



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Richelle N.,¹
Complainant,

v.

Todd Hunter,
Acting Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2023004307

Hearing No. 430-2022-00247X

Agency No. 2001-0544-2022100279

DECISION

On July 24, 2023, 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 June 27, 2023, final order concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation 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.

ISSUE PRESENTED

The issue is whether the EEOC Administrative Judge (AJ) properly issued a decision without a hearing concluding that Complainant was not subjected to a hostile work environment regarding assignment, job performance, wages and Complainant's voluntary resignation based on sex (female) and reprisal (EEO activity).

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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Nurse Practitioner, fee-basis provider (FBP) at the Agency's Primary Care Women's Clinic, VA Medical Center in Columbia, South Carolina. Complainant is female. The record is devoid of any prior EEO activity in which she was involved. Complainant's first-line supervisor (Supervisor 1) was the Women's Health Medical Director. ROI at 144. Complainant's second-line supervisor (Supervisor 2) was the Chief of Primary Care. Complainant's third-line supervisor (Supervisor 3) was the Acting Chief of Staff. ROI at 191-92.

Supervisor 1 oversaw the daily operations of the Women's Clinic and directed the work of subordinate women's health physicians, residents, students, nurse practitioners, physician assistants, and health technicians. ROI at 143. See Functional Statement for the VN-0610-III Nurse Practitioner (Women's Health Director). Supervisor 1 functioned as an expert in clinical practice and was responsible for providing guidance and assistance to women's health providers and support staff. See Functional Statement at 2 and ROI at 146.

Complainant initiated EEO contact on October 19, 2021. On October 27, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against her and subjected her to a hostile work environment on the bases of sex (female) and reprisal (instant complaint) under Title VII of the Civil Rights Act of 1964 when:

1. On August 10, 2021, and on September 14, 2021, Supervisor 1 interfered with Complainant's care of a patient, undermined complainant's position and clinical abilities;
2. On August 11, 2021, and on September 15, 2021, management failed to respond when Complainant reported harassment;
3. On September 15, 2021, management detailed Complainant from patient care, pending an investigation;
4. On September 15, 2021, Supervisor 2 stated several times to Complainant "Bon Appetit.";
5. On September 15, 2021, Complainant resigned from her fee-basis contract (constructive discharge);
6. On September 15, September 17, 2021, and on September 28, 2021,

Agency officials refused to accept Complainant's rescission of her resignation;

7. As of September 30, 2021, management has ignored Complainant's September 28, 2021, request for a third-party investigation; and
8. On or about October 1, 2021, the Agency has failed to pay Complainant \$1,075 for September 13-15, 2021.

The Agency conducted an investigation into the complaint. The investigation includes Complainant's allegations that since her employment in 2015, she was subjected to a hostile work environment and discrimination at the hands of Supervisor 1, resulting in reprisal actions against her on September 15, 2021. Complainant believed that Supervisor 1's alleged actions had nothing to do with work assignments, but instead to the fact that she was a mid-level female Health Care Provider subjected to unwarranted/unjustified interference with the care she provided which culminated with a patient on August 10, 2021.

According to Complainant, the action of entering a patient's examination room without Complainant's or the patient's consent only occurred because of Supervisor 1's position and his need to harass and exercise undue control. Complainant asserted that she sent an email to Supervisor 1 addressing the hostile situation and requesting such not happen again. However, her request was ignored, and a second incident occurred on September 14, 2021. Complainant alleged that on September 15, 2021, reprisal action was taken against her by Supervisor 1 resulting in her resigning under duress. Complainant also stated that she verbally rescinded her resignation after meeting with Supervisor 3 on the same day, September 15, 2021, and taking in consideration his request for her not to resign.

Also, according to Complainant, on September 15, 2021, she was subjected to taunting actions of Supervisor 2 after their meeting when they both ended up in the cafeteria for lunch. Complainant asserted that a witness was at the table with her.

Complainant stated that one support Licensed Practical Nurse (Practical Nurse) submitted a written complaint directly to Supervisor 1 on September 15, 2021.

She asserted that the complaint was investigated by only Supervisor 1 who submitted his telephonic report of contacts (ROC) with two veterans, and one Physician Assistant student who was being "precepted" by Complainant to Supervisor 2. Complainant stated that no Health Care Provider ever complained.

