



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

[REDACTED]  
Nannie D.,<sup>1</sup>  
Complainant,

v.

Kristi L. Noem,  
Secretary,  
Department of Homeland Security  
(Immigration and Customs Enforcement),  
Agency.

Appeal No. 2023000924

Hearing No. 540-2019-00279X

Agency Nos. HS-ICE-00369-2018  
HS-ICE-02546-2018

**DECISION**

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403, from the Agency's October 26, 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. For the following reasons, the Commission AFFIRMS the Agency's final order.

At the time of events giving rise to this complaint, Complainant worked for the Agency as a Mission Support Specialist, Enforcement and Removal Operations in Albuquerque, New Mexico. Complainant filed two formal EEO complaints, listed below, which were later consolidated.

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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.

*Agency No. HS-ICE-00369-2018 (Complaint 1)*

On February 15, 2018, Complainant filed an EEO complaint alleging that the Agency discriminated against her and subjected her to a hostile work environment based on sex (female) when:

1. In March of 2016, and continuing, an Enforcement and Removal Assistant (ERA), repeatedly stopped by Complainant's office to stare at her and sometimes sigh;
2. On or about January 13, 2017, Complainant learned that several of her coworkers made disparaging remarks about her in an open setting, including calling her a "b\*\*ch" and calling her "lazy," and, the Assistant Field Office Director (AFOD), failed to act when Complainant informed him of this incident;
3. On June 19, 2017, the ERA used his vehicle to menace Complainant, which she reported to the AFOD, who sent the report to the Office of Professional Responsibility (OPR), but no action was taken against the ERA;
4. On or about October 24, 2017, the ERA called Complainant a "b\*\*ch," and the AFOD, and the Deputy Field Office Director (DFOD), failed to take appropriate action after Complainant informed them of the incident;
5. On or about October 25, 2017, the ERA walked past Complainant laughing and implied to a coworker that he was carrying a gun; and,
6. On or about December 7, 2017, the ERA sent Complainant disrespectful emails and the AFOD failed to take appropriate action after becoming aware of the incident.

*Agency No. HS-ICE-02546-2018 (Complaint 2)*

On November 21, 2018, Complainant filed a formal complaint alleging the Agency subjected her to a hostile work environment based on race/national origin (Hispanic), sex (Female), and reprisal (Prior EEO activity) when:

1. Since on, or about, July 10, 2018, Complainant has been singled out, yelled at, intimidated, belittled, micro-managed, and held to a different standard, and when Complainant reported this conduct to management, management failed to take appropriate action;
2. On, or about, July 10, 2018, Complainant learned that a Supervisory Detention and Deportation Officer (SDDO) told another SDDO (SDDO-2) that he had seen Complainant conspiring against him with an Officer;
3. On July 24, 2018, an SDDO (SDDO-3) approached Complainant while she was having lunch with coworkers, introduced himself as her new supervisor, and stated that Complainant was to check in with him on her arrival and check out with him when she left the building;
4. On July 25, 2018, Complainant was told to "cc" SDDO-3 on all her emails so he could track her work;
5. On August 2, 2018, SDDO-3 asked Complainant to "cc" him on emails rather than placing his name on the "To" line, even though she was already putting his name on the "cc" line rather than the "To" line as he claimed;
6. On August 9, 2018, SDDO-3 denied Complainant's leave request;
7. On several occasions, including August 2 and 13, 2018, SDDO-3 got too close to Complainant, invading her personal space;
8. On October 29, 2018, Complainant received a low rating on her fiscal year 2018 Performance Work Plan (PWP) annual review;

9. On November 5, 2018, SDDO-3 unnecessarily delayed Complainant leaving the office to pick up her son at school and take him to urgent care.

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. The AJ held a hearing and subsequently issued a decision on September 27, 2022, in favor of the Agency.

In the decision, following the AJ's findings of fact, the AJ addressed the allegation of a hostile work environment based on sex in both complaints. The AJ stated it was clear that in Complaint 1, Complainant and the ERA did not get along, and it was clear the ERA and his friends were upset when Complainant was promoted to the position of Mission Support Specialist in March 2016. The Assistant Field Office Director (AFOD) had testified that the bickering between Complainant and the ERA had continued for nearly three years, which he attributed to disagreements about unionization.

