



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

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

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

v.

Mark Averill,  
Acting Secretary,  
Department of the Army,  
Agency.

Appeal No. 2023000484

Hearing No. 451-2019-00169X

Agency No. ARFTSAM18JUL03042

**DECISION**

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403, from an Equal Employment Opportunity Commission (EEOC or Commission) Administrative Judge's (AJ's) August 23, 2022, decision which became the Agency's final decision 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. See 29 C.F.R. § 1614.109(i). For the following reasons, we AFFIRM the Agency's final decision finding no discrimination.

At the time of events giving rise to this complaint, Complainant worked as a GS-6, Administrative Support Assistant at the Agency's Medical Command, Patient Care Integration, Joint Base San Antonio in Fort Sam Houston, Texas.

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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 August 3, 2018, Complainant contacted an EEO Counselor regarding her complaint. On September 18, 2018, Complainant filed a formal complaint alleging discrimination and harassment based on race (Black), sex (female), and in reprisal for prior EEO activity when:

- a. On June 28, 2018, a GS-14, Senior Health System Specialist prolonged Complainant's Defense Travel System voucher processing.
- b. On June 5, 2018, Complainant's new second level supervisor (NS2) denied her attending the Simplified Acquisition purchasing training class.
- c. On or about March 2018, Complainant's then second level supervisor (S2) moved through a Permanent Change of Station, and S2 took the headset that Complainant purchased with Complainant's government purchase card.
- d. On May 31, 2017, Complainant's first level supervisor (S1) downgraded her evaluation.
- e. On March 8, 2017, S2 removed Complainant's additional duties from her during her initial counseling which impacted her coworkers.
- f. On March 7, 2017, S2 told Complainant she had to be in her seat by 0700.
- g. On February 2, 2017, S2 and the Specialist moved Complainant away from the majority of the office.
- h. On or about November 2016, S2 denied Complainant her administrative job duties without her knowledge.

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 EEOC AJ. Complainant requested a hearing. The Agency submitted a motion for a decision without a hearing. Complainant submitted her response. On August 23, 2022, the AJ issued a decision without a hearing finding no discrimination.

Regarding claim a, the Senior Health System Specialist was concerned about approving the voucher because the cost went up from \$1,800 to \$3,142. He thus requested a new authorization with the actual cost which was ultimately approved for the reimbursement.

Regarding claim b, NS2 initially had concerns about Complainant's position series and the grade requirements for the training. However, NS2 authorized Complainant to attend the training.

Regarding claim c, S2 did not move through a Permanent Change of Station; rather she was transferred from Medical Command to the Army Medical Command Center and School, which were both in Fort Sam Houston. Complainant's new first level supervisor (NS1) indicated that he was responsible for S2 having the headset, and S2 did not even ask for it. NS1 stated that he believed that S2 could take the headset to S2's new position. When Complainant raised the issue of S2 taking the headset improperly, the Agency investigated the issue and determined that NS1 did not properly transfer the headset. NS1 then contacted S2, and S2 promptly returned the headset.

Regarding claim d, S1 states he initially rated Complainant lower than the top rating, but after discussing Complainant's accomplishments with Complainant, raised the rating to the highest level. Complainant received the highest overall annual performance rating of Successful-1 (highest to lowest ratings were Successful-1, 2, to 3, Fair-4, and Unsuccessful-5) for the period from March 2, 2016, to April 30, 2017.

Regarding claim e, on February 1, 2017, Complainant's Allied Clinical Service (ACS) office was moved to the Garcia building in downtown San Antonio from Fort Sam Houston. Due to this move, Complainant was instructed not to pick up the mail from the old building in Fort Sam Houston anymore because the "G3/5/7" office would be handling the mail. Complainant was also given new office instructions, i.e., reporting to S1 or S2 for an absence and sending a copy of the Office of the Surgeon General email to S2, after the move.

Regarding claim f, S2 clarified to Complainant that Complainant had to be at work on time, i.e., Complainant's duty started at 0700. This applied to all other employees.

Regarding claim g, after the ACS office move to the Garcia building, described in claim e, ACS employees, including Complainant, were not allowed to select their specific cubicle. Complainant was eventually placed in a cubicle close to S2's office.

Regarding claim h, S2 did not remove Complainant's administrative duty, i.e., the staffing processing of "OneStaff" actions, but merely added herself to the process to make it more efficient and visible.

Based on the foregoing, the AJ found that the Agency articulated legitimate, nondiscriminatory reasons for its actions. The AJ also found that Complainant failed to present any evidence the Agency's proffered reasons were pretext for unlawful discrimination. The Agency did not issue a final order after the AJ's decision, and the AJ's decision became the Agency's decision, pursuant to 29 C.F.R. § 1614.109(i). 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 this case, Complainant failed to identify any similarly situated employee who was treated more favorably than she was regarding the alleged incidents. Further, Complainant failed to present any evidence the alleged incidents was based on her protected classes. 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 or harassed by the Agency as alleged.

Accordingly, we AFFIRM the Agency's final 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