Complainant contended that on September 15, 2021, she sent an email to management requesting an unbiased investigation, which was never acknowledged. According to Complainant, the Agency's plan to remove her from patient care during the investigation was based solely on the recommendation of Supervisor 1. Notwithstanding, Complainant stated, the Nursing Supervisor was prepared to provide another support staff to assist Complainant since the Practical Nurse who submitted the statement requested not to work with Complainant.

Complainant acknowledged receipt of a certified letter from Supervisor 2 on September 27, 2021, informing her that there was no work for her, and requesting that she submit her badge. Complainant stated that it was at this time that she emailed management staff requesting follow-up information on the investigation and reminding management that she verbally rescinded her resignation on September 15, 2021, during her meeting with the Supervisor 3.

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. The parties engaged in discovery. On November 21, 2022, the Agency submitted a motion for summary judgment (Agency's motion). Complainant, through her representative, filed responses and supporting documentation to the Agency's motion on February 2, 2023; and March 9, 16, and 29, 2023. After reviewing the claims and record evidence submitted, the assigned AJ found that the case was ripe for summary judgment. The AJ granted summary judgment in favor of the Agency and issued a decision without a hearing on June 23, 2023.

The AJ determined that the Agency provided a concise summary of the pertinent facts, which coincided with the record evidence. The AJ incorporated by reference into their decision the factual summary submitted in the Agency's motion. The AJ based their decision on the following factual summary.

Complainant, during her stint as a fee-based contract nurse, submitted that she was subjected to discrimination and a hostile work environment as it relates to work assignments, alleged interference with patient care by management, and comments from her supervisor such as "Bon Appetit" when they passed each other on the way to lunch.

Also, Complainant admitted that the Agency received complaints about Complainant's patient care from several providers. As a result, the Agency initiated an investigation into the claims and the Agency moved Complainant away from patient care during the investigation.

In response, on or about September 15, 2021, Complainant submitted an email to the Chief of Primary Care (Chief), advising that she was resigning from her position, effective immediately. ROI at 295. Chief acknowledged Complainant's resignation and provided instructions for Complainant's departure. ROI at 296.

Despite her voluntary resignation, on or about September 27, 2021, Complainant sent a certified letter to the Agency requesting to rescind the resignation pending the outcome of the investigation of the aforementioned complaints about her performance and patient care. Despite Complainant's desire and attempt to rescind her resignation, the Agency declined to reinstate Complainant or to allow her to complete her contract that was set to end on or about December 31, 2021.

The AJ observed that while Complainant submitted that she was subjected to discriminatory harassment, the record did not support her assertions. Instead, asserted the AJ, the Agency explained that out of a concern for patient safety, management chose to remove Complainant from patient care while they investigated complaints levied against her.

The AJ also observed the Agency's submission that even before the investigation could be completed, Complainant's choice to resign was her own and that there was no discriminatory influence on the Agency decision to decline her recission. The AJ noted that Complainant submitted no evidence to the contrary.

The AJ determined that even crediting Complainant's position on the claims and incidents asserted, without more, the issues in the record evidence did not rise to the actionable discrimination and/or hostile work environment.

The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

CONTENTIONS ON APPEAL

On appeal, Complainant reiterates her allegations, stating that the AJ's decision was without merit and was not derived from the facts and evidence. According to Complainant, the decision depicted a complete deference for the Agency. Moreover, asserts Complainant, the Agency did not provide a concise summary of the pertinent facts which coincide with the record evidence; and that she did not admit that the Agency received complaints about Complainant's patient care from several providers. Complainant asserts that the Agency was responsible for her involuntary resignation which, she states, she verbally rescinded in a meeting with the Acting Chief of Staff. Complainant also states that there was no due process in "this opinion" (presumably the AJ's decision); and that the AJ wasted six months after the close of evidence to issue the decision which Complainant considers "grossly wrong." Complainant request corrections of the errors submitted in the AJ's "judgement" and seeks another review.

In response, the Agency requests that the Commission affirm its final order which, it asserts, is detailed, well-reasoned, and factually and legally correct. The Agency also states that Complainant failed to raise any viable arguments on appeal to support the position that the Agency's final order was factually and/or legally incorrect.

STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that EEOC "review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law").

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*).

ANALYSIS

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 or retaliatory animus. Here, Complainant presented no additional evidence in her appeal statement to support her allegations that the challenged management actions were motivated by discrimination or retaliation to raise a genuine dispute of material facts. Beyond conclusory and speculative assertions, and even assuming that the AJ had adopted Complainant's factual statements and not based their decision on a concise factual summary, Complainant has presented no other affidavits, declarations, or unsworn statements from other witnesses nor documents which contradict or undercut the explanations provided by her supervisors or which would cause us to doubt their veracity as witnesses.

