



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

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Iona A,<sup>1</sup>  
Complainant,

v.

Gary Ashworth,  
Acting Secretary,  
Department of the Air Force,  
Agency.

Appeal No. 2024004126

Agency No. 9R1M2303780F24

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated May 31, 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. For the reasons discussed below, we affirm the Agency's final decision.

**ISSUES PRESENTED**

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

**BACKGROUND**

From September 2021 until May 4, 2023, when Complainant was terminated from her position, Complainant worked as a Senior Contract Support Specialist in the in the Contract Support unit of the Specialized Management Branch for

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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.

the C2ISR Division at Robins Air Force Base, Georgia. Complainant worked under the Agency's contract with Credence Management Solutions, LLC (Credence).

Officially, Complainant directly reported to Credence's Project Manager (CPM) in the C2ISR Division. Technically, Complainant's regular work assignments came from the Contract Support unit chief (S1) who was a federal civilian employee. A major was Specialized Management Branch's chief and was her second-level supervisor (S2). S2 also supervised the chief of Specialized Management Branch's Special Projects unit (SPC). Also under S2's supervision was Program Management Lead (PML) who was a deputy chief or acting chief in Specialized Management Branch's Integrated Broadcast Service unit. S2 was supervised by a colonel who was the C2ISR Division's Senior Materiel Leader (SML).

On May 16, 2022, S1 informed Complainant that Agency management denied Complainant's request to travel for temporary duty in Texas.

On January 24, 2023, Complainant participated in a focus group of civilian employees and contractors at the request of S2. Complainant spoke freely about her criticisms of the organizational structure, of management's insufficient support for process improvement, and of negative behaviors she had witnessed by SPC and PML.

On March 3, 2023, SML briefed the focus group report results to several individuals, to include S2 and SPC.

In April 2023, SML informed S2 that management found his leadership style deficient. S2 was reassigned to another mission. SML reported that Complainant was present on her telework day and spent that day helping S2 clear out his office.

On May 1, 2023, the Product Support unit chief held a meeting with Complainant and CPM. The Product Support unit chief requested that Complainant volunteer for certain escort duties. Complainant loudly responded, "Fuck that!" As a result, CPM sent Complainant home thereafter.

On May 3, 2023, a manager for Credence emailed S1 and courtesy-copied CPM to notify them that Complainant would be terminated for insubordination.

On May 4, 2023, Complainant's termination from employment was effectuated.

On September 5, 2023, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of sex (female) and in reprisal for EEO-protected activity (January 2023 participation in focus group) when:

1. On or about May 16, 2022, Complainant was requested to go TDY to Texas as a representative of the contracting team by her supervisor and it was denied by SPC;
2. On or about May 22, 2022, until May 4, 2023, Complainant was referred to as a "spy" and the eyes and ears of management by SPC and PML; and
3. On May 4, 2023, the complainant became aware that SML released the Focus Group Report to SPC and PML, which resulted in the complainant being terminated from her Senior Contract Support Specialist position.

On May 31, 2024, the Agency dismissed the formal Complaint for failure to state a claim pursuant to 29 C.F.R. 1614.107(a)(1). The Agency reasoned that overall work-relationship control factors supported a determination that Complainant was an independent contractor for Credence as opposed to a joint employee for the Agency. The Agency pointed out the email informing S1 that Credence management had decided that Complainant's employment would be terminated. The Agency also noted testimony from CPM who said that the incident that caused Complainant's firing was not her involvement in the focus group. Instead, CPM insisted that Complainant was terminated for the May 1, 2023, incident wherein she loudly cursed her refusal after the Product Support unit chief discussed Complainant volunteering as an escort.

The instant appeal followed.

#### CONTENTIONS ON APPEAL

On appeal, Complainant argues that the Agency was her joint employer for EEO purposes. Complainant specifically argues that S1 and S2 were her direct supervisors for her day-to-day employment, because they controlled her scheduling and assignments. Complainant states that Credence merely processed paperwork concerning her time and attendance, but that Credence did not otherwise communicate with her over months during her Agency employment. Complainant contends that SPC and PML had conspired against her and made false reports to have her terminated by Credence.

Complainant accuses SPC of making the phone call that persuaded Credence to terminate her. Complainant asserted that SPC and SML retaliated against her for speaking out about C2ISR Division management's shortcomings during a focus group. Complainant accuses SML of releasing the results from the focus group in a manner that made her a target for reprisal, even after Complainant was assured that she could speak freely at the focus group without fear of retribution. According to Complainant, Credence management had falsely stated that it had made the termination decision and falsely denied that the Agency had liability for her termination. In support of her position, Complainant pointed out that the Director of Resource Advocacy, who had facilitated the focus group, supported her by opining that Complainant was the victim of harassment and retaliation by the Agency.

The Agency responded in opposition to Complainant's appeal. The Agency states that the record corroborated that Credence terminated Complainant's employment for misconduct. The Agency states that Complainant's termination was not related to the focus group. The Agency denies that the report from the focus group attributed negative statements about management to Complainant. The Agency notes the lack of any other employee who was terminated after giving responses during the focus group.

#### 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 Commission regulations at 29 C.F.R. §§ 1614.103, 1614.106(a), the Agency must accept a justiciable claim that an aggrieved employee has been subjected to discrimination based on EEO-protected characteristics or because of EEO-protected activities.

EEOC'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 a complainant does not allege that they were "aggrieved" within the meaning of EEOC's regulations, then an agency shall dismiss the complaint for failure to state a claim. 29 C.F.R. § 1614.107(a)(1).

