



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Irene S,<sup>1</sup>  
Complainant,

v.

Frank Kendall,  
Secretary,  
Department of the Air Force,  
Agency.

Appeal No. 2024004544

Agency No. 6R0M2306157

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated April 24, 2024, dismissing a formal 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 Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. Upon review, the Commission finds that Complainant's complaint was improperly dismissed pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim.

**ISSUES PRESENTED**

Whether the Agency properly dismissed Complainant's complaint for failure to state a claim.

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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.

### BACKGROUND

During the relevant time, Complainant worked as a Grade GS-11 with the Agency's 325th Fighter Wing Equal Opportunity Staff in Tyndall Air Force Base, Florida. On March 12, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of race (Caucasian), disability (anxiety), and in reprisal for EEO-protected activity.

The Agency framed Complainant's claims as follows:

1. From August 5, 2023 through August 6, 2023, a Senior Master Sergeant (SMSgt) mocked Complainant. Complainant alleges SMSgt threatened Complainant when SMSgt said "If you keep telling me you want to reschedule your drill date, I will have a CDE (Commander Directed Evaluation) done in reference to your mental health." Complainant states that SMSgt refused to give her RMP (Readiness Management Period) time; and
2. From September 1, 2023 through September 6, 2023, Complainant was not getting the assistance needed from the services squadron Superintendent. When Superintendent finally answered the phone Complainant was given the "runaround" and verbally cut off during mid-sentence. Also Superintendent took another call and used profanity while on the call. After five to ten minutes, Superintendent finally gave Complainant the information she needed. Complainant states that she informed an Black male Master Sergeant (MSgt) she was not getting help with lodging. After MSgt talked to Superintendent, Superintendent was able to help MSgt, while it took Complainant one week before giving her lodging.

On April 24, 2024, the Agency issued a final decision dismissing the complaint pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim. The Agency determined because Complainant's complaints were "intertwined" with her military status she was not considered an aggrieved employee.

### CONTENTIONS ON APPEAL

On appeal, Complainant contested the Agency's position that her claims concerned her military status. Complainant argues that her claims were properly raised in the context of her status as a civilian employee.

Complainant argues that the Agency of framing her claims inaccurately and failing to follow EEOC Management Directive 110 while processing her complaint in an untimely manner. Complainant further alleged that the Agency improperly failed to engage in alternative dispute resolution and improperly attempted to dissuade her from pursuing her claims.

The Agency did not submit a response to Complainant's 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.

### ANALYSIS

EEOC Regulation 29 C.F.R. § 1614.107(a)(1), states that prior to a request for a hearing in a case, the Agency shall dismiss an entire complaint that falls to state a claim under 29 C.F.R. § 1614.103 or 29 C.F.R. § 1614.106(a). The regulations provide that an agency may not accept a complaint from a complainant who is not aggrieved. 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 under EEOC regulations. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994).

The Agency bears the burden to prove its final dismissal decisions. Ericson v. Dep't of the Army, EEOC Request No. 05920623 (Jan. 14, 1993). Here, the Agency has not met that burden. We carefully reviewed the entire case file and Complainant's submissions. The Agency, however, provided no explanation of Complainant's military status. The Agency did not elaborate on how the matters which Complainant raised were military in nature. The Agency does not dispute that, at some point Complainant held federal civilian employment. Although Complainant did not deny that she had some military status, Complainant's military status remains unclear.

Therefore, it was unclear how her claims were militarily "intertwined" so as to be beyond the Commission's jurisdiction. See Complainant v. Dep't of the Air Force, EEOC Appeal No. 012032074 (Nov. 25, 2013) (reversing the agency's cursory dismissal that claims were "military in nature" where the agency provided no support for its assertion that Complainant's claims concerned military, rather than civilian matters).

### CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is REVERSED. The complaint is hereby REMANDED to the Agency for further processing in accordance with this decision and the ORDER below.

### 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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

January 8, 2025  
Date