



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Giselle W,¹
Complainant,

v.

Antony Blinken,
Secretary,
Department of State,
Agency.

Appeal No. 2024000034

Agency No. DOS-0352-23

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated October 3, 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Foreign Service Officer at the Agency's Embassy in Jerusalem.

On August 10, 2023, Complainant filed a formal complaint alleging that the Agency subjected her to hostile workplace discrimination on the bases of race (Asian), sex (female), and reprisal for prior protected EEO activity (for reporting discrimination at Israeli POE, advocating for action and opposing lack of action with government of Israel on discrimination), when on June 19, 2023, the cable she wrote was altered, and she was forced to work every weekend, as recently as August 10, 2023. Complainant also listed in her formal complaint 3079 addendum many events of purported discrimination. Complainant noted that her assignment was curtailed, duties were reassigned, work products diminished, and she was denied opportunities.²

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 Complainant also alleged discrimination based upon marital status, which the Agency appropriately noted is not a covered EEOC basis.

The Agency dismissed the complaint for failure to state a claim, pursuant to 29 C.F.R. § 1614.107(a)(1). The Agency noted that Complainant detailed issues in her formal complaint which were not brought before the EEO Counselor, particularly, Complainant having been subjected to a hostile work environment to include being “regularly undermined” and having to work every weekend. Thus, the Agency dismissed those issues pursuant to 29 C.F.R. § 1614.107(a)(2). Finally, the Agency reasoned that the overall complaint is not sufficiently severe or pervasive to state a viable hostile work environment claim.

CONTENTIONS ON APPEAL

Complainant explains:

The Department alleges that my complaint included “a matter that has not been brought to the attention of a Counselor”; however, that is untrue. I spoke to the [EEO] Counselor on July 6, 2023, about the most recent incident that occurred as late as June 19-20, 2023. I noted in the telephone call that this was part of a pattern of discriminatory treatment I had endured while employed at the U.S. Office of Palestinian Affairs and U.S. Embassy Jerusalem. I also spoke to this [EEO Counselor] about retaliatory behavior and actions I had experienced after I spoke up about anti-Asian hate and discrimination including a hostile workplace environment created by the U.S. Ambassador to Israel and others. During the initial call, the [EEO Counselor] suggested a course of action which indicated to me that the Department was attempting to not take my matter seriously and I objected. I asked for a new EEO Counselor, and S/OCR [Office of Civil Rights] responded that I could not change my EEO Counselor despite my reservations about [his] ability to handle my case in an unbiased and neutral manner. Later, the [EEO Counselor] declined to include the entirety of my claims and when I received his report and Notice of Right to File (Form DS-3079), I clearly wrote to him expressing my concern that he had both oversimplified my complaint and noted to him and the S/OCR office that the report had failed to fully document the entirety of my complaint. I, therefore, strongly disagree with the Department’s assertion that I failed to raise matters noted in my formal complaint at the initial intake with the EEO Counselor as that is categorically false.

The Agency did not submit a statement in response to Complainant’s appeal. However, the record contains relevant e-mail correspondence. In an e-mail exchange (Thursday, July 6, 2023 7:45 AM) with Complainant, the assigned EEO Counselor stated, “I understand your grievance to be based on the protected category of race and *part of an ongoing pattern of discrimination* with the last incident occurring within the 45-day time frame to use the informal process.”

ANALYSIS AND FINDINGS

The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that an agency shall dismiss a complaint that fails to state a claim. An agency shall accept a complaint from any aggrieved employee or applicant for employment 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, .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. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994).

Here, having reviewed the EEO Counselor's Report, formal complaint and other submissions by Complainant, we find that this matter warrants an investigation. We further find the events described in the above claims, along with those detailed in Complainant's formal complaint 3079 addendum, if proven to be true and considered together, would indicate that Complainant has been subjected to harassment that was sufficiently severe or pervasive to alter the conditions of her employment. See Cobb v. Department of the Treasury, EEOC Request No. 05970077 (March 13, 1997).

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is REVERSED. The complaint is hereby REMANDED to the Agency for further processing in accordance with this decision and the Order below.

ORDER (E0618)

The Agency is ordered to process the remanded **hostile work environment claim** in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, a copy of complainant's request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

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 Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The 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 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 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.

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 (R0124)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. 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. **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 23, 2024
Date