



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

[REDACTED]  
Clay W.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2023001421

Hearing No. 410-2021-00429X

Agency No. 200I-0508-2020105913

**DECISION**

On December 30, 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 November 30, 2022, final order concerning his 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 as a GS-0640-4 Patient Escort at the Agency's Atlanta VA Medical Center facility in Decatur, Georgia.

On December 1, 2020, Complainant filed a formal complaint alleging that the Agency discriminated against him on the bases of race (Black), national origin

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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.

(Puerto Rican), color (light skin), and reprisal for prior protected EEO activity when:

1. Complainant was subjected to disparate treatment when:
  - a. From May 28, 2019, to present, he has not been awarded the proper amount of leave; and
  - b. From May 28, 2019, to present, errors within his paychecks have not been corrected;
2. Complainant was subjected to harassment, including when:
  - a. The events identified in claim (1) occurred;
  - b. He was required to use leave to attend an Agency class December 2-6, 2019;
  - c. His supervisor (Supervisor-1) questioned him regarding his delivery of labs;
  - d. On February 8, 2020, during a dispute between Complainant and a coworker (Coworker-1), Coworker-1 lunged towards Complainant's face and told him to step outside because Coworker-1 wanted a "piece of [Complainant's] white ass"; and
  - e. His request to move to a different shift was not granted until October 2020; and
3. On January 13, 2021, Complainant's request for two hours of official time to perform work related to his EEO complaint was denied.

Complainant began working for the Agency on May 28, 2019, and he subsequently provided documents showing his previous federal service. In January 2020, a HR Specialist requested that Complainant's leave accrual be updated to eight hours per pay period, effective May 28, 2019. Complainant confirmed that his leave accrual was changed to eight hours per pay period beginning with the pay period ending January 18, 2020. Complainant's timecards had to be retroactively corrected to reflect the additional leave Complainant would have accrued. Complainant's timekeeper updated Complainant's timecards from September 1, 2019, through January 4, 2020, but did not have access to pay periods that predated his position as timekeeper. A Supervisory Payroll Technician stated that, after months of back and forth, Payroll conducted another review and determined that Complainant had been credited with the appropriate amount of leave retroactive to May 28, 2019. Complainant also generally alleged that there were issues with his payroll that were not corrected in a timely manner.

Complainant was taking contracting officer's representative (COR) classes with the Agency at his own expense for upward mobility. Complainant averred that, although Supervisor-1 told him that he did not need to take leave when he was attending Agency training, he was required to use leave to attend COR class December 2-6, 2019. Complainant alleged that the other students in the class did not have to take leave to attend. Complainant stated that, when he requested reconsideration, he was not required to take leave, and leave records do not reflect that Complainant was charged with leave for these dates. Complainant requested a schedule change to attend a COR class from April 15-May 1, 2020, and Supervisor-1 granted a temporary change. Complainant requested to change to third shift/night shift several times. Supervisor-1 told Complainant that he could move to third shift when they had coverage for second shift. On October 12, 2020, Supervisor-1 offered Complainant a third shift position, which he accepted on October 14, 2020.

Complainant stated that Supervisor-1 called him on his day off to ask about some missing labs. According to Complainant, he dropped off the sample at the lab, but it was in the wrong tube and lab staff had called the floor to ask for the labs to be re-drawn. Complainant averred that the nurse did not tell the nurse on the next shift that the blood needed to be drawn again.

Complainant alleged that, in February 2020, Coworker-1 lunged at him and said he wanted a "piece of [Complainant's] white ass," which Complainant interpreted as a racial threat.<sup>2</sup> According to Complainant, although he was Black, he looked Caucasian because of his light skin. Complainant reported Coworker-1's actions to Supervisor-1. Supervisor-1 stated that Complainant indicated that he did not want Supervisor-1 to do anything because Complainant did not want Coworker-1 to lose his job. Supervisor-1 averred that the Nurse Manager who had been on duty the night of the incident said she had spoken with the individuals involved and that Coworker-1 apologized. Supervisor-1 scheduled a meeting in March 2020 to address Complainant's issues with Coworker-1, and, on March 11, 2020, Complainant emailed Supervisor-1, stating that he appreciated the Escort Lead's efforts to resolve the situation. According to Complainant, others also had a problem working with Coworker-1.

Complainant stated that Supervisor-1 denied his request for two hours of official time to work on his EEO complaint on January 13, 2021. According to Supervisor-1, she needed to check the policy before approving Complainant's request and wanted to ensure that there was minimal delay to patient care.

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<sup>2</sup> Coworker-1's race, national origin, and color are not identified in the record.

The record reflects that Supervisor-1 approved Complainant to use eight hours of official time to work on the instant EEO complaint.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. Over Complainant's objection, the AJ assigned to the case granted the Agency's motion for summary judgment and issued a decision without a hearing in favor of the Agency on November 20, 2022.

The Agency subsequently issued a 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.

The Agency's legitimate, nondiscriminatory explanation for the delay in Complainant receiving the proper amount of leave and pay was due to administrative errors. There is no evidence that the Agency's errors were connected to Complainant's race, national origin, color, or prior protected activity. Complainant's unsupported allegations of discriminatory motivation are insufficient to establish pretext for discrimination.

With respect to the February 8, 2020, incident, Coworker-1's statement that he wanted a "piece of [Complainant's] white ass" is evidence that Coworker-1's conduct was motivated by Complainant's race, national origin, and/or color. However, there is no evident connection between the other instances of alleged harassment and Complainant's membership in any protected class. Moreover, the other incidents concern alleged harassment by Complainant's managers with respect to his leave accrual, paychecks, leave, schedule, and performance of job duties, which are everyday interactions between a supervisor and a subordinate that do not rise to the level of harassment. For example, although Complainant alleged harassment with respect to being instructed to take leave for the COR classes, it is undisputed that the COR classes was not related to Complainant's Patient Escort position. Complainant was not switched to third shift until October 2020, but the record reflects that the delay was due to a lack of coverage on second shift and that Supervisor-1 temporarily changed Complainant's schedule to facilitate attending COR classes. Although Coworker-1's comment to Complainant was offensive and Complainant felt threatened, we agree with the AJ that Coworker-1's February 8, 2020, actions were insufficiently severe or pervasive to constitute a hostile work environment.

Finally, Complainant alleged that he was denied official time to work on his EEO complaint. Pursuant to 29 C.F.R. § 1614.605, agencies shall afford complainants a reasonable amount of official time to allow a complete presentation of the relevant information associated with their complaint and to respond to agency requests for information. The actual number of hours to which a complainant is entitled will vary, depending on the nature and complexity of the complaint and considering the mission of the agency and the agency's need to have its employees available to perform their normal duties on a regular basis. The Commission considers it reasonable for agencies to expect their employees to spend most of their time doing the work for which they are employed. EEO MD-110, Chap. 6 § VII.C. The Agency denied Complainant's January 13, 2021, request for official time to ensure coverage for patient care, and the Agency provided Complainant eight hours of official time to work on his complaint. We find that Complainant has not shown that the Agency denied him a reasonable amount of official time.

Upon careful review of the AJ's decision and the evidence of record, as well as the parties' arguments on appeal, including those not specifically addressed herein, we conclude that the AJ correctly determined that the preponderance of the evidence did not establish that Complainant was discriminated against by the Agency or denied a reasonable amount of official time to work on his EEO complaint as alleged.

Accordingly, we AFFIRM the Agency's final order implementing the AJ's decision.

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 6, 2025  
Date