The AJ acknowledged that while the Agency investigated whenever Complainant raised a complaint, they failed to take easy steps to address the problems between Complainant and the ERA, such as having them stay away from each other or mandating that they act professional. The Agency did take steps to involve an independent mediator to work out problems, but Complainant rejected the proposed mediation on advice of counsel. The AJ determined that there was no evidence the ERA's actions toward Complainant were based on her sex.

The AJ addressed the allegation that ERA tried to run Complainant off the road, which the Agency had investigated. Complainant had acknowledged that she was in a rental car, with tinted windows, and did not know if the ERA knew he was tailgating her. The ERA had a history of aggressive and dangerous driving, and the AJ noted it was troublesome that the Agency made no effort to let the ERA know this was improper, especially in a government car. However, the AJ concluded that there was no evidence that the ERA's actions were due in part to Complainant's sex. Regarding the gun incident, the AJ found that the Agency took appropriate action when it learned of the ERA's comment and that he had a gun in his car on government property, violating policy.

The AJ found the Assistant Field Office Director testified credibly regarding his decision to not discipline the ERA for having a gun in his car, because the policy was not well-known and neither the ERA nor the Assistant Field Office Director knew about the policy. The AJ determined that Complainant failed to establish that any of these incidents were because of Complainant's sex. Additionally, the AJ found the email from the ERA was objectively not disrespectful, despite Complainant's allegation. Further, management then responded by telling the ERA not to email Complainant directly.

Regarding the allegations in Complaint 2, the AJ concluded that there was no evidence that Complainant failed to establish that she was subjected to discrimination or harassment due to her sex or national origin/race. The AJ found there was no evidence of a causal link between Complainant's protected basis and actions alleged. For example, as to Claim 2 (Complaint 2) the AJ determined it was a bizarre incident, which the AJ found it credible. However, the AJ concluded that had more to do with union activity than any other bases.

The AJ stated that the alleged incidents taken by Complainant's new supervisor against Complainant were the result of bad management, however, there was no evidence that they were due to Complainant's sex, race/national origin, or reprisal. The AJ found that with respect to Complainant's new supervisor, the Supervisory Detention and Deportation Officer (SDDO-3), the treatment of Complainant was no more than normal supervisor interactions. The AJ recognized that while SDDO-3 was a micromanager and unprofessional, there was no evidence that any of his actions were based on her sex or national origin/race. There was no evidence of discriminatory comments or that Complainant was treated differently.

The AJ noted SDDO-3 supervised another Hispanic, female, who testified that she was never required to check-in with him, or cc him on her communications. SDDO-3 had also never supervised a Mission Support Specialist, therefore he was observing Complainant closely in order to learn her job. The allegation in Claim 7 (Complaint 2) was that SDDO-3 was looking over Complainant's shoulder at a computer, which required a certain amount of closeness. With regards to Claim 9 (Complaint 2), the AJ found that while it was insensitive when SDDO-3 asked Complainant to stop by his office before she left to get her child from urgent care, however, it was because Complainant had the only purchase card.

Finally, the AJ determined that Complainant failed to establish that she was subjected to retaliatory harassment regarding the allegations in Complaint 2.

The AJ noted many of the incidents were nothing more than a disagreement with management style. Even if the incidents at issue were of the type to discourage a reasonable person from engaging in EEO activity, the AJ determined there was no evidence that any of the actions taken were due to retaliatory animus. Additionally, SDDO-3 denied having any knowledge of Complainant's prior EEO activity.

The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination, harassment, and reprisal as alleged. The instant appeal followed.

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held.

An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony, or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See EEOC Management Directive 110, Chapter 9, at § VI.B. (Aug. 5, 2015).

Upon careful review of the AJ's decision and the evidence of record, as well as the parties' arguments on appeal, we conclude that substantial evidence of record supports the AJ's determination that Complainant has not proven discrimination 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:

  
Carlton M. Hadden, Director  
Office of Federal Operations

March 6, 2025  
Date