



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

[REDACTED]
Helen G,¹
Complainant,

v.

Christine Wormuth,
Secretary,
Department of the Army,
Agency.

Appeal No. 2023004263

Agency No. ARHQOSA23FEB00954

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision (Dismissal) dated June 8, 2023, dismissing her 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., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an EEO Manager at the Agency's Anniston Army Depot in Anniston, Alabama.

On May 24, 2023, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of sex (female), age (69), and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, when between August 2012 and December 2022, Complainant was subjected to harassment when:

1. On December 30, 2022, despite a facility open-door policy, Complainant was denied the opportunity to speak to an Agency Colonel;

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.

2. On an unspecified date following an Inspector General visit, Complainant notified management that she had been subjected to a hostile work environment but nothing was done;
3. In 2022 and 2023, a facility lawyer and the Deputy Chief of Staff spoke to Complainant in a condescending manner after Complainant asked them for help, interpretation, and guidance on a COVID-19 Tasker;
4. On numerous occasions Complainant's former first-line supervisor (Supervisor) spoke to Complainant in an abrasive and condescending/threatening tone and accused her of lying;
5. On unspecified dates, Supervisor accused Complainant of not turning in EEO reports;
6. On various unspecified dates, Complainant, during briefings, was instructed by the facility Chief Legal Counsel to disclose information about EEO contacts to him and to facility leadership;
7. On various unspecified dates, the facility Chief Legal Counsel and the Command Group made degrading comments about Complainant and her EEO staff when she was briefing them on the allegations made in EEO complaints;
8. On unspecified dates, Supervisor initiated two different 15-6 investigations against Complainant;
9. From 2012 to December 30, 2022, Supervisor denied Complainant a promotion to GS 0260/13;
10. In 2015, Supervisor denied Complainant the Group Award on Performance (GAP);
11. In 2015, Supervisor gave Complainant an annual performance rating of "4."
12. On or around August 2012, Supervisor reassigned Complainant to a Supervisory EEO Specialist position which Complainant was not qualified to perform and Complainant received no support from leadership;
13. On various unspecified dates, Supervisor required Complainant to work overtime without compensation;
14. On an unspecified date, Supervisor asked Complainant to work on an upcoming Saturday, but then denied overtime pay and presented Complainant with a letter of warning for working that overtime;
15. In 2012, Complainant was denied a desk audit;
16. On an unspecified date, Supervisor undermined Complainant's authority when he did not allow Complainant to hire staff, removed some of Complainant's staff members and did not take Complainant's performance rating recommendations for her employees into consideration; and
17. On an unspecified date, Supervisor directed Complainant to follow the Standard Operating Procedure, previously created by the former EEO Officer and Chief Counsel, for processing EEO complaints instead of MD110 and EEO regulations.

The Agency dismissed the complaint for untimely EEO Counselor contact. The instant appeal followed.

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination be brought to the attention of the Equal Employment Opportunity Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) days of the effective date of the action. The record discloses that the latest alleged discriminatory event occurred on December 30, 2022, but Complainant did not initiate contact with an EEO Counselor until February 14, 2023, which is beyond the forty-five (45) day limitation period.

EEOC regulations provide that the agency or the Commission shall extend the time limits when the individual shows that he was not notified of the time limits and was not otherwise aware of them, that he did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence he was prevented by circumstances beyond his control from contacting the Counselor within the time limits, or for other reasons considered sufficient by the agency or the Commission. The Agency noted that as an EEO Specialist, Complainant was aware of the applicable time periods, and further noted that, despite Complainant's reference to her own medical condition as well as her bereavement following the deaths of three family members between September 2022 and December 2023, Complainant could have contacted a Counselor at any time "from August 2012 up to February 13, 2023" for her Counselor contact to have been timely. We note on appeal that Complainant has not provided any evidence to support any claim that she was medically unable to contact a Counselor prior to February 14, 2023. We therefore find Complainant has presented no persuasive arguments or evidence warranting an extension of the time limit for initiating EEO Counselor contact.

CONCLUSION

The Dismissal is AFFIRMED.

STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0124)

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 his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit his or her 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 his or her 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

January 22, 2024

Date