



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

[REDACTED]
Malorie D.,¹
Complainant,

v.

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

Appeal No. 2023000465

Hearing No. 450-2021-00044X

Agency No. 2003-0580-2020101547

DECISION

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403, from the Agency's October 12, 2022 final order concerning an 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 order finding no discrimination.

At the time of events giving rise to this complaint, Complainant worked as a GS-6, Health Technician at the Veterans Affairs Medical Center in Houston, Texas.

On April 7, 2020, Complainant filed a formal complaint alleging that she was subjected to a hostile work environment based on sex (female) when:

¹ 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. Beginning in August 2019, and ongoing to the present, a coworker (C1) stated to Complainant, "I'll fuck the shit out of you," aggressively brushed his body against her body, would not move when she would tell him he was too close, C1 moved closer when she pushed him away, and C1 belittled and cursed at her in front of colleagues and patients.
2. On or about December 18, 2019, C1 pushed up against Complainant's buttocks and hips, "in an effort to place his penis on her butt," when she bent over to get something by the copy machines.
3. On December 23, 2019, C1 stated to Complainant, "I need you to get your fat ass, your food, and take it somewhere else, shut the hell up and get the hell on."

After its investigation into the complaint, the Agency provided Complainant with a copy of the report of investigation and notice of right to request a hearing before an Equal Employment Opportunity Commission (EEOC or Commission) Administrative Judge (AJ). Complainant requested a hearing. The Agency submitted a motion for a decision without a hearing. Complainant submitted her response. On October 5, 2022, the AJ issued a decision without a hearing finding no discrimination.

The AJ stated that Complainant did not dispute she first notified the Agency of C1's alleged conduct on December 24, 2019, during a meeting with her first supervisor (S1), a Nurse Manager. Upon notification, S1 immediately separated C1 (a Registered Nurse) and removed C1 away from Complainant's work area. S1 reassigned C1 to a different work area away from Complainant pending a fact-finding investigation and instructed C1 not to further engage with Complainant. The fact-finding investigation was conducted by a third party. The fact-finding team interviewed 26 individuals, including two witnesses identified by Complainant. However, none of the witnesses interviewed indicated that they knew of C1's sexual harassment of Complainant as alleged. Complainant did not indicate she subsequently had any contact with C1 or was subjected to further harassment by C1.

The AJ found that since the Agency took immediate and appropriate action in December 2019 when it first had notice of the alleged sexual harassment, Complainant failed to show a basis to impute liability to the Agency regarding C1's conduct.

The Agency issued a final order fully implementing the AJ's finding that Complainant failed to prove that the Agency was liable for the alleged sexual harassment. 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. (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*).

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.

In the case of coworker harassment, as here, the Agency is responsible for acts of sexual harassment in the workplace where the Agency knew or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action. 29 C.F.R. § 1614.11(d); see Rodriguez v. Dep't of Veterans Affairs, EEOC Appeal No. 01953850 (Aug. 29, 1996); see also Sunday S. v. U.S. Postal Serv., EEOC Appeal No. 2022003721 (Oct. 25, 2023); Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (April 29, 2024).

Here, Complainant alleged that she was subjected to sexual harassment by C1 from August 2019, to December 23, 2019.

Upon notice, the Agency immediately moved C1 away from Complainant's work area and reassigned C1 to work in another area. The Agency also properly conducted a fact-finding investigation regarding C1's conduct. Complainant did not claim she was subjected to any further harassment by C1. 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 Agency was not liable for the alleged harassment.

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)

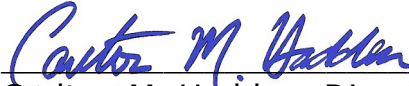
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department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

February 27, 2025
Date