



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Madeleine C,¹
Complainant,

v.

Todd Hunter,
Acting Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2024002493

Agency No. 2004-590-2024-156326

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated February 20, 2024, dismissing a formal complaint of unlawful employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the reasons set forth herein, we MODIFY the Agency's final decision.

ISSUES PRESENTED

Whether the Agency's final decision properly dismissed Complainant's complaint for failure to state a claim.

BACKGROUND

During the period at issue, Complainant worked as an Administrative Support Assistant at the Agency's facility in Hampton, Virginia.

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.

On January 26, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination.

The Agency framed Complainant's complaint in the following fashion:

Whether Complainant was subjected to a hostile work environment as evidenced by the following events:

1. In December 2023, [named Caregiver Support Program Manager] proposed to charge Complainant AWOL when she was on workers' compensation.
2. On December 7, 2023, [named Caregiver Support Program Manager and named Human Resources Specialist] changed Complainant's timesheets from continuous pay to leave without pay (LWOP), while on workers' compensation.
3. On December 19, 2023, Complainant attempted to contact [a named Agency official] to file her timecard and [confirm] that her pay was fixed.
4. On January 4, 2024, Complainant's status was changed back to continuous duty when she reported back to work; however, the change caused an overpayment of \$3000.
5. On December 27, 2023, Complainant believed her privacy was violated when [a named Agency official] uploaded her medical diagnosis into the workers' compensation portal.
6. On January 10, 2024, [the named Caregiver Support Program Manager] did not respond to Complainant's request to write a debt memo to correct her overpayment to the government.
7. On January 10, and 16, 2024, Complainant notified [a named human resources assistant] about the Privacy Act violation.

The Agency dismissed Complainant's complaint for failure to state a claim. The Agency reasoned that Complainant listed reprisal for filing a complaint with the union as the basis of her EEO complaint. However, the Agency, in its final decision, found that Complainant did not allege reprisal for prior participation in the EEO process or opposition to discrimination pertaining to an EEO basis. Complaint File at 114.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant requests that we reverse the Agency's final decision dismissing her complaint. Complainant asserts that she also included the basis of disability in her EEO complaint and even contacted her EEO Counselor to inform him that the basis of disability should be included in her formal complaint.

In response, the Agency requests that we affirm its final decision dismissing Complainant's complaint. The Agency reiterates, regarding the basis of reprisal, that Complainant's discussion of her concerns with the union did not pertain to discrimination related to an EEO basis and thus was not prior protected EEO activity. In addition, the Agency asserts the complaint file does not support Complainant's assertion that she raised disability as a basis in her complaint.

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

The Agency properly dismissed the basis of reprisal. According to the EEO Counselor's Report, Complainant was alleging reprisal because she reported to the union that her supervisor was requiring her to perform duties above her pay grade. Complaint File at 52-53. Complainant also listed reprisal as a basis on her formal complaint form. Complaint File at 55.

Upon review of the record, including information Complainant provides on appeal regarding her complaint to the union, we find that the crux of Complainant's complaint to union officials involved a general allegation that she was being required to work duties above her GS-5 pay grade rather than alleging discrimination under an EEO basis.

We find, however, that Complainant also alleged disability as a basis in her formal complaint. In an attachment to her formal complaint, Complainant asserted that she was hit by a car and was harassed because of her injuries. Complainant asserts that she experienced harassment from the Agency based on various alleged incidents including, but not limited to, being improperly coded as AWOL, Agency officials sharing her medical information with employees who did not have a need to know,² including a timekeeper, not providing her telework, offering her a light duty position more than 60 miles from her work facility, and pressuring her to return to work prior to her doctor's guidance. Complaint File at 57-88.

The record reflects that the Agency's EEO Counselor sent Complainant the Notice of Right to File a Formal Complaint (Notice) on January 16, 2024 via email. The Notice set forth that the basis of Complainant's complaint was reprisal and the claims were "time and attendance" and "harassment/hostile work environment." The Notice provided, in pertinent part, that "upon receipt of this letter please notify me no later than 5 business days whether the above information is incorrect." Complaint File at 39.

Complainant, on appeal, submits various emails reflecting that she informed her EEO Counselor that she was raising disability as a basis for her EEO complaint. For example, Complainant, on appeal, submits a copy of an email dated January 19, 2024, she sent to the EEO Counselor regarding the Notice. Therein, she set forth "I noticed in the basis section, I don't see HIPPA violation, Privacy Act Violation, Workers' [Compensation] violation, discrimination of **disability**, and unfair labor practice. Can you please add these to my claim?" (emphasis added). The EEO Counselor responded via email "[p]lease be advised counselors are only involved in the informal counseling stage.

² Section 102(d) of the Americans with Disabilities Act, and by extension Section 501(g) of the Rehabilitation Act, specifically prohibits the disclosure of medical information, except in limited situations. See Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, EEOC Notice No. 915.002 (Oct. 17, 2002) (describing the limited exceptions to medical confidentiality requirements).

If you [choose] to file formal, you will receive a letter notifying you of your rights moving forward. If your claims are accepted for investigation, you will be assigned a Case Manager and that will be your point of contact for the duration of your case. Any additional information you may consult your case manager..." In response, Complainant, via email, stated "I was responding to your email stating I have [five] days to update the [claim] if I saw something wrong. So that's what I was responding back to." Based on the foregoing, we find that Complainant alleged disability as a basis in her formal complaint.³

CONCLUSION

Accordingly, for the reasons set forth herein, we AFFIRM the Agency's dismissal of the basis of reprisal. However, we REVERSE the remainder of Complainant's complaint alleging she was subjected to a hostile work environment on the basis of disability and we REMAND this matter to the Agency for further processing in accordance with the ORDER below.

ORDER (E0224)

The Agency is ordered to process the remanded claims (defined herein as a hostile work environment claim based on disability) 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.

3 Finally, to the extent that Complainant is claiming a violation of HIPPA and the Privacy Act, the Commission has previously determined that matters concerning the HIPAA, and the Privacy Act, are not within the regulations enforced by the Commission. See Grove v. U.S. Postal Serv., EEOC Appeal No. 0120110456 (Jan. 5, 2012); Price v. U.S. Postal Serv., EEOC Appeal No. 0120111033 (Dec. 8, 2011); Scott v. U.S. Postal Serv., EEOC Appeal No. 0120101539 (Aug. 13, 2010); Cromer v. U.S. Postal Serv., EEOC Appeal No. 0120083518 (April 22, 2010). In addition to the extent Complainant is alleging that the Agency did not properly process her workers' compensation claim, we find that this a collateral attack on the Department of Labor's Office of Workers' Compensation Programs (OWCP) process. The proper forum for Complainant to have raised challenges to actions which occurred during the OWCP process was within that forum. See Cooper v. Dep't of the Army, EEOC Appeal No. 0120122536 (Oct. 10, 2012).

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, or a copy of the final agency decision ("FAD") if Complainant does not request a hearing.

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 (T0124)

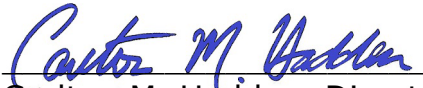
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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 28, 2025
Date