



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

████████████████████
Woodrow F,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs
(Veterans Health Administration),
Agency.

Appeal No. 2024004252

Agency No. 20045652024158513

DECISION

Complainant timely appealed to the Equal Employment Opportunity Commission ("EEOC" or "Commission"), from the Agency's June 18, 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., Section 501 of the Rehabilitation Act of 1973 ("Rehabilitation Act"), as amended, 29 U.S.C. § 791 et seq. Upon review, the Commission REVERSES the Agency's decision and REMANDS the matter for further processing.

ISSUES PRESENTED

Whether the Agency properly dismissed Complainant's formal complaint pursuant to 29 C.F.R. § 1614.107(a)(1), for stating the same claim that is pending before or has been decided by the agency or the Commission.

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 worked as a Psychology Technician, GS-5 at the Agency's Fayetteville VA Medical Center, Acute Psychiatry Ward (5C) facility in Fayetteville, North Carolina.

On May 13, 2024, Complainant filed a Formal EEO Complaint alleging that the Agency subjected him to discrimination on the bases of race (African-American) and disability (mental). The Agency framed Complainant's claim as follows:

1. On March 5, 2024, Nurse Manager and Assistant Nurse Manager, denied his request to change duty shifts as reasonable accommodation; and
2. On March 22, 2024, Nurse Manager and Assistant Nurse denied Complaint's request for reconsideration of the March 5, 2024 denial.

Complainant's Formal EEO Complaint contains a more detailed and lengthier list of claims.² While most of the claims are ultimately rooted in the denial of accommodation referenced in Claims 1 and 2, Complainant also articulated claims of disparate treatment and a hostile work environment based on the Agency's response to his accommodation requests:

3. On March 18 and 20, 2024, February 7 and 20, 2024, January 26 and 27, 2024, and December 2 and 7, 2023, he was denied a reasonable accommodation, his concerns were not addressed, and the Agency failed to engage in the interactive process in good faith; and
4. Complainant was directed to Human Resources or to obtain a schedule change through the Reasonable Accommodation process, yet Management accommodated Caucasian employees' schedule requests directly.

² Complainant raises safety concerns that fall outside the EEO process (e.g. chronic understaffing, management alleged violation of patient care monitoring). These concerns fall within the purview of the Department of Labor's Occupational Safety and Health Administration ("OSHA"). Instructions for filing a complaint are available on the OSHA website.

Complainant also alleged that he was subjected to reprisal for engaging in protected EEO activity (requesting reasonable accommodation) when:

5. On February 20, 2024, following Complainant's request for clarification on the reasonable accommodation process, Management insisted on pursuing a transfer as a reasonable accommodation, despite Complainant's expressed concerns (loss of employment).

The Agency dismissed the matter pursuant to 29 C.F.R. 1614.107(a)(1), finding that Complainant already raised the same claim in a prior EEO complaint. According to the Agency, the prior complaint was dismissed due to untimely filing pursuant to 29 C.F.R. 1614.107(a)(2). There is no record to indicate that Complainant appealed the dismissal with the Commission.

CONTENTIONS ON APPEAL

Complainant contends that the instant complaint is not identical to his prior complaint because he provided additional dates and evidence. Complainant also contends that the Agency should be barred under the doctrine of Equitable Estoppel from citing his prior complaint as grounds to dismiss the instant complaint because its dismissal of the prior complaint was a procedural error. He reasons that by considering his prior complaint. In the Agency would benefit from its own error to Complainant's detriment. In the alternative, Complainant asks the Commission to reinstate his prior complaint.

The Agency contends that Complainant's prior EEO complaint raised identical claims to those in the instant complaint. The Agency also contends that the evidence Complainant cites as "new" was also provided for the record for his prior 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

The regulation set forth under 29 C.F.R. § 1614.107(a)(1) provides for the dismissal of a complaint that states the same claim that is pending before or has been decided by the Commission or the Agency. To be dismissed as the "same claim," the present formal complaint and prior complaint must have involved identical matters. The Commission has consistently held that in order for a formal 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. United States Postal Serv., EEOC Appeal No. 01955890 (Apr. 5, 1996). Identifying new evidence to support a claim previously raised with an agency or the Commission, or arguing a different theory of law, does not create a new claim. See Doleshal v. Dep't of Health and Human Servs., EEOC Appeal No. 01A40020 (Jul. 29, 2004).

It is the burden of the Agency to provide evidence or proof to substantiate its final decision. See Complainant v. Dep't of Commerce, EEOC Appeal No. 0120142525 (Nov. 25, 2014) quoting Marshall v. Dep't of the Navy, EEOC Request No. 05910685 (Sept. 6, 1991).

Here, the Agency did not provide sufficient evidence to support a dismissal for failure to state a claim under 29 C.F.R. § 1614.107(a)(1). The Agency bases its dismissal on the existence of a prior EEO complaint filed by Complainant containing "identical claims" as the instant complaint. Yet, the Agency proffers no documentation, such as counseling or formal complaint documents articulating the claims in this prior EEO complaint, nor does it provide a copy of its referenced final decision dismissing the claims.³

³ Although Complainant's appellate brief acknowledges the existence of a previous complaint addressing the same matter, we find this insufficient to meet the Agency's evidentiary burden. On appeal, Complainant challenges the Agency's assertion that the claims are "identical," and the only evidence provided by the Agency is bald assertions. Moreover, the Commission declines to penalize Complainant for exercising his appeal rights.

CONCLUSION

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

We hereby REMAND Complainant's complaint, **as framed in this Decision** (Claims 1 – 5), for further processing in accordance with the following Order.

ORDER (E0224)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, or a copy of the final agency decision ("FAD") if Complainant does not request a hearing.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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 (R0124)

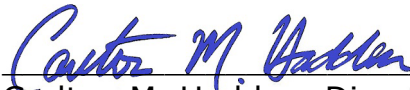
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. 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. **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

January 8, 2025

Date