



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Chu R,<sup>1</sup>  
Complainant,

v.

Denis R. McDonough,  
Secretary,  
Department of Veterans Affairs,  
Agency.

Appeal No. 2024003441

Agency No. 2003-598B-2023-153530

**DISMISSAL**

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) regarding Agency Case No. 2003-598B-2023-153530. For the reasons discussed below, we dismiss the instant appeal.

**ISSUE PRESENTED**

Whether Complainant abandoned her complaint during the EEO Counseling phase.

**BACKGROUND**

Complainant initiated EEO Counseling on August 3, 2023. The EEO Counselor noting in the counseling record Complainant was alleging harassment based on race and sex when she was yelled at by a co-worker on May 10, 2023.

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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.

Thereafter, on September 21, 2023<sup>2</sup>, Complainant signed a Notice of Withdrawal of EEO Complaint, prior to filing a formal complaint. The signed Notice stated the EEO Counselor had advised Complainant of her rights and responsibilities during the EEO complaint process. Complainant stated she was withdrawing her complaint on her own free will and without coercion.

Complainant filed the instant appeal on May 8, 2024.

#### CONTENTIONS ON APPEAL

Complainant filed no statements on appeal.

In opposition to the appeal, the Agency submitted a copy of a brief filed in Complainant's other EEOC Appeal No. 2024003424<sup>3</sup>, which explained that Complainant withdrew her complaint at the counseling stage, and it never evolved into a formal complaint in the EEO complaint process.

#### 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.

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<sup>2</sup> Complainant made a typographical error on the Notice of Withdrawal and noted the year as 2022, instead of 2023.

<sup>3</sup> In Complainant's other appeal, the Commission affirmed the Agency's dismissal for failure to state a claim, partially for the same claims raised herein as abandoned. See Geraldine G. v. Dep't of Veterans Affairs, EEOC Appeal No. 2024003424 (Oct. 30, 2024).

### ANALYSIS

The Commission has held that “a complainant who receives counseling on an allegation, but does not go forward with a formal complaint on that allegation is deemed to have abandoned it and consequently, cannot raise it in another complaint.” Small v. U.S. Postal Service, EEOC Request No. 05980289 (July 16, 1999).

Here, the Report of the EEO Counselor indicates that Complainant first sought EEO Counseling regarding the matter raised in this appeal on August 3, 2023. The record further indicates, however, that Complainant withdrew her claims on September 21, 2023, prior to filing a formal complaint. We therefore find that Complainant abandoned these matters raised above in this appeal. Tate v. U.S. Postal Service, EEOC Request No. 0520060584 (Dec. 15, 2006) (claim abandonment when no complaint filed). Complainant has offered no explanation or justification on appeal for the Commission to interfere in Complainant’s voluntary withdrawal. Accordingly, where, as here, Complainant has abandoned her claims, dismissal is appropriate.

### CONCLUSION

Accordingly, Complainant's appeal is DISMISSED

### 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 14, 2024

Date