



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

[REDACTED]
Eugenia C,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Appeal No. 2024004201

Agency No. 4J493003824

DECISION

Complainant timely appealed to the Equal Employment Opportunity Commission ("EEOC" or "Commission"), from the Agency's May 28, 2024 dismissal of his 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 AFFIRMS the Agency's decision to dismiss Complainant's complaint for failure to state a claim.

ISSUE PRESENTED

Whether the Agency properly dismissed Complainant's formal EEO complaint pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim.

¹ 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 was employed by the Agency as a Mail Technician, 07-P, for the Agency's P1 Annex in Grand Rapids, Michigan.

On May 10, 2024, Complainant filed a formal EEO complaint alleging that the Agency subjected her to discrimination, including a hostile work environment on the bases of race (African-American),² and reprisal for prior protected EEO activity. The Agency framed the claims as follows:

1. On or around February 8, 2024, Complainant's co-workers hacked her personal email and phone, and cloned her phone;
2. On dates not specified, Management and the Office of Inspector General ("OIG") took money out of Complainant's personal bank account;
3. On a date not specified, [a coworker] tried to spray fox urine on Complainant;
4. On dates not specified, a manager shared Complainant's win/loss statements from area casinos;
5. On a date not specified, Complainant found an orange toy gun on her desk; and
6. On dates not specified, Complainant received false unemployment claims in other people's names in her mail.

Complainant's Formal EEO Complaint offers additional context by describing how a coworker ("Coworker 1"), Manager, and several other coworkers and non-employees, allegedly stole Complainant's identity and made unauthorized withdrawals from her personal bank account. Complainant took a few days off to address the identity theft.

² Although Complainant only checked the "reprisal" option on her Formal EEO Complaint form, Complainant indicates race-based discrimination as well, asserting, "I feel that if I had been a white postal employee this would have been solved" in both the narrative portion of the Formal EEO Complaint and on appeal.

Upon her return, she found the toy gun on her desk, and around this time, a coworker attempted to spray her with fox urine. She reported the incidents to Management, explaining, "this is getting scary." Complainant alleges that no action was taken.

Complainant's Formal EEO Complaint asserts that the alleged hostile work environment was also due to the Manager, Coworker 1, and others making a concerted effort to "deny justice" for Complainant. Complainant explains that she pursued claims of identity theft and bank fraud with multiple law enforcement offices, including the FBI. She also sought an investigation of these matters with the Agency's Office of Inspector General ("OIG"). Complainant claims that the Agency, motivated by discrimination and reprisal, took concerted action to deny her due process through these avenues by, among other things, intercepting her emails, monitoring her calls, and withholding evidence.

The Agency dismissed the matter for failure to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1), reasoning that Complainant did not allege that she was subjected to an adverse employment action or denied a term, condition, or privilege of employment to which she was entitled. The Agency further reasoned that Complainant's allegations were not sufficient to establish a hostile work environment because they either described isolated incidents or concerned incidents that were not associated with Complainant's employment. The Agency also reasoned that the alleged actions failed to state a claim of reprisal because they would not deter a reasonable person from engaging in protected activity.

CONTENTIONS ON APPEAL

Complainant contends that the Agency did not properly frame her complaint to reflect the allegations in her Formal EEO Complaint about how Manager, coworkers, and others' efforts to ensure that Complainant is denied justice. For instance, Complainant contends that her personal cell phone and emails are continually being hacked to prevent Complainant from reporting crimes and discriminatory practices. As evidence, Complainant provides a completed FBI IC3 (Internet Crime) Referral Form submitted in late 2023, which Management and others allegedly intercepted. The form alleges "bank fraud, home invasion, and cyber-crime," and states that \$5000 was stolen from her account as January 8, 2019. Complainant also provides an undated letter indicating that in early May 2024, Complainant met with the Office of the Inspector General ("OIG") regarding the numerous crimes allegedly committed against her by Manager, Coworker 1, and others.

Complainant further contends that the alleged harassment has continued on a "daily" basis and it is "over and beyond anything that [any one] person should have to endure." She requests a court-appointed attorney to represent her in this EEO complaint.

The Agency did not file a response to Complainant's appeal.

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 they have been discriminated against by that agency because of race, color, religion, sex, national origin, age or disability. 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 they are aggrieved, the agency shall dismiss a complaint for failure to state a claim. 29 C.F.R. § 1614.107(a)(1).

Where, as here, a complaint does not challenge an agency action or inaction regarding a specific term, condition, or privilege of employment, a claim of harassment may survive if it alleges conduct that is sufficiently severe or pervasive to alter the conditions of the complainant's employment. See Harris v. Forklift Systems, Inc., 510 U.S. 17, 23 (1993).

Similarly, as Complainant is raising a reprisal claim, the Commission has stated that adverse actions need not qualify as "ultimate employment actions" or materially affect the terms and conditions of employment to constitute retaliation. Lindsey v. United States Postal Serv., EEOC Request No. 05980410 (Nov. 4, 1999). Instead, claims based on statutory retaliation clauses are reviewed "with a broad view of coverage. Under Commission policy, a complainant is protected from any retaliatory discrimination that is reasonably likely to deter... complainant or others from engaging in protected activity." Maclin v. United States Postal Serv., EEOC Appeal No. 0120070788 (Mar. 29, 2007).

