



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Shan D.,<sup>1</sup>  
Complainant,

v.

Xavier Becerra,  
Secretary,  
Department of Health and Human Services  
(Centers for Disease Control and Prevention),  
Agency.

Appeal No. 2024004098

Agency No. HHS-CDC-0228-2024

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated May 31, 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. Upon review, the Commission finds that Complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim.

**ISSUES PRESENTED**

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

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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

During the period at issue, Complainant worked for the Agency as a Health Scientist in Atlanta, Georgia.

On March 22, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on based on race (African-American), sex (female), color (Black), and in reprisal for prior protected EEO activity (EEOC Appeal No. 2024004147) when:

on January 22, 2024, she received an administrative grievance response and determined that she had been "treated unfairly during the administrative grievance process."

In the instant final decision, the Agency dismissed the formal complaint for failure to state a claim. The Agency stated that Complainant must demonstrate that she suffered a harm and the Agency's unlawful conduct caused the harm. The Agency further stated that Complainant's claim did not articulate a harm or loss, and that Complainant was afforded an opportunity to submit an administrative grievance and an appropriate decision was issued. Finally, the Agency stated that no tangible employment concrete action ensued and there is no relief.

On October 16, 2023, Complainant received a written reprimand that she appealed through the administrative grievance process. On January 22, 2024, Complainant received a Stage One Administrative Grievance response from the Deputy Branch Chief of Global Health Center (Deputy Branch Chief) that her grievance request was untimely. The Deputy Branch Chief was the deciding official of Complainant's October 2023 written reprimand.

### CONTENTIONS ON APPEAL

On appeal, Complainant, through counsel, argues that she filed an administrative grievance, but it was not a grievance through a negotiated or union process. Additionally, Complainant avers that the Agency handled her grievance differently than those outside of her protected class and in retaliation for prior protected EEO activity. Finally, Complainant asserts, that while she did not suffer a tangible concrete employment action, such is not required with a claim of reprisal as only an adverse employment action is required to move forward.

### 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

Under the regulations set forth at 29 C.F.R. Part 1614, an agency shall accept a complaint from an 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). If the complainant cannot establish that he is aggrieved, the agency shall dismiss a complaint for failure to state a claim. 29 C.F.R. § 1614.107(a)(1).

Complainant filed an administrative grievance after receiving a written reprimand. On January 22, 2024, Complainant received a Stage One Administrative Grievance response from the Deputy Branch Chief that her grievance request was untimely. A fair reading, of Complainant's formal complaint, indicates that she believes that she was treated unfairly during the administrative grievance process. Instead of addressing this denial through the administrative grievance process, Complainant filled an EEO complaint. Complainant is lodging a collateral attack by attempting to address the administrative grievance denial through the EEO process. While Complainant feels she was treated unfairly, the Commission finds that the complaint fails to state a claim under the EEOC regulations because Complainant failed to show that she suffered harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy.

## 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

December 10, 2024

Date