



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

████████████████████  
Merrill O.,<sup>1</sup>  
Complainant,

v.

Pete Hegseth,  
Secretary,  
Department of Defense  
(Department of Defense Education Activity),  
Agency.

Appeal No. 2023000476

Hearing No. 570-2021-01065X

Agency No. EU-FY21-010

DECISION

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403, from the Agency's September 28, 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. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 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 TP-1701-CE-15, Special Education Teacher at Hohenfels Middle/High School for the Department of Defense Education Activity Europe East District in Germany.

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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 December 1, 2020, Complainant filed a formal complaint, which was amended, alleging discrimination based on age (over 40) and in reprisal for prior EEO activity when:

1. On December 2, 2020, he served a one-day suspension.
2. On March 10, 2021, his school Principal denied his request for a volunteer coach.
3. In reprisal for a prior EEO complaint, on April 5, 2021, management removed his key access.
4. On April 9, 2021, he was not provided a substitute teacher.<sup>2</sup>

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 filed his opposition. On September 20, 2022, the AJ issued a decision without a hearing finding no discrimination.

Regarding claim 1, Complainant's Superintendent, GS-15, indicated that he issued Complainant the one-day suspension because Complainant failed to comply with the Agency's policy to quarantine for 14 days prior to reporting to work at the school in Germany upon returning from the United States.

Regarding claim 2, Complainant was coaching the girls' softball team for spring sports as an extracurricular duty assignment. The Principal stated that the Agency's Athletic Director initially did not allow sports coaches, including Complainant, to have a volunteer coach with their sports teams. However, the Director subsequently made exceptions, and Complainant and other coaches were allowed to have volunteer coaches/assistance.

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<sup>2</sup> Complainant's complaint initially included other claims, which the Agency dismissed pursuant to §§ 1614.107(a)(1) and/or .107(4). 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).

Regarding claim 3, the Principal stated that in October 2020, Complainant and four other teachers were notified of their room changes. As a result, Complainant's key access to the room with special education files was changed. Complainant was subsequently granted key access to the room to access files for his special education students.

Regarding claim 4, the Principal indicated that Complainant's special education meeting was originally scheduled for March 22, 2021, but the parent could not make it due to work requirements so the meeting was rescheduled to April 9, 2021. The Principal stated that she previously sent out emails to teachers concerning substitute coverage for 31 education meetings for the months of March, April, and May 2021, which did not list the April 9, 2021 coverage. The Principal indicated that Complainant never contacted her to correct the situation or to request a substitute teacher to cover his class while attending the meeting on April 9, 2021.

Based on the foregoing, the AJ found that the Agency articulated legitimate, nondiscriminatory reasons for the alleged actions. The AJ also found that Complainant failed to provide any evidence that the Agency's reasons were pretextual. The Agency issued its final order fully implementing 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. (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.

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 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).

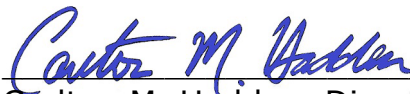
#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0124)

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