



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

████████████████████  
Jacinta B,<sup>1</sup>  
Complainant,

v.

Merrick B. Garland,  
Attorney General,  
Department of Justice  
(Federal Bureau of Investigation),  
Agency.

Appeal No. 2024004004

Agency No. FBI-2024-00120

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated June 25, 2024, dismissing a formal 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. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the reasons discussed below, we affirm the Agency's final decision dismissing the formal complaint.

ISSUES PRESENTED

Whether the Agency properly dismissed Complainant's complaint on various grounds.

---

<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

During the period at issue, Complainant was a candidate for Special Agent. Her application was handled at the Agency's field office in Chicago, Illinois.

On July 8, 2023, Complainant filed a prior formal EEO complaint (Agency No. FBI-2023-00215). Following an investigation, Complainant requested a hearing before an EEOC Administrative Judge (AJ). On January 30, 2024, the AJ assigned to the hearing matter (EEOC No. 570-2024-00205X) issued a notice of proposed summary judgment in favor of the Agency. On that same day, Complainant responded to the AJ's notice by filing a withdrawal of her complaint. On January 31, 2024, the AJ dismissed Complainant's complaint.

On February 29, 2024, Complainant filed the instant formal complaint (Agency No. FBI-2024-00120). Therein Complainant included a narrative which restated the same five claims that she had stated in the prior formal complaint, that the Agency had subjected her to discrimination on the bases of national origin (Polish), sex (female), disability (physical and mental), and in reprisal for prior protected EEO activity when:

1. In May 2017, a Special Agent (SA) sexually harassed Complainant by asking her to contact him if she returned to take the Phase I test for the SA position;
2. On March 1, 2022, an SA embarrassed Complainant by referring to her as "Karina" and announcing that it was her second time taking the Phase II test for the SA position;
3. During Complainant's Phase II interview on March 1, 2022, she was referred to as "Karina" and asked "uncomfortable" questions;
4. On March 9, 2022, Complainant was notified she had failed the Phase II test;
5. On June 6, 2023, Complainant was notified that her failure of the Phase II test had been upheld following a quality control review;

Complainant's narrative accompanying this second complaint also added the following claim:

6. On January 2024, the EEO Investigator who investigated Complainant's prior complaint "sabotaged" her case by speaking to the Administrative Judge assigned to the case.

On June 25, 2024, the Agency dismissed the instant formal complaint, Agency No. FBI-2024-00120. The Agency dismissed Claims 1-5 pursuant to 29 C.F.R. § 1614.107(a)(1) for stating the same claim as a claim that Complainant had raised in a prior EEO complaint.

The Agency dismissed Claim 6 pursuant to 29 C.F.R. §1614.107(a)(8), in that Complainant had raised an improper spin-off claim by alleging dissatisfaction with the Agency's processing of her prior complaint. The Agency also dismissed Claim 6 on the alternative grounds of failure to state a claim.

#### CONTENTIONS ON APPEAL

On appeal, Complainant has accused the Agency of a years-long campaign of violating her due process rights and civil rights under federal and state laws in addition to undermining her application for a Special Agent position.

The Agency responded opposing Complainant's appeal by arguing that it had correctly dismissed the complaint.

#### 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

### *Claims 1-5*

The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides that the agency shall dismiss a complaint that states the same claim that is pending before or has been decided by the agency or Commission. The Commission has consistently held that in order for a complaint to be dismissed as identical, the elements of the complaint must be identical to the elements of the prior complaint in time, place, incident, and parties. See Jackson v. Dep't of the Air Force, EEOC Appeal No 01955890 (Apr. 5, 1996), rev'd on other grounds, EEOC Request No. 05960524 (Apr. 24, 1997).

Claims 1-5 in the present complaint are identical restatements of those claims that Complainant had raised in her prior formal complaint, Agency No. FBI-2023-00215. When before an AJ at a hearing, EEOC No. 570-2024-00205X, Claims 1-5 claims were previously dismissed based on Complainant's motion to withdraw her complaint. On appeal, Complainant has not distinguished these present claims from those she had withdrawn nor has she persuaded us how dismissal of said claims was improper. We concur with the Agency in that Claims 1-5 had already been decided when Complainant raised them here.

### *Claim 6*

EEOC Regulation 29 C.F.R. § 1614.107(a)(8) provides that an agency shall dismiss a complaint that alleges dissatisfaction with the processing of a previously filed complaint. EEO Management Directive 110 (EEO MD-110) at Ch. 5 § IV(D) defines such as a "spin off" complaint. EEO MD-110 further instructs that spin-off complaints should be referred to the agency official responsible for EEO complaint processing and/or processed as part of the original complaint, rather than on appeal. Samuel C. v. Dep't of Justice, EEOC Appeal No. 0120182823 (Nov. 15, 2018); Denis M. v. U.S. Postal Serv., EEOC Appeal No. 0120181126 (May 2, 2018).

A fair reading of the record confirms that Complainant's Claim 6 is alleging dissatisfaction with the conduct of the EEO investigator, rather than discrimination. The record reveals that, twice in January 2024, Complainant emailed the EEO investigator assigned to her case requesting corrections to the report of investigation. On both occasions, the EEO investigator explained that because her complaint, Agency No. FBI-2023-00215, was pending before an AJ, the Agency no longer had jurisdiction over the matter.

The EEO investigator further advised Complainant to instead contact the AJ assigned to her case with her concerns about the report of investigation. Therefore, Claim 6 was properly dismissed as an improper spin-off complaint because the underlying facts concerned the report of investigation and Complainant's communications with the EEO investigator.

### 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:



---

Carlton M. Hadden, Director  
Office of Federal Operations

November 27, 2024

Date