



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Erika H.,¹
Complainant,

v.

Antony Blinken,
Secretary,
Department of State,
Agency.

Appeal No. 2024003555

Agency No. DOS-0477-23

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated April 19, 2024, dismissing a formal complaint. For the reasons set forth herein, we AFFIRM the Agency's final decision dismissing her complaint.

ISSUE PRESENTED

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

BACKGROUND

During the period at issue, Complainant worked as a Procurement Agent at the United States Embassy in Paris, France. On December 28, 2023, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the basis of unlawful retaliation.

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.

In its April 29, 2024 final decision, the Agency framed Complainant's claims in the following fashion:

1. On September 11, 2023, Complainant learned that [she was] being placed on a Performance Improvement Plan (PIP); and
2. [Complainant was] subjected to a hostile work environment characterized by, but not limited to, derogatory comments, being micromanaged, work being piled up and regularly demanding that everything has to be done by [close of business]; being yelled at in front of colleagues, since July 11, 2023, and as recently as September 11, 2023.

The Agency dismissed Complainant's complaint for failure to state a claim. The Agency reasoned that Complainant has not engaged in activity that entitles her to reprisal protection. The Agency set forth that Complainant alleges that she:

experienced retaliation for illegal behavior, .i.e. harassment ('harcelement moral' is illegal in France). Harcelement moral, or moral harassment, is a type of workplace bullying that is characterized by unwelcomed behavior that interferes with your ability to do your job but is not tied to a basis protected by American equal employment opportunity statutes. Reporting bullying...does not constitute illegal discrimination or harassment under the EEO statutes because there is no nexus to a protected EEO basis. Final Agency Decision (FAD) at 2.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant requests that we reverse the Agency's final decision. Complainant asserts "the crux of the complaint lies in retaliation following the reporting of illegal behavior, specifically harcelement moral, which is illegal under French law." Complainant sets forth that the French Labor Code states the following: "psychological harassment is constituted by any employee degrading the working conditions of another employee in such a way that this degradation constitutes an infringement of their rights and dignity, that this degradation is repeated over time, and that it constitutes a situation of suffering in the workplace."

Complainant asserts that she reported to human resources and her direct supervisor that the Deputy Supervisor was engaging in harassment through derogatory comments micromanagement, and excessive workload. Complainant states that, after reporting the alleged harassment, she experienced retaliation, which was comprised of numerous acts including, but not limited to the following: increased monitoring, micromanagement, and being placed on a PIP.

In response, the Agency reiterates its reasoning set forth in its final decision. The Agency asserts that Complainant has not alleged that she has been subjected to treatment made illegal by any statute over which the EEOC has jurisdiction. Moreover, the Agency states that the Commission does not have jurisdiction over French law.

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

EEOC Regulation 29 C.F.R. §1614.107(a)(1) provides that an agency shall dismiss a complaint that fails to state a claim under 29 C.F.R. §1614.103.

To state a viable claim of unlawful retaliation in the EEO complaint process, an individual must initially assert they engaged in prior protected activity as defined by 29 C.F.R. § 1614.101(b). Under 29 C.F.R. § 1614.101(b), prior protected activity includes an individual opposing any practice made unlawful by the statutes which the Commission enforces (i.e. Title VII, ADEA etc.), or participating in any stage of administrative or judicial proceedings under the statutes which the Commission enforces.

The Agency properly dismissed Complainant's complaint. Formal complaints which fail to identify a purview under EEO laws must be dismissed for failure to state a claim. See Alisia M. v. U.S. Postal Serv., EEOC Appeal No. 2021003515 (July 8, 2021); Almeda B. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120162291 (Oct. 16, 2016).

We acknowledge that Complainant, in her formal complaint, asserts that she reported to human resources and her supervisor that the Deputy Supervisor was subjecting her to a hostile work environment ("harcelement moral", which, according to Complainant, is illegal under French law). We further acknowledge that Complainant asserts that once she reported the alleged harassment, she was subjected to increased harassment, including, but not limited to, being placed under a PIP. However, Complainant does not set forth that the alleged harassment by the Deputy Supervisor, which she reported, was due to a protected EEO class (i.e. sex, religion, national origin etc.). Thus, Complainant has not alleged that she was subjected to reprisal based on prior protected **EEO** activity.

CONCLUSION

Accordingly, we AFFIRM the Agency's final decision dismissing Complainant's complaint for failure to state a claim.

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 19, 2024

Date