



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

[REDACTED]
Elden R.,¹
Complainant,

v.

Xavier Becerra,
Secretary,
Department of Health and Human Services,
Agency.

Appeal No. 2024000505

Agency No. HHS-OS-0483-2023

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated October 16, 2023, dismissing his complaint alleging 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., and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

BACKGROUND

Prior to the events at issue, Complainant had been a volunteer² with the Office of the Assistant Secretary for Preparedness and Response, Medical Reserves Corps, at an Agency facility in Texas.

On August 22, 2023, Complainant filed a formal EEO complaint claiming that the Agency subjected him to discrimination on the bases of race (Hispanic), national origin (Mexican), color

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 The Agency dismissed a prior EEO complaint filed by Complainant because he was neither its employee nor an applicant for employment. In EEOC Appeal No. 2023003701 (September 18, 2023), the dismissal was affirmed with a finding that Complainant's volunteer status did not confer standing to use the EEO complaint process.

(Brown), disability, and in reprisal for prior EEO-protected activity when:

1. Since on or about December 4, 2020, he has not been reassigned³ to various positions within the Agency.⁴
2. On June 13, 2023, Complainant learned that he was not considered an applicant for employment with the Agency.
3. On June 13, 2023, despite the Agency's posting of a vacancy announcement stating that it would consider an applicant's veterans preference status during the hiring process, Complainant was informed that the Agency would not consider him.
4. On June 13, 2023, despite the Agency's posting of a vacancy announcement stating that certain individuals with disabilities would be considered for a Schedule A non-competitive appointment, Complainant was informed that the Agency refused to recognize his eligibility under the Schedule A hiring authority.
5. On June 13, 2023, Complainant learned that the Agency refused to accept his disability documentation because it derived from the U.S Department of Veteran Affairs, Army Medical Command and Air Force Hospitals.
6. On June 13, 2023, HHS EO Director informed no other applicants but Complainant who he should select as a medical and health insurance provider.
7. On June 13, 2023, he learned the Agency did not accept his 100 percent disability rating from the Social Security Administration (SSA), thus making him “the only government employee whose federal medical agency findings are not accepted by another federal agency.”
8. On June 13, 2023, he was informed that the Agency falsified government records by denying that Public Health Service (PHS) constituted military service under federal law.

³ In his formal complaint, Complainant contended that he was not required to apply for positions at HHS because he was “guaranteed reassignment” as a reasonable accommodation.

⁴ In his complaint, Complainant failed to identify the exact titles positions and dates related to the various positions he referenced. The EEO Counselor’s report also indicated the counselor was unable to reach him to obtain more information about his claims.

9. On June 13, 2023, he learned that the Agency failed to consider him for employment under special hiring authorities for reinstatement eligible candidates and/or veterans with a 30% or more service-connected disability.
10. On June 13, 2023, Complainant was informed that the Agency destroyed his resume instead of “keeping it on the 3-year active roster” as required by veterans’ preference procedures.
11. On an unspecified date, Complainant was told that he was not eligible for reassignment because a named private attorney “did not promise [him] a job.”

Due to conflict-of-interest issues, the Agency requested that the Consumer Financial Protection Bureau’s (CFPB) Office of Civil Rights process Complainant’s formal EEO Complaint on behalf of HHS. On October 16, 2023, CFPB issued a final decision that dismissed Complainant’s formal EEO complaint for failure to state a claim in accordance with 29 C.F.R. § 1614(a)(1). As proxy for the Agency, CFPB determined that Complainant neither actually applied for an Agency position nor had he been an employee of the Agency, and therefore lacked standing to proceed.

On October 16, 2023, Complainant appealed the final decision dismissing his complaint as adjudicated by CFPB.

ANALYSIS AND FINDINGS

Under the regulations set forth at 29 C.F.R. Part 1614, an agency shall accept a complaint from an aggrieved *employee or applicant for employment* who believes they have been discriminated against by the agency because of race, color, religion, sex, national origin, age or disability. 29 C.F.R. §§ 1614.103, .106(a). 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.

Here, the CFPB, as proxy for the Agency, properly dismissed Complainant’s formal EEO complaint, for failure to state a claim, pursuant to 29 C.F.R. § 1614.107(a)(1). After careful consideration of the record, we conclude that the dismissal decision, for lack of standing under 29 C.F.R. § 1614.103, was proper. Complainant does not allege that at any time he was ever an employee of the Agency. In addition, while Complainant mentions some vacancy announcements at the Agency in his complaint, albeit with little detail, there is no indication that he ever applied for these vacancies and the Agency affirmatively denies he was an applicant for any of these positions.

Rather, a fair reading of the complaint and related EEO counseling documents indicates that Complainant is alleging that he was not required to apply for Agency vacancies because he believes the Agency was required to “reassign” him to an Agency job because of his disability and/or Veteran’s status.

As noted by the Agency, it is true that employers subject to the Rehabilitation Act may have an obligation to consider "reassignment" of individuals with disabilities as a reasonable accommodation in certain circumstances. However, the obligation of an Agency to reassign an individual with a disability as a reasonable accommodation applies to its employees, and not applicants for employment. See 29 C.F.R. Part 1630, App. at §1630.2(o) ("Reassignment is not available to applicants."). Where, as here, Complainant is not, and never has been, an employee of the Agency, he has no right to placement in an Agency job without applying for it.

In sum, because Complainant never actually applied to any Agency job and never served as an employee of the Agency, he has no standing in this case to proceed under 29 C.F.R. Part 1614, and his formal EEO complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(1).

In addition, this Commission has consistently held that denial of Veteran’s preference is not a basis covered by the employment discrimination statutes enforced in the 29 C.F.R. Part 1614 EEO complaint process. We concur with CFPB’s decision that Complainant’s claims relating to federal hiring programs for Veterans are not within the purview of the EEO complaint process. Norvell v. U.S. Postal Serv., EEOC Appeal No. 01956049 (June 24, 1996); Branham v. Soc. Sec. Admin., EEOC Appeal No. 0120071185 (June 19, 2008).

CONCLUSION

Therefore, we AFFIRM the final decision dismissing Complainant's formal EEO complaint.

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

January 24, 2024
Date