



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

[REDACTED]  
Chet L.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2024004265

Agency No. FBI-2024-00130

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision (FAD) dated July 10, 2024, dismissing 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. For the reasons set forth below, the Commission AFFIRMS the Agency's dismissal.

ISSUE PRESENTED

Whether the Agency properly dismissed Complainant's formal complaint.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Special Agent, GS-14 at the Agency's Salt Lake City Field Office in Coeur d'Alene, Idaho.

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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.

On March 8, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the basis of reprisal (prior protected EEO) when, on or about February 1, 2024, he was given a proposed removal from his position with the Federal Bureau of Investigations (FBI).

The Agency dismissed the complaint pursuant to 29 C.F.R. § 1614.107(a)(1) on the ground that Complainant had raised the same claim under Agency No. USA-2024-000443, which was pending before the Agency.

### CONTENTIONS ON APPEAL

On appeal, by and through his counsel, Complainant argues that the instant complaint differs from the complaint that was raised in Agency No. USA-2024-000443, because they involve two separate agencies i.e. the Executive Office for US Attorneys (EOUSA) and FBI.

In response, the Agency argues the instant complaint and Agency No. USA-2024-000443 were filed against one Agency, which is the Department of Justice (DOJ). The Agency stated that Complainant mistakenly equated separate components of the DOJ as separate agencies and clarifies that the EOUSA and FBI are components of the DOJ.

Complainant also argues that the instant claim and Agency No. USA-2024-000443 are different because he named different responsible officials. Specifically, in the instant claim he states that FBI employees were responsible for his proposed removal, and in Agency No. USA-2024-000443 two US Attorneys were responsible for his proposed removal.

The Agency counters that the underlying issue in the instant complaint and Agency No. USA-2024-000443 are identical and Complainant cannot avoid having his complaint dismissed by merely naming different responsible officials.

### 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

EEOC regulation 29 C.F.R. § 107(a)(1) requires an agency to dismiss a complaint that states the same claim that is pending or has been decided by the agency. To be dismissed as the "same claim," the present formal complaint and prior complaint must have involved identical matters. It has long been established that "identical" does not mean "similar." 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 Douglas R. v. United States Postal Service, EEOC Appeal No. 2019003027 (August 16, 2019).

Complainant recited identical facts in the instant complaint and Agency No. USA-2024-000443. In both complaints Complainant alleged that on February 1, 2024, he was given a proposed removal. Therefore, the complaints are identical in time, place, and incident.

On appeal, Complainant seeks to distinguish the instant claim from Agency No. USA-2024-000443 by claiming that the two claims were filed with different agencies. However, the record shows that these claims were filed with one Agency, i.e., the DOJ.

Complainant also argues that the instant claim and Agency No. USA-2024-000443 are different because he named different responsible officials. Specifically, in the instant claim he states that FBI employees were responsible for his proposed removal, and in Agency No. USA-2024-000443 two US Attorneys were responsible for his proposed removal.

The Agency counters that Complainant cannot avoid having his complaint dismissed by merely naming different responsible official for the same underlying personnel action. The Agency cites to Tijerina v. Department of the Navy, EEOC Appeal No. 01924623 (February 3, 1993) to support its argument. In Tijerina, the complainant filed a complaint that his supervisor denied him a promotion and then filed subsequent complaint that his commanding officer failed to promote him.

The Commission determined that the complaints were identical, based on the same underlying action, and that the complainant had not created a new allegation of discrimination by naming a different responsible official.

The Agency's is correct, this case is analogous to Tijerina. The fact that Complainant named different individuals who allegedly perpetuated discrimination, does not create a new allegation of discrimination. His allegation remains that the Agency discriminated against him by issuing a proposed removal. Therefore, the Agency's dismissal was proper.

Furthermore, in the FAD, the Agency stated that Complainant's proposed removal claim was accepted for investigation in Agency No. USA-2024-000443, and that the EEO investigator in Agency No. USA-2024-000443 had access to relevant FBI witnesses, EOUSA witnesses, and documents. Any arguments that Complainant sought to raise in the instant complaint should be raised in Agency No. USA-2024-000443.

### 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)

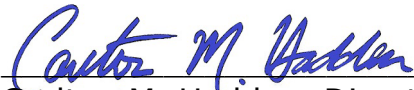
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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

January 13, 2025

Date