



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

[REDACTED]  
Mui P,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2024003703

Agency No. 200I-508-2024-157540

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated May 7, 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.

**ISSUES PRESENTED**

Whether Complainant's complaint was properly dismissed for failure to state a claim in accordance with EEOC Regulation 29 C.F.R. § 1614.107(a)(1).

**BACKGROUND**

During the relevant time, Complainant worked for the Agency as an Assistant Nurse Manager in Decatur, Georgia. On April 9, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination in reprisal for prior protected EEO activity when the Agency's Alternative Dispute

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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.

Resolution (ADR) process was "ambiguous." Complainant further alleged that the behavior of the Agency's Nurse Manager was unprofessional and that "retaliation tactics worsened."

Complainant further alleges that she was subjected to discrimination with respect to the following matters:

1. From September 15, 2023 to March 8, 2024, the Chief Nurse and the Nurse Manager provided an inadequate orientation to Complainant;
2. On January 16, 2024, the Agency's Nurse Manager humiliated Complainant in front of Complainant's co-workers when the Nurse Manager stated, "I told you how to use VATAS, we went over pending time, you should have known how to check timecards for pending leave;"
3. On February 2, 2024 the Nurse Manager humiliated Complainant in front of co-workers when she told Complainant to "be quiet;"
4. From February 5, 2024 to February 29, 2024, Nurse Manager subjected Complainant to the following micromanagement: delayed Complainant from ending her tour of duty; interrupted Complainant's orientation/work; spoke to Complainant in a nasty, disrespectful, and condescending manner; accused Complainant of being late to work;
5. From February 5, 2024 to February 29, 2024, the Nurse Manager denied Complainant an opportunity to participate in the interview process of potential employee candidates;
6. On February 15, 2024, the Agency's Chief Nurse excluded and did not recognize Complainant from a leadership meeting and her participation in unit rounding;
7. On February 28, 2023, the Nurse Manager delayed review/approval for Complainant's leave request and told Complainant to leave the Nurse Manager's office;
8. From February 28, 2024 to March 14, 2024, Nurse Manager continuously attempted to require Complainant to have a closed-door conversation despite Complainant previously advising Nurse

Manager that she was not comfortable having closed door conversations;

9. From March 1, 2024 to March 14, 2024, the Agency's Nurse Manager denied Complainant's request for a copy of her orientation documents from her staff folder;
10. On March 8, 2024, the Nurse Manager instructed Complainant to stop sending emails requesting her staff folder documents;
11. On March 8, 2024, Chief Nurse provided Complainant an orientation package and informed Complainant that she would be returned to orientation status; and
12. On or about March 15, 2024, the Agency's Nurse Manager continually remarked to Complainant, "I don't know why you did not sign off on specific orientation items, as we have gone over this," or words to that effect.

On May 7, 2024, the Agency issued a final decision dismissing Complainant's complaint in its entirety for failure to state a claim, pursuant to EEOC Regulation 29 C.F.R. § 1614.107(a)(1).

This appeal followed.

#### CONTENTIONS ON APPEAL

Complainant provides no new arguments or evidence in support of her appeal in this matter. The Agency's appeal brief requests that the Commission affirm its previous decision dismissing the instant matter.

#### 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, in relevant part, that an agency shall dismiss a complaint that fails to state a claim. An agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that he or 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). The Commission's federal sector case precedent has long defined an "aggrieved employee" as 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).

As an initial matter, in addressing Complainant's allegations regarding ADR, we note here that the Commission has consistently held that settlement negotiations are to be treated as confidential and privileged in order to facilitate a candid interchange in order to settle disputes informally. Therefore, Complainant cannot bring a claim regarding statements and conduct occurring during ADR negotiations. See Nelson v. Department of Defense (Defense Contract Audit Agency), EEOC Appeal No. 01A13907 (September 25, 2001)(comments and actions made during a mediation session akin to actions during settlement negotiations). In that regard, we find that the Agency properly determined that Complainant's ADR allegations failed to state a claim.

Turning now to Complainant's remaining claims we note that for claims based on reprisal, adverse actions need not qualify as "ultimate employment actions" or materially affect the terms, conditions, or privileges of employment to constitute unlawful retaliation. Complainant v. Dep't of Veterans Affairs, EEOC Appeal No. 0120122790 (Dec. 13 2012). Instead, it is Commission policy to consider reprisal claims with a broad view of coverage to protect the complainant from any retaliatory discrimination that is reasonably likely to deter protected activity. Carroll v. Dep't of the Army, EEOC Request No. 05970939 (Apr. 4, 2000).

Here, Complainant raised reprisal as the sole basis for her formal complaint. Although we considered Complainant's reprisal claim broadly, we nevertheless determine that Complainant did not establish that she was aggrieved with respect to reprisal.

Complainant claimed that the Agency was discriminating against her because of her prior protected EEO activity. EEO laws prohibit punishing employees for asserting their rights to be free from employment discrimination including harassment. Asserting these EEO rights is considered "protected activity." However, the record does not reflect any prior EEO activity that could have resulted in the alleged reprisal. Other than Complainant's participation in the Agency's ADR process for the instant complaint, there is no evidence of record establishing Complainant's prior EEO activity covered by EEO regulations. Complainant does not explain how she previously opposed discrimination or participated in the EEO complaint process such that she was protected by the reprisal provision in Title VII.

### CONCLUSION

The Agency's final decision to dismiss the instant complaint in its entirety for failure to state a claim was proper. The Agency's decision is AFFIRMED for the reasons discussed above.

### 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

November 25, 2024

Date