



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

[REDACTED]
Annice N,¹
Complainant,

v.

Christine Wormuth,
Secretary,
Department of the Army,
Agency.

Appeal No. 2024002672

Agency No. DHASAN 23-0871

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated May 22, 2024, 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. Upon review, the Commission finds that Complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim.

ISSUE PRESENTED

Whether the Agency's final decision properly dismissed Complainant's formal complaint for failure to state a claim in accordance with 29 C.F.R. § 1614.107(a)(1).

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

During the period at issue, Complainant had formerly worked as a Budget Analyst at the Agency's Resource Management office in White Sands Missile Range, New Mexico.

On February 29, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination in reprisal for prior protected EEO activity (EEOC Case No. 450-2023-00343X; Agency No. ARWSMR23JAN00682) when:

On December 18, 2023, Complainant was told that her EEO complaint had no merit by the Agency Labor Attorney from the Office of the Staff Judge Advocate at White Sands Missile Range.

On May 22, 2024, the Agency dismissed Complainant's complaint for failure to state a claim under 29 C.F.R. 1614.107(a)(1).

CONTENTIONS ON APPEAL

On appeal, Complainant contends that the Agency's Labor Attorney had made illegal statements by disparaging her claims during an attempted settlement discussion. Complainant also contends that the White Sands Missile Range EEO Director caused her humiliation by advising her to file the instant complaint, only to dismiss it later.

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

To establish standing, in accordance with 29 C.F.R. §1614.103, a complainant must be either an employee or an applicant for employment of the agency against which that complainant alleges discrimination. The claim must concern a policy or practice which affects a complainant as an employee or applicant. An agency shall accept a complaint from any aggrieved employee or applicant who believes that he has been discriminated against because of race, color, religion, sex, national origin, age or disabling condition. 29 C.F.R. §1614.106(a). EEOC Regulation 29 C.F.R. §1614.107(a)(1) provides for dismissal of a complaint which fails to state a claim within 29 C.F.R. §§ 1614.103 and 1614.106(a). Our case precedent defines an “aggrieved” employee or applicant as one who suffers a harm with respect to a term, condition, or privilege of employment for which there is a remedy under EEOC regulations. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994).

Here, the AJ assigned to Complainant’s prior case (EEOC Case No. 450-2023-00343X; Agency No. ARWSMR23JAN00682) had ordered the parties to attempt settlement discussions. Complainant and the Agency Labor Attorney held a telephone discussion in December 2023. Therein, Complainant demanded that the Agency pay her \$300,000 in addition to taking certain remedial actions. The Labor Attorney rejected Complainant’s demands and stated that her claims lacked merit.

We concur with the Agency’s finding that Complainant has failed to state a viable claim. This Commission has consistently held that settlement discussions are confidential and cannot be used as grounds for a discrimination claim. Settlement negotiations, to include any statements or proposals, are treated as privileged in order to facilitate a candid interchange to settle disputes informally. Harris v. Dep't of the Navy, EEOC Request No. 05941002 (Mar. 23, 1995). To allow a new complaint based on statements made during an attempted settlement would defeat this purpose. See Millea v. Dep't of Veterans Affairs, EEOC Request No. 05980235 (May 21, 1998); Montague v. Dep't of the Army, EEOC Request No. 05920231 (May 2, 1992); see also Green v. U.S. Postal Serv., EEOC Request No. 05980207 (June 25, 1998) (agency's withdrawal of an offer made in settlement not actionable). Accordingly, we find that the Agency properly dismissed the instant complaint for failure 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:



Carlton M. Hadden, Director
Office of Federal Operations

November 25, 2024

Date