We note that contrary to Complainant's appeal assertions, the record does not support a conclusion that the AJ's decision lacked due process. Ultimately, we find that Complainant failed to establish the existence of a factual dispute sufficient to give rise to a genuine issue of material fact. Given that Complainant had access to the ROI concerning her complaint, the opportunity to develop the record significantly during the EEO investigation and discovery before the AJ, we find that summary judgment was appropriate in this case.

In order to establish a prima facie case of harassment, Complainant must prove, by a preponderance of the evidence, the existence of five elements: (1) that she is a member of a statutorily protected class; (2) that she was subjected to unwelcome conduct related to her protected class; (3) that the harassment complained of was based on her protected class; (4) that the harassment had the purpose or effect of unreasonably interfering with her work performance and/or creating an intimidating, hostile, or offensive work environment; and (5) that there is a basis for imputing liability to the employer. See Celine B. v. Dep't of Navy, EEOC Appeal No. 2019001961 (Sept. 21, 2020); Humphrey v. U.S. Postal Serv., EEOC Appeal No. 01965238 (Oct. 16, 1998). See also Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982), approved in Meritor Savings Bank v. Vinson, 477 U.S. 57, 66-67 (1986); see generally Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (April 29, 2024).; Flowers v. Southern Reg'l Physician Serv. Inc., 247 F.3d 229 (5th Cir. 2001). The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the victim's circumstances. Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (April 29, 2024).

In other words, to prove her hostile work environment claim, Complainant must establish that she was subjected to conduct that was either so severe or so pervasive that a "reasonable person" in Complainant's position would have found the conduct to be hostile or abusive. Complainant must also prove that the conduct was taken because of a protected basis; in this case, her sex or engagement in prior EEO activity. Only if Complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself.

Complainant belongs to protected classes based on her sex, and her protected EEO activity when she initiated EEO contact in the instant complaint on October 19, 2021. She was also subjected to unwanted conduct. However, Complainant did not show a connection between any protected basis and the alleged harassment; and none of the Agency employees or Supervisors 1 and 2 were aware of any prior EEO activity involving Complainant when they took any of the alleged actions. See ROI at 144, 173, 230, 232, and 235. Importantly, Complainant herself stated that Supervisor 3 offered to escort her to the EEO counselor, but she declined. ROI at 127-30.

Regarding Claim 1, the record reflects that Supervisor 1 oversaw the daily operations of the Women's Clinic and directed the work of subordinate women's health physicians, residents, students, nurse practitioners, physician assistants, and health technicians. ROI at 143.

Therefore, Supervisor 1 was acting within his supervisory authority and did not interfere with Complainant's care of a patient (Patient A) or undermine her position and clinical abilities when Supervisor 1 spoke to Patient A; informed the patient about weekly follow-up appointments; and asked the patient if she was willing to see him for the return appointments (if they were necessary). ROI at 144. Nor was it interference when Supervisor 1 explained the use of trichloroacetic acid (TCA) to that patient. ROI at 124, 144, and 270.

Regarding Claim 2, the record reflects that Complainant sent an email to Supervisor 1 about him addressing the TCA treatment with her patient. ROI at 126 and 270. In the email, Complainant stated that Supervisor 1 crossed the line and that it felt like a hostile situation. However, Supervisor 1 stated that he did not respond when Complainant sent the initial email because he considered her statement about wrongdoing in speaking to the patient to be misguided.

He also did not respond because Complainant stated, "I do not wish to cause any problems, but will not stand by and allow it to occur again without letting you know that I will have to address such conduct with VA Administration if it continues." According to Supervisor 1, speaking to veterans about their care was an expectation in his role. He did not send the email to management until November 17, 2021, because he did not see how his assisting in the veteran's patient care was hostile. He was also unaware of any investigation concerning Complainant's allegation that he created a hostile situation. ROI at 145-46. Importantly, Complainant did not dispute record evidence showing that she did not send the email to any other management officials until after she resigned on September 15, 2021. ROI at 126 and 145-46.

Complainant also alleged that on September 14, 2021, Supervisor 1 threatened to repeat the same situation that happened on August 10, 2021, followed her to the elevator and the Supply Office, and uttered that he was the Women's Health Director and could do what he wanted with her patients. ROI at 124. Even accepting Complainant's allegation as true, this one-time comment by Supervisor 1, made within his supervisory authority, is insufficient to establish a claim of harassment because it lacks the requisite severity and pervasiveness. Nor does Supervisor 2's "Bon Appetit" (French phrase for good appetite) statement to Complainant in the cafeteria on September 15, 2021, (Claim 4) sustain a claim of harassment.

