



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

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

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

v.

Alejandro N. Mayorkas,  
Secretary,  
Department of Homeland Security  
(Citizenship and Immigration Services),  
Agency.

Appeal No. 2023004096

Agency No. HS-CIS-00381-2022

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated June 8, 2023, dismissing his complaint of unlawful 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 reasons presented below, we AFFIRM the Agency's final decision dismissing the complaint.

**ISSUE PRESENTED**

Whether the Agency's final decision properly dismissed Complainant's formal complaint.

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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.

### BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an Immigration Officer, GS-14 at the Agency's Fraud Division in Camps Springs, Maryland.

On December 23, 2021, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the basis of religion (Christian) when he was notified that he needed to submit an exemption request if he did not want to obtain a COVID-19 vaccination by November 9, 2021, as required by Executive Order 14043, and that failure to comply with Executive Order 14043 could result in disciplinary action.

On June 8, 2023, the Agency dismissed Complainant's claim pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state claim. Specifically, the Agency determined that Complainant was not an aggrieved employee because he informed the EEO counselor that management did not pressure him to get the vaccine or change his religious beliefs. In response to Complainant's assertion that he was threatened with discipline, the Agency determined that he was not aggrieved by management's actions because he was never disciplined.

The instant appeal followed.

### CONTENTIONS ON APPEAL

Complainant argues that he was an aggrieved employee because the Agency failed to provide him with a religious accommodation. The Agency submitted a brief arguing that the FAD should be affirmed because Complainant has failed to show that he was aggrieved.

### STANDARD OF REVIEW

The Agency's decision to dismiss a complaint is subject to de novo review by the Commission, which requires the Commission to examine the record without regard to the factual and legal determinations of the previous decision maker and issue its decision based on the Commission's own assessment of the record and its interpretation of the law. 29 C.F.R. § 1614.405(a). The Commission should construe the complaint in the light most favorable to the complainant and take the complaint's allegations as true. See Cobb v. Department of the Treasury, EEOC Request No. 05970077 (March 13, 1997).

Thus, all reasonable inferences that may be drawn from the complaint's allegations must be made in favor of the complainant.

### ANALYSIS

By regulation, an agency shall accept a complaint from any aggrieved employee who believes that he or she has been discriminated against by that agency because of race, color, religion, sex, national origin, age or disability. 29 C.F.R. §§ 1614.103, 1614.106(a). The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Department of the Air Force, EEOC Request No. 05931049 (April 21, 1994). If a complainant does not allege that they were "aggrieved" within the meaning of the Commission's regulations, then an agency shall dismiss the complaint for failure to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1).

Complainant applied for a religious exemption to the Agency's COVID-19 vaccination requirement, which had been implemented pursuant to Executive Order 14043. On appeal, Complainant argues that he was aggrieved because the Agency failed to provide him with a religious accommodation.

Complainant's assertion that his accommodation request was denied is not supported by the record. The record shows that the Agency delayed processing his request due to a preliminary nationwide injunction, which required federal Agencies to take no action to implement or enforce Executive Order 14043. On May 9, 2023, Executive Order 14043 was revoked, consequently, any policies premised on the order may no longer be enforced. Renaldo v., Department of Defense, EEOC Appeal No. 2023001971 (Sept. 23, 2024). Complainant's claim is now moot. Since he has not alleged that he received the vaccine, and nothing in the record shows that he was impacted during the period that his request was being processed, we find that he has not shown any harm and that his complaint fails to state a claim.

### CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is AFFIRMED.

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

November 21, 2024  
Date