



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Sanda N,¹
Complainant,

v.

Antony Blinken,
Secretary,
Department of State,
Agency.

Appeal No. 2024004296

Agency No. DOS-0451-23

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision (Dismissal) dated July 1, 2024, dismissing her complaint of unlawful employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the reasons below, we AFFIRM the Dismissal.

ISSUES PRESENTED

Whether the Agency correctly dismissed the complaint for lack of jurisdiction.

BACKGROUND

At the time of events giving rise to this complaint, Complainant was an applicant for employment in an unspecified contract position at an undisclosed location. On November 21, 2023, Complainant filed a formal

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.

complaint alleging that the Agency subjected her to discrimination on the basis of disability (Post Traumatic Stress Disorder) when:

1. On September 9, 2023, during the course of conducting a security investigation into Complainant's eligibility to work in a contract position for the Agency, the Bureau of Diplomatic Security investigator (Security Investigator) asked inappropriate and invasive questions about Complainant's disability; and
2. On September 12, 2023, the Security investigator disclosed to Complainant's roommate information about Complainant's disability without her consent.

The Agency dismissed the claim on the grounds that the EEOC lacks jurisdiction to review the merits of Complainant's security clearance determination or provide a remedy for any violation.

CONTENTIONS ON APPEAL

Complainant makes no contention on appeal. The Agency requests that we affirm its Dismissal.

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 Commission has consistently affirmed the dismissal of complainants' claims alleging that they were subjected to discrimination due to their security clearance being revoked or denied, finding that such claims fail to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1), and are outside the purview of the Commission's jurisdiction.

The Commission has held that the complaint fails to state a claim under EEOC regulations because the Commission is precluded from reviewing the validity of the requirement of a security clearance and the substance of a security clearance determination. See, e.g., Rezaee v. Department of the Air Force, EEOC Appeal No. 01A60451 (April 25, 2006) (citing Policy Guidance on the Use of National Security Exception Contained in § 703(g) of Title VII of the Civil Rights Act of 1964, as amended (EEOC National Security Guidance), EEOC Notice No. N-915-041 (May 1, 1989)); Carr v. Dep't of the Army, EEOC Appeal No. 01A44011 (November 4, 2004) (citing EEOC National Security Guidance). Thierjung v. Dep't of Defense (Defense Mapping Agency), EEOC Request No. 05880664 (November 2, 1989). However, the Commission does retain the authority to review whether the grant, denial, or revocation of a security clearance was carried out in a discriminatory manner. Id.; Schroeder v. Dep't of Defense (Defense Mapping Agency), EEOC Request No. 05930248 (April 14, 1994).

Following a review of the record, we find that we are precluded from addressing this matter because it involves reviewing the substance of a security clearance investigation and determining whether or not the questions asked by the Security Investigator, to both Complainant and her roommate, were appropriate. Such questions were part of a security clearance determination over which we do not have jurisdiction.

CONCLUSION

The Dismissal 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