



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

[REDACTED]
Shayna P.,¹
Complainant,

v.

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

Appeal No. 2023001705

Hearing No. 550-2020-00494X

Agency No. 200P-0640-2020101833

DECISION

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's December 30, 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 as a Human Resources Assistant at the Agency's Palo Alto Health Care System in Palo Alto, California.

On February 26, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (Asian) and sex (female), and in reprisal for prior protected EEO activity, when:

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.

1. Complainant was subjected to a hostile work environment when:
 - a. on January 13, 2020, a Lead Personnel Security Specialist removed Complainant's personal identity verification (PIV) out of her computer workstation;
 - b. on January 13, 2020, the Lead Personnel Security Specialist followed Complainant as she walked to the Human Resources Office to file a report against the Lead Personnel Security Specialist;
 - c. on January 13, 2020, the Lead Personnel Security Specialist intervened and blocked Complainant from making a report of an incident in private;
 - d. on January 17, 2020, the Lead Personnel Security Specialist instructed Complainant to wait until she released her for lunch;
 - e. on February 5, 2020, Complainant was accused of making negative comments to coworkers;
 - f. on February 5, 2020, the Lead Personnel Security Specialist directed a Security Officer to search Complainant's personal belongings;
 - g. on February 5, 2020, the Lead Personnel Security Specialist accused Complainant of taking work home with her;
 - h. on February 5, 2020, the Director verbally reprimanded Complainant for having work documents in her bag; and
 - i. on unspecified dates, management only enforced the department's lunchtime rules against Complainant and her Asian coworker;
2. on January 23, 2020, Complainant was issued a written reprimand; and
3. on February 7, 2020, Complainant was detailed to a receptionist desk.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) 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 granted the Agency's motion and issued a decision without a hearing on December 28, 2022. As an initial matter, the AJ found that claim 3 was not a discrete act that rendered Complainant aggrieved.

While she characterized the action as a “reprimand,” it was an email instructing Complainant not to discuss her negative perceptions of the Agency with customers or coworkers while rendering services.

The AJ then agreed with the Agency that collateral estoppel applied based on a decision issued by the Merit Systems Protection Board (MSPB) for Complainant’s subsequent removal.² The MSPB found the underlying removal action appropriate, and that Complainant did not establish her affirmative defense of retaliation for her termination. The Lead Personnel Security Specialist removed Complainant’s PIV card (claim 1(a)), out of a desire to have a conversation with Complainant, who refused to speak to her, and this was legitimate and not pretextual. Complainant removed documents from the office containing personally identifiable information, such as names; fingerprints; and social security numbers, which prompted the Agency’s actions in claims 1(f), 1(g), and 1(h). The MSPB found the Agency’s actions motivated by legitimate reasons and not pretexts. The MSPB sustained a lack of candor charge based on Complainant’s attempts to deceive management when they questioned her about these documents, and she denied having them in her bag when she did. The AJ noted that Complainant argued that the MSPB did not fully examine her discrimination claims, but she had withdrawn them except for the reprisal basis. Since Complainant previously abandoned her claims, she was not permitted to relitigate them before the Commission.

The Agency detailed Complainant away from her sensitive security position to perform duties as a receptionist (claim 3), and the AJ found no evidence of discrimination or retaliation. Regarding the other alleged incidents of harassment, the AJ determined that Complainant did not raise a genuine dispute of material fact regarding the existence of a discriminatory or retaliatory motive. It was undisputed that Complainant made comments about “lazy people,” that was overheard by coworkers. Management officials also explained that Complainant was asked to wait to take her lunch break until a coworker returned to maintain staff levels, and this was applied to all employees without regard to a protected class.

The Agency issued its final order adopting the AJ’s finding that Complainant failed to prove discrimination as alleged. The instant appeal followed.

² Complainant filed a petition for review for the MSPB’s decision. The Commission concurred with the MSPB in Stephany K. v. Department of Veterans Affairs, EEOC Appeal Number 2021001610 (September 23, 2021).

