



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

[REDACTED]  
Darrin H.,<sup>1</sup>  
Complainant,

v.

Alejandro N. Mayorkas,  
Secretary,  
Department of Homeland Security  
(Immigration and Customs Enforcement),  
Agency.

Appeal No. 2024000152

Agency No. HS-ICE-02842-2022

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated September 6, 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Deportation Officer at the Agency's Enforcement and Removal Operations in

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<sup>1</sup> 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.

Tallahassee, Florida. On October 11, 2022, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of religion (Christian) and reprisal when:

1. In August 2021, the Agency did not deny or approve Complainant's religious accommodation exemption request in a timely manner.
2. On November 9, 2021, Complainant was told to verify his vaccination status.
3. On June 9, 2022, Complainant was placed on telework status for part of pay period 15 due to not scheduling a COVID-19 test within the required 7-day period.
4. From June 9, 2022, to August 18, 2022, Complainant tested weekly for COVID-19 under duress.

On September 6, 2023, the Agency dismissed Complainant's claims pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state claim.

The instant appeal followed.

#### CONTENTIONS ON APPEAL

Complainant argues that he was treated differently than his co-workers because he was not vaccinated. The Agency argues that discrimination on the basis of vaccination status, is not protected under the statutes enforced by the Commission.

#### 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

By regulation, 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 disability. 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). If a complainant does not allege that they were "aggrieved" within the meaning of the Commission's regulations, then an agency shall dismiss the complaint for failure to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1).

#### *Vaccination Status*

Complainant asserted that he was treated less favorably because of his vaccination status. Specifically, Complainant claimed that he was instructed to verify his vaccination status, and that when the Agency learned that he was unvaccinated he was subjected to weekly testing while his vaccinated coworkers were not. Despite Complainant's contentions, the Agency was correct when it expressed that vaccination status is not protected under the statutes enforced by the Commission. 29 C.F.R. § 1614.103(a). Furthermore, COVID-19 testing is job-related and consistent with business necessity, the EEOC has decided that "employers can require mandatory COVID-19 viral testing to evaluate an employee's continued presence in the workplace." What You Should Know About COVID-19 and the ADA, the Rehabilitation Act and Other EEO Laws, EEOC Technical Assistance Questions and Answers -- Updated on July 12, 2022, at Question A.6.

We note that Complainant alleged that he was aggrieved because he was placed on telework status during pay period 15. However, it is unclear how he was harmed. He did not assert that he was not paid for pay period 15, or that he was disciplined for not scheduling his COVID test in a timely manner. Complainant has not shown harm or loss to a term or condition of employment. Without more, his allegations are insufficient to state a claim.

#### *Religious Accommodation*

Complainant applied for a religious exemption to the Agency's COVID-19 vaccination requirement, which had been implemented pursuant to

Executive Order 14043. In his complaint, he alleged that he was aggrieved because the Agency did not deny or approve his request in a timely manner.

The record shows that the Agency delayed processing Complainant's 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. Therefore, it was no longer necessary for Complainant to seek a religious accommodation. Renaldo v., Department of Defense, EEOC Appeal No. 2023001971 (Sept. 23, 2024). Since Complainant has not allege that he received the vaccine, and nothing in the record shows that he was impacted during the months that his request was being processed, we find that he has not shown any harm and that his allegation fails to state a claim.

### 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

November 20, 2024

Date