Regarding Claim 3, the record does not support Complainant's allegation that management detailed her from patient care on September 15, 2021, pending an investigation.

Instead, the record reflects that Supervisor 2 informed Complainant that Supervisor 1 would see the rest of Complainant's scheduled patients for that day due to safety concerns that had been presented involving Complainant. ROI at 149-50 and 254.

Regarding Claim 6, the record does not support Complainant's allegation that Agency officials refused to accept her rescission of her resignation on September 15, September 17, and September 28, 2021. For one thing, Complainant herself stated that her rescission was verbally made to Supervisor 3. ROI at 149-52. She did not deny receipt of the Agency's September 16, 2021, letter accepting her resignation. ROI at 89 and 248. Moreover, Complainant served at the discretion of the Agency. Therefore, management did not discriminate or retaliate against Complainant; nor did they subject her to a hostile work environment when management decided to exercise their discretion and terminate her fee-basis service provider contract following reports of Complainant's infractions leading to management having safety concerns for patients. See Excerpt from VA Handbook 5021, Employee/Management Relations, Part VI, Paragraph 17, stating that fee-based appointments employees may be terminated at the discretion of the appointing authority when their services are no longer needed.

Specifically, Practical Nurse reported instances of Complainant's performance deficiencies that resulted in her asking to be reassigned from assisting Complainant out of safety concerns. See ROI at 253-57 for September 16, 2021, ROC from Practical Nurse. For example, On September 13, 2021, Complainant was one and half hours late for Clinic. Her lateness caused a patient to wait for one hour and fifteen minutes to be seen.

On September 14, 2021, Practical Nurse assisted Complainant with a second patient (Patient B). Patient B was at the Clinic for an IUD removal and replacement. Complainant could not retrieve the IUD. Patient B had severe pain during the procedure and Complainant only stopped the procedure after the patient asked her four times to do so. See ROI at 257 reflecting that on September 20, 2021, Supervisor 1 contacted a patient that Complainant saw on September 14, 2021. The patient stated that the exam was uncomfortable, and she did not get her IUD removed, but she did not have any issues or concerns with the provider.

Also on September 14, 2021, Practical Nurse assisted Complainant with another patient (Patient C). Patient C was having an IUD removed. The patient was in pain during the procedure. She was swearing about the pain, had difficulty breathing and her hands were shaking.

Complainant subsequently stated that she forgot the lidocaine gel, an ointment used on different parts of the body to cause numbness or loss of feeling for patients having certain medical procedures. See ROI at 256 reflecting that on September 20, 2021, Supervisor 1 contacted one of the patients that Complainant saw on September 14, 2021. The patient told Supervisor 1 that the procedure was very painful and made her cry and that she would not go back to this provider.

In her ROC, Practical Nurse stated that Complainant ran late and brought patients back before rooms could be cleaned and prepared for the next procedure, brought the wrong patient back, told Practical Nurse not to worry about obtaining vitals and weight (and once a urine pregnancy test). Practical Nurse also stated that Complainant was unorganized and hazardous when obtaining specimens. This hazardousness caused Practical Nurse to be unnecessarily exposed to blood and other bodily fluids. The assistant nurse manager also informed Supervisor 1 that no one felt comfortable working with Complainant when asked if they could change the nurse assignment for Complainant. ROI at 254.

Moreover, on September 29, 2021, Supervisor 1 contacted a Physician Assistant Student (Physician Assistant) who worked with Complainant on September 14, 2021. ROI at 261. Physician Assistant observed patients in pain when Complainant performed procedures. She also informed Supervisor 1 that Complainant kept patients waiting while she searched for equipment or instruments. See ROI at 255.

Regarding Claim 7, Complainant alleged that as of September 30, 2021, management had ignored her September 28, 2021, request for a third-party investigation. However, Complainant did not dispute that she had stated that she no longer wished to be employed in the Women's Clinic as a fee-based provider; and that she voluntarily left the Clinic. ROI at 149-50. Therefore, management was acting within their authority and discretion when on September 28, 2021, Supervisor 2 informed Complainant that her resignation had been processed and her contract cancelled. ROI at 261. She also informed Complainant that there was no work for her at that time. Id.

