



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

[REDACTED]
Herta K.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2024004591

Agency No. 2004-540-2024-157580

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 11, 2024, dismissing her 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 the complaint.

ISSUE PRESENTED

Whether the Agency's final decision properly dismissed Complainant's formal complaint.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an Inventory Management Specialist at the Agency's VA Medical Center in Clarksburg, West Virginia.

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.

On May 22, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the basis of sex² (female) when:

1. On March 5, 2024, Chief Supply Officer asked Complainant in a hostile tone, "did you tell the vendor that items have been sent upstairs without being tagged?" And when Complainant denied giving the information to the vendor, Chief Supply Officer continued to say Complainant gave the vendor the wrong information and stated to Complainant, "you need to watch what you say in front of the vendors.
2. On March 8, 2024, Complainant was yelled at, cursed at, and degraded in front of her coworkers and vendors, when Chief Supply Officer yelled, "you are fucking everything up" while Complainant was checking the inventory. Chief Supply Officer did not tell her what her mistake was.
3. On March 11, 2024, Chief Supply Officer did not tell Complainant about a staff meeting when she returned from leave. Complainant said that she attended the meeting because a coworker told her about the meeting.

The Agency dismissed Complainant's complaint pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim. The instant appeal followed.

CONTENTIONS ON APPEAL

The parties did not submit briefs on 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).

² Complainant did not articulate a basis of discrimination on her formal complaint. The EEO Counselor indicated that during pre-complaint counseling, she reported sex as the basis for discrimination.

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

Under the regulations set forth at 29 C.F.R. Part 1614, an agency shall accept a complaint from an 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 disabling condition. 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 (April 21, 1994).

If a complainant cannot establish that she is aggrieved, the agency shall dismiss her complaint for failure to state a claim. 29 C.F.R. § 1614.107(a)(1). 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. Thus, not all claims of harassment are actionable. As noted by the Supreme Court in Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998): "simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the 'terms and conditions of employment'. Id

Here, there is nothing in the record supporting a claim that Complainant was adversely affected by the alleged incidents. Complainant does not allege that she was disciplined after she interacted with the vendor on March 5, 2024, or after Chief Supply Officer yelled at her when she supposedly made a mistake with inventory on March 8, 2024. Complainant also does not allege that missed the meeting on March 11, 2024. Thus, there is no indication that Complainant suffered a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy.

Moreover, even taking the facts as alleged as true, we do not find that these incidents are sufficiently severe or pervasive to set forth an actionable claim of harassment.

The incidents where Chief Supply Officer spoke to Complainant about talking to vendors and checking inventory were common workplace occurrences – a supervisor explaining work duties to an employee. Additionally, the alleged incidents are of a type that typically arise out of workplace conflicts or communications. We note that Complainant claimed that Chief Supply Officer cursed at her on one occasion. However, an isolated incident of alleged harassment is not sufficient to state a harassment claim. And EEO laws are not a civility code, rather, they forbid “behavior so objectively offensive as to alter the conditions of the victim's employment.” See Oncale v. Sundowner Offshore Serv., Inc., 523 U.S. 75, 81 (1998), and Phillips v. Dep't of Veterans Affairs, EEOC Request No. 05960030 (July 12, 1996).

Therefore, Complainant's complaint of harassment fails to state a claim upon which relief can be granted pursuant to 29 C.F.R. § 1614.107(a)(1).

CONCLUSION

The Agency's final decision dismissing the formal complaint for the reasons discussed above 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