In Serita B. v. Dep't of the Army, EEOC Appeal No. 0120150846 (Nov. 10, 2016), EEOC reaffirmed its long-standing position on "joint employers;" it is supported by numerous sources including: EEOC Compliance Manual, "Threshold Issues," OLC Control No. EEOC-CVG-2000-2 (May 12, 2000) (Compliance Manual) at § 2-III(B)(1)(a)(iii)(b), EEOC Enforcement Guidance: Application of EEO Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms, "Coverage Issues," OLC Control No. EEOCCVG-1998-2 (Dec. 3, 1997) (Enforcement Guidance) at Question 2; Ma v. Dep't of Health and Human Servs., EEOC Appeal Nos. 01962389 and 01962390 (May 29, 1998). We reiterate the analysis set forth in those decisions and guidance documents in this decision.

On the factor of the right to control when, where, and how a worker performs the job and to assign additional projects, complete agency control is not required. Rather, the control may be partial or joint and still point to joint employment. Shorter v. Dep't of Homeland Sec., EEOC Appeal No. 0120131148 (June 11, 2013) (where both staffing firm and agency made assignments, this pointed to joint employment); Complainant v. Dep't of the Navy, EEOC Appeal No. 0120143162 (May 20, 2015), reconsideration denied, EEOC Request No. 0520150430 (Mar. 11, 2016) (when a staffing firm issued a complainant's appraisal with input from the agency, this pointed toward joint employment). Likewise, where both the agency and staffing firm provided logistical resources to perform the job, this pointed to joint employment. Elkin v. Dep't of the Army, EEOC Appeal No. 0120122211 (Nov. 8, 2012). Similarly, if a staffing firm terminates a worker because an agency communicates it no longer wants that worker, then this supports that the agency has joint and de facto authority to discharge the worker. Complainants v. Dep't of Justice, EEOC Appeal Nos. 0120141963 and 0120141762 (Jan. 28, 2015). EEOC considers relevant each entity's right to control terms and conditions of employment, whether or not it exercises joint employer authority. Enforcement Guidance at Question 2, Example 5 (where an entity reserves the right to direct the means and manner of a worker's labor, but does not generally exercise that right, the entity may still be found to be a joint employer).

In assessing the right to control, EEOC does not consider any factor to be decisive and emphasizes that it is unnecessary to satisfy a majority of the factors. The fact that a worker performs work pursuant to a contract between the federal government and an outside organization and is paid and provided with benefits by that organization, on its own, is not enough to show that joint employment does not exist. Rather, all of the circumstances in the worker's relationship with the agency should be considered to determine if the agency should be deemed the worker's joint employer. Enforcement Guidance at Question 1. In sum, the Agency will qualify as a joint employer if it has the right to control the means and manner of Complainant's work, regardless of whether he was paid by an outside organization or is on the federal payroll. Enforcement Guidance at Question 2.

Significant to the instant case, where a staffing firm terminates a worker after an agency communicates it no longer wants the worker's services, this supports a finding that the agency has joint or de facto power to discharge the worker. See, e.g., Complainants v. Dep't of Justice, EEOC Appeal Nos. 0120141963 & 0120141762 (Jan. 28, 2015); see also Skanska USA Bldg., Inc., 550 Fed. App'x at 254, 256 (where defendant removed staffing firm's workers from job site without challenge from staffing firm, and after such removals staffing firm generally fired worker, this pointed to joint employment); Butler v. Drive Auto. Indus. of America, Inc., 793 F.3d 404, 414-15 (4th Cir. 2015).

Regarding Agency control, it is undisputed Complainant received most of her tasks from Agency personnel. On the other hand, however, CPM's presence and involvement with Complainant's work, in addition to the high-level and independent nature of her work, reflect that she was an independent contractor rather than a joint employee. Hence, the Commission finds that the question of who initiated Complainant's termination is paramount in determining the existence of a joint-employment relationship in this case.

While Complainant accused SPC, PML and SML of engineering Credence's termination, no documentary evidence of record shows that Credence acted upon receiving input from the Agency. In their sworn declarations, SPC, PML, and SML denied they played any roll in Credence's termination decision. It does not appear as though Credence consulted with the Agency on the matter.

CPM stated that Credence had exercised exclusive authority in its decision to terminate Complainant's employment. Although Complainant described her interaction with Credence as minimal, she acknowledged that she had communicated with CPM about work matters on multiple occasions.

Furthermore, Complainant did not deny CPM's presence and role during the May 1, 2023 incident that preceded her employment discharge. She admitted that she had an "unforeseen outburst" which caused CPM to send her home and then prohibit her from returning to work prior to her termination.

Critical to this issue of who had and exercised termination discretion over Complainant, we are presented with the May 3, 2023 email from Credence management to S1. Therein, a Credence manager informs the Agency that Credence independently decided to end Complainant's work on the contract:

. . . Due to circumstance of [Complainant's] insubordination with Credence directive, I am afraid we will have to dismiss her tomorrow. I didn't want you caught off guard, sadly [Complainant] has not followed through on clear direction on professional behavior and requirements expectations.

Call if we need to talk. If you had an employee of this nature and tried to work with them for months, I know you get the picture and understand. Credence cannot afford this risk any longer sir. We will find an excellent replacement to support your team.

The text from this email clearly indicated that Credence management claimed ownership of the decision to dismiss Complainant. Moreover, this email conforms with CPM's stating that Complainant was terminated over the incident in which she had cursed her negative response to Product Support unit chief suggesting that she perform escort duties.

Beyond her assertions and a few supporting opinions, Complainant proffers little, in the way of evidence, in favor of her argument that the Agency was her joint-employer because it was the de facto decision-maker behind her termination. The record is devoid of documentary or testimonial evidence showing that it was the Agency, and not Credence, who ultimately terminated Complainant's employment. Instead, the strongest evidence, Credence management's termination email discussed above, supports the findings of the Agency's final decision.

Based upon the foregoing 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.

## 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

February 11, 2025

Date