Supervisor 3 also stated that Complainant sent him a copy of the email she sent to Supervisor 1 on August 11, 2021, in which she expressed dissatisfaction during a previous encounter. He did not receive the email until it was determined that Complainant's services were no longer required as a fee-basis contractor. He did not investigate the incident since she was no longer a fee-based contractor.

He felt Complainant's main concern was the events of September 15, 2021. She was removed from patient care by her direct clinical supervisor so that an investigation could be conducted about the concerns raised about her care. This removal would be a routine step in such proceedings and was designed to protect the patients, providers, and facility. ROI at 196-97.

Importantly, Complainant presented no Agency policy regarding third-party investigations following termination of employees or contractors that was inconsistently applied to her. Therefore, Complainant's allegations fail as she did not demonstrate that management took any actions in Claims 1-4, and 6-7 that was based on her sex or any purported prior protected EEO activity. Nor did management engage in any severe or pervasive conduct that is sufficient to constitute actionable harassment. Complainant also failed to identify any male fee-basis provider that received more favorable treatment under her same or similar circumstances.

The image which emerges from considering the totality of the record is that there were conflicts and tensions with Supervisor 1's management style that left Complainant feeling aggrieved. However, the statutes under the Commission's jurisdiction do not protect an employee against adverse treatment due simply to a supervisor's personality quirks or autocratic attitude. See Bouche v. U.S. Postal Serv., EEOC Appeal No. 01990799 (Mar. 13, 2002). See also Jackson v. City of Killeen, 654 F.2d 1181, 1186 (5th Cir. 1981) ("Title VII is not a shield against harsh treatment at the workplace; it protects only in instances of harshness disparately distributed. The essence of the action is, of course discrimination."). Discrimination statutes prohibit only harassing behavior that is directed at an employee because of their protected bases. Here, the preponderance of the evidence does not establish that Supervisor 1 was motivated by discriminatory or retaliatory animus. Complainant's claim of harassment is precluded based on our findings that she failed to establish that any of the actions taken by the Agency were motivated by her protected bases. See Oakley v. U.S. Postal Service, EEOC Appeal No. 01982923 (Sept. 21, 2000).

Constructive Discharge (Claim 5)

Regarding Claim 5, the record does not support Complainant's allegation of constructive discharge from her fee-basis contract on September 15, 2021.

Rather, contrary to Complainant's appeal assertion that the Agency was responsible for her involuntary resignation, the record reflects that after asking Supervisor 2 some questions, Complainant stated that she no longer wished to be employed in the Women's Clinic as a fee-based provider and left the Clinic. ROI at 149-50. Complainant also failed to refute record evidence reflecting that On September 15, 2021, she resigned from her position. ROI at 87-8, 124, 258, and 295.

In that regard, we find that the Agency correctly analyzed the facts and law in Claim 5 to determine that Complainant did not establish a claim of constructive discharge. The standard for constructive discharge requires that: (1) a reasonable person in the complainant's position would have found the working conditions intolerable; (2) conduct that constituted discrimination against the complainant created the intolerable working conditions; and (3) the complainant's involuntary resignation resulted from the intolerable working conditions. See Complainant v. Dep't of Justice, EEOC Request No. 05940688 (Apr. 13, 1995).

We conclude that a finding of constructive discharge is precluded by our finding that Complainant was not subjected to a discriminatory hostile work environment. See Terrence F. v. Nat'l Aeronautics and Space Admin., EEOC Appeal No. 2021001419 (Nov. 22, 2021).

Accordingly, as a matter of law, Complainant's claim of constructive discharge fails. See Lorraine D. v. Federal Deposit Insurance Corporation, EEOC Appeal No. 0120142043 (October 27, 2016).

Unpaid Wages (Claim 8)

Regarding Claim 8, Complainant alleged that the Agency has failed to pay her \$1,075 for September 13-15, 2021. We do not find that this Agency non-action was due to Complainant's membership in any protected class. As such, we cannot provide any relief for the nonpayment alleged.²

² We note the Agency's explanations that there is no record of any work performed by Complainant for the dates at issue. See ROI at 245-46. However, included in the record is an August 29, 2022, document in which Complainant described work she performed on September 13, 14, and 15, 2021, for a total payment due to her of \$1075.00 without accumulated interest. While management was dissatisfied with Complainant's job performance, they did not deny that she had performed work on the dates in question. Complainant's alleged non-payment could potentially be raised

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's final order.

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>

within the jurisdiction of another federal agency, the U.S. Department of Labor's Wage and Hour Division.

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.

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

February 4, 2025
Date