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*).

Upon review, we find the record in the present case was fully developed. 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 offers no arguments on appeal and 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 her favor. Upon careful review of the AJ's decision and the evidence of record, as well as the Agency's 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.

We find that the dismissals of claims 1(a), 1(f), 1(g), and 1(h) were proper based on collateral estoppel. Under the doctrine of collateral estoppel, once an issue is determined by a court of competent jurisdiction, that decision precludes re-litigation of the issue in a different cause of action. The Commission has previously held that the doctrine of collateral estoppel is applicable to discrimination claims. See Fitz-Gerald v. Tenn. Valley Auth., EEOC Request No. 05910573 (Jan. 16, 1992). Thus, issue preclusion bars re-litigation of issues actually adjudicated and necessary to the judgment of prior litigation between the parties. See Magallanes v. Dep't of Justice, EEOC Request No. 05900176 (Jul. 13, 1990).

A review of the MSPB's decision shows that these claims were adjudicated for Complainant's affirmative defenses to her removal. The MSPB concluded that there was no evidence that these actions were retaliatory.

For the alleged harassment in claims 1(b) - 1(e), and 1(i), Complainant offered no connection to a protected basis. Regarding claim 1(b), the Lead Personnel Security Specialist explained that she accompanied Complainant to Human Resources to discuss the situation (from claim 1(a)). In response to claim 1(c), the Chief of Recruitment and Placement testified that the Lead Personnel Security Specialist did not intervene or block Complainant from making the report, and they both came to discuss the incident. ROI at 195, 154. The record contains a written Report of Contact authored by Complainant regarding the events of January 13, 2020. ROI at 127-9. For claim 1(e), Complainant's supervisor attested that three employees reported to her that Complainant made mean or negative comments. Complainant averred that she was frustrated and admitted that she made a comment about not liking lazy people, which may have been overhead because it was a small office with no privacy. A coworker confirmed that he witnessed Complainant calling another coworker ignorant. ROI at 238, 179, 96-7. Witnesses also verified that rules regarding lunch breaks were applicable across the board, and they all followed the same policy, for claims 1(d) and 1(i). ROI at 170, 186.

Complainant claimed that she was "reprimanded" by the Lead Personnel Security Specialist in a January 23, 2020 email in claim 2. The Lead Personnel Security Specialist wrote that customers should not be subjected to Complainant's complaints about Agency systems. It was inappropriate for Complainant to express her negative feelings about the office, and she was instructed to keep her interactions professional without her personal feelings. ROI at 690. The Commission has held that routine work assignments, instructions, and admonishments do not rise to the level of harassment because they are common workplace occurrences. See Gray v. U.S. Postal Serv., EEOC Appeal No. 0120091101 (May 13, 2010). Unless it is reasonably established that the common workplace occurrence was somehow abusive or offensive, and that it was taken in order to harass Complainant on the basis of her protected class, we do not find such common workplace occurrences sufficiently severe or pervasive to rise to the level of a hostile work environment or harassment as Complainant alleges. See Complainant v. Dep't of Veterans Affairs, EEOC Appeal No. 0120130465 (Sept. 12, 2014). There is no evidence that these work-related incidents were abusive or offensive, or taken in order to harass Complainant on the basis of a protected class.

Accordingly, we find that Complainant did not establish that the Agency subjected her to harassment based on race or sex, or in reprisal for prior protected EEO activity.

Regarding claim 3, the Chief of Human Resources Management Services explained that he detailed Complainant to the reception desk based on the seriousness of the alleged misconduct. ROI at 221. Complainant did not show that the proffered reason was not worthy of belief, and her bare assertions that management officials discriminated against her are insufficient to prove pretext or that their actions were discriminatory.

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)

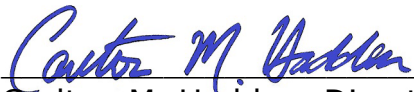
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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:



Carlton M. Hadden, Director
Office of Federal Operations

March 6, 2025

Date