him on the bases of race (Hispanic)<sup>2</sup>, national origin (Puerto Rican), age (Y.O.B. 1957), and in reprisal for prior protected EEO activity when:

1. On October 9, 2018, Complainant learned from his immediate supervisor (S1), R3 Division Director, that he was being removed from the Ballistic and Environmental Test Branch Manager position (Code R36).<sup>3</sup>

On January 31, 2020, Complainant filed a second complaint (Agency No. 20-00174-01370) alleging he was subjected to harassment based on race (Hispanic), color (black), national origin (Puerto Rican), age (Y.O.B. 1957), and in reprisal for prior protected EEO activity when:

2. For the appraisal period of October 1, 2017, through September 30, 2018, he did not receive an end-of-year written performance assessment;
3. On August 19, 2019, Complainant's second level supervisor (S2) presented him with a Notice of Decision on Proposed Removal that mitigated the proposed removal of Complainant to a 12-day suspension and demotion to a non-supervisory position, resulting in a reduction in grade and pay; and
4. On September 1, 2019, Complainant's Agency-issued computer was reimaged in connection with an Agency-wide software upgrade while he was on administrative leave, causing him to lose all data saved on the computer's internal hard drive.

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<sup>2</sup> Although Complainant identified his race as Hispanic, the Commission considers the term, "Hispanic," to be a description of an individual's national origin, not race.

<sup>3</sup> Complainant's complaint initially included other claims, which the Agency dismissed pursuant to § 1614.107(a)(2). Complainant does not challenge the dismissal of these claims on appeal. The Commission exercises its discretion to address only those issues specifically raised on appeal and declines to address these procedural dismissals. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110) at Chap. 9, § IV.A (Aug. 5, 2015).

At the conclusion of the investigation on his complaints, the Agency provided Complainant with a copy of the reports of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing on both complaints and the cases were consolidated. Over Complainant's objections, the AJ assigned to the case granted the Agency's motion for a decision without a hearing and issued a decision without a hearing on August 10, 2022.

The AJ found Complainant failed to establish a prima facie case of discrimination on any of his protected bases. The AJ noted Complainant failed to show he was treated less favorably than similarly situated employees outside his protected group under similar circumstances. Additionally, the AJ found the Agency articulated legitimate, nondiscriminatory reasons for its actions. On October 9, 2018, following inquiries conducted by Complainant's supervisor and by the Command Evaluation and Review Office, finding that Complainant abused his authority by demonstrating capricious conduct, Complainant was assigned nonsupervisory duties pending disciplinary action and two months later was subjected to a 12-day suspension and a demotion to a nonsupervisory position. S1 did not issue Complainant a written evaluation for the rating period ending September 30, 2018, as a result of his uncertainty on how to properly conduct the evaluation due to the proposed disciplinary action.

While Complainant was on paid administrative leave, the Agency mandated the installation of a computer update to all Agency computers by April 2019. Approximately three percent of Agency computers had technical problems with the update, including Complainant's computer. In order to install the update, the Agency's Information Technology office reimaged Complainant's computer and all of Complainant's data and work-related files were erased. The AJ found Complainant did not offer evidence to show the Agency's articulated reasons for its actions were pretextual.

The Agency subsequently issued a final order on September 16, 2022. The Agency's final order fully implemented the AJ's finding that Complainant failed to prove that the Agency subjected him 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. (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 definition of the claims on appeal.

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