



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

[REDACTED]
Karlene P.,¹
Complainant,

v.

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

Appeal No. 2023000688

Hearing No. 410-2020-00305X

Agency No. 200I-0557-2019105119

DECISION

On November 3, 2022, 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 October 4, 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. 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 was a former employee, who had worked as a Physician Assistant at the Agency's Carl Vinson VA Medical Center in Dublin, Georgia.

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.

On October 23, 2019, Complainant filed an EEO complaint alleging that the Agency subjected her to discrimination and a hostile work environment on the bases of sex (female), age (68), and in reprisal for prior protected EEO activity when:

1. From November 2018 to January 2019, she was not provided the training she requested;
2. On December 12, 2018, she was assigned secretarial duties for two months;
3. On January 25, 2019, a co-worker (CW1) sent her an email that contained comments of a sexual nature;
4. On January 25, 2019, Mental Health Service Line Manager (M1) did nothing about her reports of the inappropriate email from the named individual;
5. On January 25, 2019, M1 told her that there was no way she was going to Albany, Georgia for training;
6. In February 2019, she was not provided updated information regarding her assignment of secretarial duties;
7. On February 5, 2019, the Staff Psychiatrist (CW2) yelled at her on the workroom floor;
8. On March 22, 2019, Complainant was issued a Professional Practice Evaluation and Notice of Summary Suspension of Privileges;
9. On March 22, 2019, CW1 sent her an email that addressed her as, "Hey Darling;"
10. On March 29, 2019, she was issued two unsatisfactory performance evaluations;
11. On July 12, 2019, Complainant was notified of a review board convening regarding her attendance and conduct issues;
12. On August 8, 2019, a review board regarding Complainant was conducted;
13. On September 4, 2019, she was issued a Notice of Separation During Probation; and
14. In September 2019, Complainant was subjected to constructive discharge.

The record shows that on September 30, 2018, Complainant was appointed to the position of Physician Assistant. The appointment was subject to a two-year probationary period. She complained in November 2018, to M1 regarding the lack of training. She claimed that M1 refused to provide her training, but he has allowed Complainant's younger co-worker to receive training from the Psychiatrist. The record includes a delineation of the training that was provided to Complainant.

Complainant claimed that, in January 2019, she complained to M1 of inappropriate sexual conduct on the part of a CW1. The record contains other emails reflecting the communications were friendly in nature. On January 25, 2019, the male coworker sent her an email, "Clarification," stating that he did not mean to convey anything inappropriate." The undisputed record shows that, on March 22, 2019, at 4:00 p.m., Complainant had sent an email to CW1 during his off-duty hours requesting his assistance regarding her 30-day evaluation for competency. It is undisputed that she contacted him after hours, during his "private time." On March 22, 2019, at 4:10 PM, the male coworker sent her an email that addressed her as, "Hey Darling." He told her that he did not know of openings, but he made a recommendation of people and suggestions. He sent a return email clarifying his intent and apologizing to Complainant if she was offended.

Complainant claimed that CW2 yelled at her and called her unprofessional. CW2 denied yelling at Complainant. CW2 stated that he remembered telling Complainant that he was very busy and that he would not order suboxone (a controlled substance) for a veteran without an evaluation.

On March 21, 2019, Complainant was notified that her privileges were being summarily suspended upon the recommendation of the Chief of Staff, since concerns had been raised to suggest that aspects of her clinical practice did not meet the accepted standards of practice and potentially constitute a threat to patient welfare.

The undisputed record showed that several Reports of Contacts were filed against Complainant for her unprofessional behavior. She was issued two unsatisfactory performance evaluations. On July 12, 2019, she was notified that a review board was convened regarding her attendance and conduct issues. On September 4, 2019, Complainant was issued a Separation During Probation Letter with an effective date of September 13, 2019. The letter informed her that the Professional Standards Board determined that Complainant should be separated during her probationary period for consistently displaying unbecoming conduct as a VA employee and failing to meet performance standards.

At the conclusion of the investigation, 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 timely requested a hearing.

Over Complainant's objections, the AJ assigned to the case granted the Agency's motion and issued a summary judgment decision.

In the decision, the AJ determined that most of Complainant's claims amounted to unsupported allegations and speculation and that the alleged incidents were insufficiently severe or pervasive to establish a hostile work environment. In particular, the AJ noted that the two emails from CW1 may have been inappropriate; however, they were isolated and insufficient to create a hostile work environment, especially when considered in the context of other email communications between Complainant and CW1. Further, the AJ found that Complainant failed to show that the incidents alleged were based on discriminatory or retaliatory animus. As a result, the AJ found that Complainant was not subjected to discrimination, reprisal, a hostile work environment, or constructive discharge as alleged.

The Agency subsequently issued a final order fully adopting the AJ's decision. This 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*).

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 or retaliatory 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 factfinder could not find in Complainant's favor.

We agree with the AJ that the evidence in the record does not establish that the alleged incidents were sufficiently severe or pervasive to constitute a hostile work environment. Furthermore, aside from Complainant's bare uncorroborated assertions, the record does not support a finding that any of the alleged actions were based on Complainant's protected classes. Rather, the record reflects that the alleged incidents were more likely the result of routine supervision and general workplace disputes. Complainant failed to show that the Agency's reasons for its actions were pretextual. As a result, the Commission finds that Complainant was not subjected to discrimination, reprisal, or a hostile work environment as alleged.

Finally, we conclude that a finding of constructive discharge is precluded by our finding that Complainant was not subjected to a discriminatory or retaliatory hostile work environment. See Val L. v. Dep't of Veterans Affairs, EEOC Appeal No. 2021004383 (Feb. 23, 2023) ("The law does not permit an employee's subjective perceptions to govern a claim of constructive discharge."); Terrence F. v. Nat'l Aeronautics and Space Admin., EEOC Appeal No. 2021001419 (Nov. 22, 2021).

Upon careful review of the AJ's decision and the evidence of record, we conclude that the AJ correctly determined that the preponderance of the evidence did not establish that Complainant was subjected to discrimination, reprisal, or a hostile work environment 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:


Carlton M. Hadden, Director
Office of Federal Operations

March 6, 2025
Date