



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

[REDACTED]
Monroe M,¹
Complainant,

v.

Lloyd J. Austin III,
Secretary,
Department of Defense
(Defense Logistics Agency),
Agency.

Appeal No. 2024004543

Agency No. DLAB-24-000128

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 30, 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. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. Upon review, the Commission finds that Complainant's complaint was properly dismissed for failure to state a claim.

ISSUES PRESENTED

The issue presented before the Commission is whether Complainant's complaint was properly dismissed 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 worked as a Supervisory Production Operations Specialist in Mechanicsburg, PA.

On May 7, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to hostile workplace discrimination on the bases of race (African-American), sex (male), age, and reprisal for prior protected EEO activity when:

1. He received a Letter of Instruction (LOI) from his immediate Supervisor, no proper investigation or dialogue regarding the allegations, and the mention of potential disciplinary action in the LOI which *purportedly* contradicts its characterization as non-disciplinary supervisory guidance; furthermore,

a. the LOI was threatening and *purportedly* an unjust adverse action of retaliation for raising his concern to management about discrimination in the workplace, and of employees under his supervision who consistently violate policy and procedures.

b. his immediate Supervisor's assignment of an additional workload stated in the LOI, compounded by her failure to provide clear instructions of the additional workload, *purportedly* created an environment ripe for retaliation.

c. the systematic propagation of false accusations, the lack of support from Human Resources (HR) and management, to include collusion and coercive tactics employed through the LOI, *purportedly* give rise to a toxic work environment.

2. From January 2024 to present, HR representatives and management failed to respond or take any meaningful action when Complainant informed them of employees' violations, and failed to share with him outcomes of an investigation supposedly pertaining to employees under his supervision.

The Agency dismissed the complaint for failure to state a claim. The Agency noted that there were no adverse employment/personnel actions taken against Complainant. Complainant's immediate Supervisor explained in the LOI and in her e-mail communication to Complainant that the LOI was not an adverse action, nor was it disciplinary in nature.

The letter was simply an instruction on how to address situations as a supervisor. Further, claiming retaliation does not give rise to discrimination against Complainant for elevating employee issues to management, HR, and Employee and Labor Relations (ELR) when there is record of e-mail exchanges between Complainant, management, and HR who addressed employee problems with the appropriate actions management took based upon Complainant's concerns as the supervisor. Also, there was no additional workload created by the LOI. Additionally, an employee or supervisor who challenges the filing of a complaint by a subordinate employee (such as asking for details of the case during the investigation) may create a "chilling effect" to dissuade others from engaging in protected activity. Likewise, claiming retaliation due to managements' action to conduct an investigation and not sharing outcomes about the investigation pertaining to subordinate employees does not give rise to a toxic work environment. The Agency reasoned that Complainant's allegations fail to state a viable hostile work environment claim. Complainant filed the instant appeal.

CONTENTIONS ON APPEAL

Complainant repeats his claims. Complainant primarily maintains that the LOI constitutes an adverse action.

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 at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that an agency shall dismiss a complaint that fails to state a claim. An agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that he or she has 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).

The Commission has a policy of considering reprisal claims with a broad view of coverage. See Carroll v. Dep't of the Army, EEOC Request No. 05970939 (Apr. 4, 2000). Under Commission policy, claimed retaliatory actions which can be challenged are not restricted to those which affect a term or condition of employment. Rather, a complainant is protected from any discrimination that is reasonably likely to deter protected activity. Maclin v. U.S. Postal Serv., EEOC Appeal No. 0120070788 (Mar. 29, 2007); see also EEOC Compliance Manual Section 8, "Retaliation," No. 915.003 (May 20, 1998), at 8-15.

In Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993), the Supreme Court reaffirmed the holding of Meritor Savings Bank v. Vinson, 477 U.S. 57, 67 (1986), that harassment is actionable if it is sufficiently severe or pervasive to alter the conditions of the complainant's employment. The Court explained that an "objectively hostile or abusive work environment [is created when] a reasonable person would find [it] hostile or abusive" and the complainant subjectively perceives it as such. Harris, supra at 21-22. Thus, not all claims of harassment are actionable. Where a complaint does not challenge an agency action or inaction regarding a specific term, condition or privilege of employment, a claim of harassment is actionable only if, allegedly, the harassment to which the complainant has been subjected was sufficiently severe or pervasive to alter the conditions of the complainant's employment.

Having reviewed Complainant's formal complaint and the EEO Counseling Report, we acknowledge that Complainant may have felt upset or somewhat anxious by the Agency's actions in this matter. However, Complainant has not alleged harm or loss to a specific term, condition, or privilege of his employment. We further find that the alleged incidents are not sufficiently severe or pervasive to set forth an actionable claim of harassment. Moreover, the alleged actions are not reasonably likely to deter Complainant or others from engaging in protected EEO activity. See Burlington Northern and Santa Fe Ry. Co. v. White, 548 U.S. 53, 57 (2006); EEOC Enforcement Guidance on Retaliation and Related Issues, EEOC Notice No. 015.004, § II(B)(3) & n. 137 (Aug. 25, 2016).

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 22, 2025

Date