Lack of Specificity

To state a viable claim of discrimination, including a hostile work environment, Complainant must identify *when* the events occurred, what happened, how she was directly disadvantaged or how these matters altered the terms, conditions, or privileges of her employment. Carlan v. Dep't of the Treas., EEOC Appeal No. 01A32447 (Aug. 1, 2003).

Although the Agency framed Claim 1 as occurring on February 8, 2024, Complainant's only specified date in the record for this claim was that her email and phone have been hacked "continuously." Complainant provides no explanation for when and how she believes her phone was hacked, only her assumption that this occurred. Elfrieda v. United States Postal Serv., EEOC Appeal No. 2022000085 (Feb. 2, 2022) (simply alleging that the harassment is "ongoing" is not specific enough to state a claim); Complainant v. Dep't of the Treas., EEOC Appeal No. 2020000343 (Aug. 20, 2020) (allegation that the complainant's supervisor instigated other employees to harass, follow and spy on her failed to state a claim as the complainant merely provided a "generalized statement regarding other employees but offered no specifics or examples.") Claim 1 lacks the necessary specificity to state a claim.

Claims 2 through 6 also fail to identify when the alleged discriminatory events occurred. In her Formal EEO Complaint, when asked the date of the alleged discrimination, Complainant simply wrote "over a period of time." Her appellate brief does not clarify any dates. Moreover, the evidentiary documents Complainant submitted indicated that the alleged discriminatory events may have occurred years apart and/or beyond the scope of this complaint. Without an explanation for when an alleged discriminatory event occurred, both in time and in relation to the other alleged discriminatory events, Complainant's complaint lacks the necessary specificity to state a claim under 29 C.F.R. § 1614.107(a)(1).

Collateral Attack

Although not explicitly included in the Agency's framing of Complainant's complaint, we find the record sufficiently developed to address Complainant's claim that she was subjected to a hostile work environment based on race and reprisal when the Agency prevented her from pursuing identity theft and bank fraud claims through other law enforcement agencies and through OIG.

The Commission has held that an employee cannot use the EEO complaint process to lodge a collateral attack on another proceeding. See Wills v. Dep't of Def., EEOC Request No. 05970596 (Jul. 30, 1998); Kleinman v. United States Postal Serv., EEOC Request No. 05940585 (Sept. 22, 1994); Lingad v. United States Postal Serv., EEOC Request No. 05930106 (Jun. 25, 1993). Such proceedings include OIG investigations, and civil actions. See, e.g. Erika H. v. Dep't of Labor, EEOC Appeal No. 0120181326 (May 11, 2018) (collateral attack on OIG investigation), Lopez v. Dep't of Agriculture, EEOC Appeal No. 0120121900 (Aug. 21, 2012) (the proper forum for Complainant to have raised her challenges to actions which occurred during the civil proceeding involving her petition for a restraining order was at that proceeding itself).

The Commission has previously found allegations that the Agency took steps to undermine a civil action of which a complainant is a party constituted an impermissible collateral attack on a civil court proceeding. See Clayton v. United States Postal Serv., EEOC Appeal No. 0120092082 (May 27, 2010) citing Henry v. United States Postal Serv., EEOC Appeal No. 01972956 (Dec. 11, 1998) (allegation that agency officials provided false, misleading, and perjured testimony in a civil action in which the complainant was a party failed to state a claim of employment discrimination, but rather, is more in the nature of a collateral attack on the proceedings of the civil court). The proper forum to expose the purported false information is the forum in which the transgression took place. See Fuller v. Dep't of Homeland Sec., EEOC Appeal No. 0120100171 (Apr. 16, 2010).

Complainant's allegations that the Agency's actions prevented her from obtaining justice through various law enforcement offices and OIG fail to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1).

Request for Legal Representation

The Commission does not provide court-appointed attorneys. See Putt v. Dep't of Agric., EEOC Appeal No. 0520090462 (Nov. 2, 2009). However, while not required, Complainants have a right to representation throughout the complaint process. 29 C.F.R. § 1614.605(a); EEOC MD-110 Appendix C. Representation can be a legal representative (attorney) or a non-legal representative of the complainant's choice so long as there is no conflict of interest.³ 29 C.F.R. § 1614.605(c), EEOC MD-110 Ch. 1, VI.

We note that if Complainant opts to pursue her complaint in civil court, she may request that the Court appoint an attorney to represent her. See Flint v. Nat'l Sec. Agency, EEOC Appeal No. 0520110560 (Nov. 14, 2011). Information about court-appointed attorneys in civil actions may be found in the Statement of Rights following this decision.

New Claims of Discrimination

In her appeal brief, Complainant indicates that she has been subjected to additional instances of discrimination and harassment since filing the instant complaint. For instance, she alleges that "during her absence" (date not specified), her coworkers used her work credentials with Manager's knowledge. As these claims were not raised in Complainant's Formal EEO Complaint, they will not be adjudicated in this decision.

If Complainant wishes to pursue additional claims, she must do so by contacting an EEO Counselor pursuant to 29 C.F.R. § 1614.105. See Hall v. United States Postal Serv., EEOC Appeal No. 0120031342 (Apr. 24, 2003).

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is AFFIRMED.

³ The EEOC provides guidance for complainants who are not represented by an attorney for the appeals and hearing processes at <https://www.eeoc.gov/federal-sector/information-complainants-who-are-not-represented-attorneys> and <https://www.eeoc.gov/guide-initial-conference-unrepresented-complainants>.

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 12, 2025

Date