



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

[REDACTED]  
Kathy Z.,<sup>1</sup>  
Petitioner,

v.

Thomas J. Vilsack,  
Secretary,  
Department of Agriculture  
(Food Safety and Inspection Service),  
Agency.

Petition No. 2023005179

MSPB No. CH-0752-22-0443-I-1

Agency Complaint No. FSIS-2022-00052

**DECISION**

On September 8, 2023, Petitioner filed a timely petition with the Equal Employment Opportunity Commission (EEOC or Commission) asking for review of a Final Order issued by the Merit Systems Protection Board (MSPB) concerning her claim of discrimination alleging violations of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the reasons that follow, we DENY consideration of Petitioner's petition, and REMAND this matter to the Agency for further processing.

**BACKGROUND**

At the time of events giving rise to this complaint, Petitioner worked as a Human Resources Assistant at the Agency's Office of Management facility in Minneapolis, Minnesota.

Petitioner filed an EEO complaint alleging that the Agency discriminated against her on the bases of disability and age (born 1960) when:

---

<sup>1</sup> This case has been randomly assigned a pseudonym which will replace Petitioner's name when the decision is published to non-parties and the Commission's website.

1. On December 31, 2021, she was forced to resign from her GS-0203-07, Human Resource Assistant position.
2. On October 15, 2021, management denied her request for a reasonable accommodation for a job coach.
3. On an unspecified date in October 2021, management issued her a negative performance evaluation and rated her Unacceptable.
4. On June 21, 2021 and other unspecified dates, management denied her training requests.
5. On unspecified dates, Management overloaded her with work due to understaffing.
6. On several dates, she was subjected to various incidents of harassment, including but not limited to:
  - a. On unspecified dates, management referenced and questioned her about her retirement;
  - b. On unspecified dates, management repeatedly threatened to place her on a Demonstration Opportunity (DO); and
  - c. On unspecified dates, management sent her disrespectful emails.

Following its investigation into the complaint, the Agency issued a decision finding that Petitioner had not established discrimination on any of the claims as alleged. The Agency's final decision gave Petitioner appeal rights only to the Merit Systems Protection Board (MSPB). Thereafter, Petitioner filed an appeal with the MSPB. An MSPB AJ held a hearing and issued a decision, which became final, finding that Petitioner had not established that she was subjected to a constructive retirement and therefore dismissing the appeal for lack of jurisdiction.

Pursuant to 29 C.F.R. § 1614.303, Petitioner filed a petition with this Commission from the MSPB decision, first requesting that she should be allowed a hearing before an EEOC Administrative Judge on all her claims. In the alternative, Petitioner argued that the evidence establishes that she was subjected to a discriminatory hostile work environment based on her disability and age that led to her constructive retirement.

In response, the Agency argues first that Petitioner's appeal should be dismissed for lack of jurisdiction and in the alternative, that the Commission should concur with the MSPB AJ's decision that Petitioner did not establish that she was forced to resign.

### ANALYSIS AND FINDINGS

EEOC regulations provide that the Commission has jurisdiction over mixed case appeals and complaints on which the MSPB has issued a decision that makes determinations on allegations of discrimination. 29 C.F.R. § 1614.303 et seq. However, when the MSPB, as it did here, denies jurisdiction, the Commission has held that there is little point in continuing to view the matter as a "mixed case", as defined by 29 C.F.R. § 1614.302(a), because the MSPB did not address any matters of discrimination within the Commission's jurisdiction. Therefore, the Commission finds that it currently has no jurisdiction to review the MSPB's decision. However, this matter will

now be considered a “non-mixed” case and returned to the Agency for appropriate processing. See generally Schmitt v. Dep’t of Transp., EEOC Appeal No. 01902126 (July 9, 1990); Phillips v. Dep’t of the Army, EEOC Request No. 05900883 (October 12, 1990); 29 C.F.R. § 1614.302(c)(2)(i) and (ii).

### CONCLUSION

For the reasons stated above, Petitioner’s request to review MSPB No. CH-0752-22-0443-I-1 is DENIED. However, the Agency’s final decision on Complaint No. FSIS-2022-00052 is VACATED, and the matter is REMANDED to the Agency for further processing as outlined below.

### ORDER

Within thirty (30) calendar days from the date this decision is issued, the Agency shall provide Petitioner (now “Complainant”) with a copy of the Report of Investigation and a notice of right to request a hearing and decision from an EEOC Administrative Judge on the entire complaint or an immediate final decision from the Agency pursuant to 29 C.F.R. § 1614.108(f). Thereafter, if Petitioner/Complainant requests a hearing, the EEOC Administrative Judge shall issue a decision on the complaint in accordance with 29 C.F.R. § 1614.109, and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

### IMPLEMENTATION OF THE COMMISSION’S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and §1614.502, compliance with the Commission’s corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Petitioner/Complainant and his/her representative.

If the Agency does not comply with the Commission’s order, the Petitioner/Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Petitioner/Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Petitioner/Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled “Right to File a Civil Action.” 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999).

If the Petitioner/Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated. See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

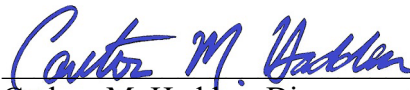
PETITIONER'S RIGHT TO FILE A CIVIL ACTION (W0610)

This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court, based on the decision of the Merit Systems Protection Board, within thirty (30) calendar days of 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 his or her 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.

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 31, 2024

Date