



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

[REDACTED]
Leon B.,¹
Complainant,

v.

Alejandro N. Mayorkas,
Secretary,
Department of Homeland Security
(Citizenship and Immigration Services),
Agency.

Appeal No. 2024004512

Agency Nos. HS-CIS-02167-2023, HS-CIS-00802-2024

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 24, 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 presented below, we AFFIRM the Agency's final decision dismissing Complainant's complaint.

ISSUES PRESENTED

Whether the Agency properly dismissed Complainant's formal EEO complaint pursuant to 29 C.F.R. § 1614.107(a)(3) on the ground that the matter was the basis of a pending civil action in a U.S. District Court.

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 an Immigration Officer, GS-13, in the Agency's Fraud Detection & National Security Directorate, Social Media Division, at the USCIS headquarters in Camp Spring, Maryland. He had several prior and/or pending EEO complaints, but contacted an EEO counselor again on August 9, 2023 raising new claims of reprisal involving his supervisor. Complainant raised issues to include harassment (negative comments from his supervisors regarding his performance and responsibilities, as well as excessive review of Complainant's work product), proposed suspension, reprimand, negative performance evaluation, and being placed on a performance improvement plan.

On November 8, 2023, Complainant filed a formal EEO complaint alleging that the Agency subjected him to discrimination and harassment on the basis of reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 when:

1. From May 2023 through November 14, 2023, USCIS subjected Complainant to harassment. Some incidents include:
 - a) In early May 2023, Complainant's supervisor refused to respond with specific information to his questions regarding a poor midyear review.
 - b) Throughout this time, with multiple examples from June and October 2023, Complainant's supervisor reassigned his completed work to coworkers.
 - c) Throughout this time, with multiple examples from May and September 2023, Complainant's supervisor communicated with disrespectful emails.
 - d) On July 28, 2023, management issued Complainant a notice of proposed suspension, and then rescinded the proposal on November 14, 2023.
2. On November 7, 2023, Complainant's supervisor placed him on a performance improvement plan (PIP), regarding a poor midyear review.
3. On November 14, 2023, management issued Complainant a notice of proposed removal from federal service, and on February 5, 2024, Complainant's employment with the agency was terminated.²

² On February 5, 2024, Complainant requested to amend his formal EEO complaint to include his removal. The removal was added but given a new case number, HS-CIS-00802-2024, because it was a mixed allegation. Thus

The Agency initially accepted Claims 1-3 for investigation on February 8, 2024. However, on July 24, 2024, the Agency dismissed these claims in their entirety pursuant to 29 C.F.R. § 1614.107(a)(3) on the ground that on April 3, 2024, Complainant filed a civil action involving these matters in the United States District Court for the District of Maryland (Civil Action Number 8:24-cv-00421-PX) and more than 180 days had passed since the filing of the EEO complaint. The Agency found that this civil action was based upon the same allegations of discrimination raised in Complainant's above-referenced formal EEO complaints (HS-CIS-02167-2023 and HS-CIS-00802-2024). Complainant filed the instant appeal.

CONTENTIONS ON APPEAL

On appeal, Complainant contends the Agency dismissed his mixed complaint for the sole purpose of not providing him with due process. Complainant asserts the civil action he filed involves the claims raised in Lawrence T. v. Dep't of Homeland Security, EEOC Appeal No. 2023004013 (Nov. 9, 2023). However, he also states that the "mixt[sic] complaint was added to the civil action as an amendment." He asserts the Agency's EEO office purposefully allowed his mixed complaint to reach 180 days without assigning it to an EEOC Administrative Judge for adjudication to deprive him of due process. He claims the Commission should not dismiss his mixed complaint before knowing if the district court will accept the amendments.

The Agency did not provide a brief in opposition to this 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.

the non-mixed claims were assigned to HS-CIS-02167-2023 (all claims except Complainant's removal) and the mixed claim was assigned to HS-CIS-00802-2024 (Complainant's removal).

ANALYSIS

EEOC Regulation 29 C.F.R. § 1614 107(a)(3) provides that an agency shall dismiss a complaint that is the basis of a pending civil action in a United States District Court (provided that at least 180 days have passed since the filing of the administrative complaint), or that was the basis of a civil action decided by a United States District Court in which the complainant was a party.

Commission regulations provide for the dismissal of an EEO complaint when a civil action has been filed under the same matter to prevent a complainant from simultaneously pursuing both administrative and judicial remedies on the same matters, wasting resources, and creating the potential for inconsistent or conflicting decisions, and in order to grant due deference to the authority of the federal district court. See, e.g., Bret B. v. Nuclear Regulatory Commission, EEOC Appeal No. 2024003367 (Oct. 7, 2024); Joannie V. v. Dep't of Veteran's Affairs, EEOC Appeal No. 2024002423 (Jul. 2, 2024). Thus it is not a deprivation of due process when an EEO complaint is dismissed under these circumstances.

Following a thorough review of Civil Action No. 8:24-cv-00421-PX, the Commission has determined that the above-referenced civil action and EEO complaint both raised the same claims regarding Agency's proposed suspension of Complainant, Complainant's negative 2023 performance appraisal, Complainant's placement on a performance plan, reassignment of Complainant's work and reopening of Complainant's closed cases, retraction of a proposed suspension and instigation of removal proceedings. Among other things, Civil Action No. 8:24-cv-00421-PX specifically reiterates Claims 1 and 2 as framed above and the first part of Claim 3 (the proposed suspension) as framed above before noting that "on February 5, 2024, I receive[sic] from management a Decision to remove."

Therefore after a review of the record in its entirety and consideration of all statements and arguments submitted on appeal, including those not addressed herein, it is the decision of the Equal Employment Opportunity Commission to affirm the Agency's dismissal. We find the Agency properly dismissed the formal complaint pursuant to 29 C.F.R § 1614.107(a)(3) on the grounds that it is the basis of a pending civil action in a United States District Court and at least 180 days have passed since the filing of the administrative (EEO) complaint.

CONCLUSION

Based on the foregoing, we AFFIRM the Agency's final decision dismissing Complainant's complaint.

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)

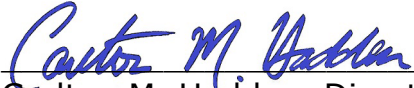
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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 21, 2025

Date