



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

[REDACTED]  
Willa B,<sup>1</sup>  
Complainant,

v.

Frank Kendall,  
Secretary,  
Department of the Air Force,  
Agency.

Appeal No. 2024003861

Agency No. 6ROM2400338

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated May 9, 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 for untimely EEO Counselor contact.

**ISSUES PRESENTED**

The issue presented before the Commission is whether Complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely EEO Counselor contact.

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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 Family Support Specialist, GS-11, at the Military & Family Readiness (M&FR) Office for the 94th Force Support Squadron (FSS) in Marietta, Georgia.

On April 5, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to hostile workplace discrimination on the basis of sex (female) when:

A. From the beginning of 2023 through July 2023, she was sexually harassed.

B. On or about June 2023, a co-worker entered her office, made lude comments about, and uninvitedly grabbed her butt.

C. On 7 July 2023, her co-worker again entered her office and aggressively stated that she was going to contact her during the ensuing weekend.

The Agency dismissed the entire complaint for untimely EEO Counselor contact. The Agency alternatively dismissed claims A and C for failure to state a claim.

### CONTENTIONS ON APPEAL

Complainant through her attorney contends she was unfamiliar with the requirement to make timely EEO Counselor contact. Specifically, Counsel asserts:

[Complainant] was unaware of the 45-day time limit because there was no EEOC poster in the building, she did not receive training regarding the 45-day time limit, nor did her supervisor direct her to the EEO office when she advised her that she was being sexually harassed by her co-worker. In fact, she was unaware of the time limit until the timekeeper informed her of it on November 15, 2023, during a discussion in which [Complainant] asked the timekeeper how many days she would be able to take off for worker's comp due to the stress caused by her co-worker's actions. As such, the 45-day time limit to initiate EEO Counseling should have been extended because [Complainant] did not have actual or constructive notice of the time limit.

Counsel also argues that because she was so traumatized as a result of the purported harassment by her co-worker, Complainant lacked the mental capacity to timely contact an EEO Counselor within the 45-day limitation period. In its response, the Agency noted:

[Complainant's] claim that she did not know the time limit or that she had rights to contact EEO is implausible. [Complainant] worked near the location listed on the Equal Opportunity (EO) posters and was present for and ran slides for the EO programs during the monthly base Newcomer's Briefings. Those slides expressly included the time limit. Moreover, [Complainant's] in-processing checklist also included EO as a base agency for her to be aware of. [Complainant's] failure to timely contact an EEO Counselor was due to circumstances within her control. [Complainant] failed to show that 'mental incapacitation' prevented her from contacting an EEO Counselor. [Complainant] has not submitted any letters or evidence like the psychiatrist's letter in Maddux v. U.S. Postal Service, EEOC No. 05980302 (August 5, 1999). On the contrary, [Complainant's] submissions show that she had sufficient mental capacity throughout the relevant time. After the incidents, she was able to contact her supervisor, the alleged perpetrator's supervisor, and Civilian Personnel Office. Also, her medical records show that she was goal-oriented with fair judgment and insight. They also show that [Complainant] was able to contact prospective employers, choose among them, apply, obtain an offer, and accept a position. Ultimately, [Complainant] demonstrated by her own conduct that she was able to do 'a number of activities' that demonstrated more mental capacity and ability than contacting EEO. See Hemphill v. Department of Defense (Defense Investigative Service), EEOC 05930342 (September 17, 1993).

#### 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. § 1614.105(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 a personnel action, within forty-five (45) days of the effective date of the action. The Commission has adopted a "reasonable suspicion" standard (as opposed to a "supportive facts" standard) to determine when the forty-five (45) day limitation period is triggered. See Howard v. Dep't of the Navy, EEOC Request No. 05970852 (Feb. 11, 1999). Thus, the time limitation is not triggered until a complainant reasonably suspects discrimination, but before all the facts that support a charge of discrimination have become apparent.

EEOC Regulations provide that the agency or the Commission shall extend the time limits when the individual shows that she was not notified of the time limits and was not otherwise aware of them, that she did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence she was prevented by circumstances beyond her control from contacting the Counselor within the time limits, or for other reasons considered sufficient by the agency or the Commission.

The record discloses that the alleged, most recent discriminatory event occurred on July 7, 2023, but Complainant did not initiate contact with an EEO Counselor until November 15, 2023, which is well beyond the forty-five (45) day limitation period. On appeal, Complainant's Counsel asserts that Complainant lacked knowledge of the EEO process timeframe(s) and was essentially attempting to function while under the stress/trauma of having been sexually harassed at her job. However, the record contains colored photographs of EEO postings along with other documentation evidencing Complainant's constructive knowledge of EEO timeframes. Furthermore, the Commission has consistently held, in cases involving physical or mental health difficulties, that an extension is warranted only where an individual is so incapacitated by her condition that she is unable to meet the regulatory time limits. See Minardi v. Dep't of Homeland Sec., EEOC Request No. 0520080071 (Nov. 16, 2007); Davis v. U.S. Postal Serv., EEOC Request No. 05980475 (Aug. 6, 1998); Crear v. U.S. Postal Serv., EEOC Request No. 05920700 (Oct. 29, 1992). We find in the instant case that, although we are sympathetic to the difficulties endured by Complainant, she failed to demonstrate that she was so incapacitated or unavailable such that the time limit should be waived in this case.

## 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

November 26, 2024

Date