



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Elvis O.,¹
Complainant,

v.

Carlos Del Toro,
Secretary,
Department of the Navy,
Agency.

Appeal No. 2024000072

Agency No. 22-00178-00543

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated September 13, 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.

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 Computer Engineer, ND-04 at the Agency's Naval Surface Warfare Center Dahlgren, in Dahlgren, Virginia.

On March 28, 2022, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the basis of religion (Christian) when:

- a. The captain issued a memo stating that all federal employees going on official government travel are mandated to be fully vaccinated.
- b. On February 3, 2022, Complainant was prohibited from attending an on-site, in person training and an evaluation of hardware, which was deemed mission critical to the program based on his vaccination status.

The Agency dismissed the complaint pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state claim. Specifically, the Agency determined that Complainant was challenging its safety measures for unvaccinated employees, and alleging discrimination on the basis of vaccination status, which is not protected under the statutes enforced by the Commission.

The instant appeal followed.

CONTENTIONS ON APPEAL

Complainant argued that he was rendered an aggrieved employee when his travel request was denied. Complainant said that his travel request was denied because of his religion, which is a protected basis. The Agency maintained that vaccination status was the determining factor in its decisions on travel, and that it never made an inquiry into any employee's religion as part of its determination.

Complainant claimed that he was aggrieved because the Agency denied his request for a religious exemption from the COVID-19 vaccination mandate. The Agency stated that Complainant's claim was moot because the executive order requiring COVID-19 vaccination was revoked.

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

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 a disabling condition. 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). EEOC Regulation 29 C.F.R. §1614.107(a)(1) provides for the dismissal of a complaint which fails to state a claim within the meaning of 29 C.F.R. § 1614.103 or §1614.106(a).

Travel Request

Although Complainant cites religion as a ground for disparate treatment in his formal complaint, a fair reading of the record reflects that he believes that as an unvaccinated employee he is being treated differently than vaccinated employees. Complainant stated that when the captain sent out the email with travel restrictions, only unvaccinated employees were restricted from travel. Similarly, Complainant said that he was denied an opportunity to travel because he completed a COVID-19 Risk Assessment and was found to be "low risk" based on his vaccination status. We find that the Agency was correct, when it determined that Complainant alleged discrimination based on vaccination status, rather than religion.

The Agency was also correct when it indicated that Complainant's vaccination status was not a basis protected by the statutes enforced by the EEOC. See 29 C.F.R. § 1614.103(a); Tommie O. v. Dep't of the Army, EEOC Appeal No. 2022002436 (August 29, 2022).

Religious Accommodation Request

The Agency delayed processing Complainant's religious accommodation 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. There is no indication in the record, including consideration of Complainant's appeal brief, that he was ever ultimately required to receive the COVID-19 vaccine or received any other adverse action for failing to be immunized. Therefore, we find that he has not shown any harm and has failed to state a claim. See Valery G. v. Defense, EEOC Appeal No. 2022002547 (August 16, 2022) and Chadwick W. v. Department of Transportation, EEOC Appeal No. 2022003448 (February 6, 2023).

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:


Carlton M. Hadden, Director
Office of Federal Operations

December 9, 2024
Date