



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

[REDACTED]  
Ronnie R.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2024003587

Agency No. 200I-508-2024-157692

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision (FAD) dated May 15, 2024, dismissing his 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. For the reasons presented below, we REVERSE the Agency's final decision dismissing the complaint and REMAND the matter for further processing.

**ISSUE PRESENTED**

Whether the Agency's final decision properly dismissed Complainant's formal complaint.

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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.

### BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Physician-Radiologist at the Agency's Department of Radiology in Decatur, Georgia.

On April 12, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of race (White), sex (male), and reprisal (prior EEO activity).

Specifically, Complaint, stated that he had been subjected to ongoing harassment by the Assistant Chief of Radiology since she assumed her position in 2017. Complainant said that she had been physically aggressive with him and verbally abusive. He listed incidents that spanned from 2017 to present, and these included an incident in 2017 where she held a clenched fist in front of his face, and an incident in 2018, where she slammed a clenched fist on the desk three times asking him why he requested FMLA leave. Complainant stated that he reported her hostile behavior to Mr. Curry at the Agency's EEO office on October 31, 2018, and that mediation was held on August 1, 2019. However, he claimed that the Assistant Chief of Radiology retaliated against him for complaining about the harassment. He said that she was verbally abusive and tried to silence him, she constantly spoke down to him like he was a toddler, stalked him in the hallway, and would move in closer when he asked her to back away, as recent as March 2024.

On May 15, 2024, the Agency issued a final decision, determining that Complainant's complaint was comprised of two allegations that were framed as the following:

- (1) From August 17, 2017, to February 22, 2022, Complainant was subjected to a hostile work environment.
- (2) On March 15, 2024, [the Assistant Chief of Radiology] bullied Complainant regarding X-ray and MRI reports and yelled, "your report is wrong . . . if I were completing QA on this, I would make it a major difference, change your report, make an addendum" or words to that effect.

The Agency dismissed claim 1 for untimely EEO counselor contact, pursuant to 29 C.F.R. §1614.107(a)(2).

The Agency also applied the doctrine of laches. The Agency dismissed claim 2 pursuant to 29 C.F.R. § 1614.107(a)(2), for failure to state a claim.

### CONTENTIONS ON APPEAL

Complainant did not submit a statement or brief in support of his appeal. The Agency filed statement in opposition to Complainant's appeal, restating the position that it took in its FAD.

### 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

#### *Framing the Complaint*

We note at the outset that the Agency improperly framed the complaint. The Commission has held that an agency should not ignore the "pattern aspect" of a complainant's allegations and define the issues in a piecemeal manner where an analogous theme unites the matters complained of. Dobbins v. Department of the Army, EEOC Appeal No. 01A15248 (January 16, 2003) (citing Meany v. Department of Treasury, EEOC Request No. 05940169 (November 3, 1994)). Here, a fair reading of the record reveals that Complainant's complaint is one of ongoing harassment, beginning in 2017 and continuing until at least March 2024.

#### *Harassment/Hostile Work Environment*

An agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that she has been discriminated against by that agency because of race, color, religion, sex, national origin, age or disabling condition. 29 C.F.R. §§ 1614.103, .106(a).

An "aggrieved employee" is one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994). The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that an agency shall dismiss a complaint that fails to state a claim.

To establish a claim of hostile environment harassment, Complainant must show that: (1) he belongs to a statutorily protected class; (2) he was subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on her statutorily protected class; (4) the harassment affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the Agency. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993). See also, Enforcement Guidance on Harris v. Forklift Systems Inc., EEOC Notice No. 915.002 (March 8, 1994).

In assessing a hostile environment claim, the totality of the circumstances must be examined, including (1) the frequency of the discriminatory conduct; (2) its severity; (3) whether it is physically threatening or humiliating, or a mere offensive utterance; and (4) whether it unreasonably interferes with an employee's work performance. See Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (April 21, 1994). In determining whether harassment is sufficiently severe or pervasive to create a claim of hostile environment, the harasser's conduct is evaluated from the objective standpoint of a reasonable person. An objectively hostile or abusive work environment is created only when a reasonable person would find it hostile or abusive. Furthermore, EEO laws are not a civility code," but rather "forbid 'only behavior so objectively offensive as to alter the conditions of the victim's employment.'" Lidia B. v. Dep't of Army, Appeal No. 0120180245 (2019) (internal citations omitted).

Complainant alleged ongoing harassment by the Assistant Chief of Radiology's, including instances when she allegedly held a clenched fist in front of Complainant's face, slammed a clenched fist on the desk three times asking Complainant why he requested FMLA leave, tried to silence Complainant, spoke down to Complainant like he was a toddler, and stalked Complainant in the hallway.

In his formal complaint, Complainant explicitly stated the harassment has continued despite Complainant's reports to management, human resources, and the Agency's EEO office. We find these allegations, along with others in the record, state a claim of harassment.

### *Timeliness*

EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination should be brought to the attention of the Equal Employment Opportunity Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within forty-five (45) days of the effective date of the action.

The Agency dismissed Complainant's hostile work environment/harassment claims that occurred from August 17, 2017 to February 22, 2022 as untimely. However, the Supreme Court has held that a complaint alleging a hostile work environment will not be time barred if all acts constituting the claim are part of the same unlawful practice and at least one act falls within the filing period. See National Railroad Passenger Corp. v. Morgan, 122 S.Ct. 2061 (June 10, 2002). On Complainant's formal complaint, Complainant indicated the most recent incident of harassment occurred on March 15, 2024, which is within 45 days of Complainant's initial contact with an EEO counselor on March 19, 2024. Therefore, we find that the Agency improperly dismissed the hostile work environment for untimely EEO counselor contact. The Agency also improperly applied the doctrine of laches.<sup>2</sup>

### CONCLUSION

We REVERSE the Agency's final decision dismissing Complainant's complaint and we REMAND this matter to the Agency for further processing in accordance with the ORDER below.

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<sup>2</sup> The doctrine of laches is an equitable defense by which a complainant's failure to diligently pursue claims within a reasonable time period can preclude consideration of those claims. Harris v. U.S. Postal Serv., EEOC Request No. 05950268 (Sept. 8, 1995).

ORDER (E0224)

The Agency is ordered to process the remanded claims 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. 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 (R0124)


This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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 filed your appeal with the Commission. 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. **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