



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

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]

Latoyia B,<sup>1</sup>  
Complainant,

v.

Antony Blinken,  
Secretary,  
Department of State,  
Agency.

Appeal No. 2024004631

Agency No. DOS-063-24

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision (Dismissal) dated July 10, 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 provided below, we AFFIRM the Dismissal.

**ISSUES PRESENTED**

Did the Agency properly dismiss Complainant's complaint for failure to state a claim?

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Procurement Specialist, GS-1101-14 at the Agency's Bureau of Administration, Office of Small and Disadvantaged Business Utilization

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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.

facility in Arlington, VA. On February 29, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of race (Black) and sex (female) when:

1. Despite Complainant's promotion to a new position outside of the Office of Management Strategy and Solutions (M/SS), the Deputy Director of M/SS and another M/SS employee tried to hold Complainant in her previous M/SS position;
2. Multiple M/SS employees continued to contact Complainant after her promotion despite Complainant's request that they stop; and
3. Complainant's security clearance was delayed from May 2023 to the present.

The Agency dismissed the claims for failure to state a claim on the grounds that the actions complained of were insufficiently severe and/or pervasive to constitute harassment. Furthermore, with regard to claim 3, the Agency found that the matter failed to state a claim because the EEOC does not have jurisdiction to review the merits of how an agency makes a security clearance determination.

#### CONTENTIONS ON APPEAL

Complainant's first contention is that the Agency's Dismissal, described as the "Final Agency Decision," is procedurally improper because a Final Agency Decision can only be rendered after an investigation into the merits, which did not occur here. Complainant next contends that the Agency's dismissal of the claims for failure to state a claim is improper, and that it is based on an assessment of the merits. Specifically, Complainant contends that by finding that the actions complained of were insufficiently severe to state a claim, the Agency was making its own assessment of the severity alleged which necessarily involves a consideration of the merits. Complainant further contends that the Agency cannot show beyond doubt that Complainant can present no facts that would entitle her to relief.

Finally, Complainant contends that the Agency erred in finding that the EEOC does not have jurisdiction to address the security clearance issue because Complainant is not challenging the inner workings of the security clearance process but is alleging that her former manager and coworkers influenced the investigation process to prevent Complainant from timely obtaining her security clearance, and that such a claim falls within the EEOC's purview.

The Agency contends that its Dismissal does not consider the merits of the complaint and that a long line of cases supports an Agency's right to dismiss harassment complaints that alleges actions that are insufficiently severe to state a claim. The Agency next contends that Complainant has not shown she is aggrieved and failed to show that her former managers were able to delay transition to her new role or impede her once she transitioned and that, based on Complainant's contentions, any attempt to delay or prevent her transfer failed and hence she was not harmed. The Agency further contends that the emails she received from her old office were respectful, professional, and rare and that no reasonable person would find them severe enough to alter their working conditions.

With regard specifically to the security clearance issue, the Agency first contends that Complainant has not shown that the delay has resulted in any harm and further, her new Supervisor noted that any delay would not impact her job. In addition, the Agency contends that Complainant's complaint about the duration of the investigation address how questions were asked and information was gathered, which go directly to the way in which the investigator is conducting the investigation, and the substance of the investigation, matters that are beyond the EEOC's jurisdiction.

#### 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

With regard to claims 1 & 2, we note that 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 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. Department of the Air Force, EEOC Request No. 05931049 (April 21, 1994). When the complainant does not allege he or she is aggrieved within the meaning of the regulations, the agency shall dismiss the complaint for failure to state a claim pursuant to 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. Where a complaint does not challenge an agency action or inaction regarding a specific term, condition or privilege of employment, such as the complaint at issue here, it is well-settled that 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. See Denis v. Department of the Army, EEOC Appeal No. 2024000801 (January 31, 2024) (Complainant's complaint dismissed pre-investigation for failure to state a claim of harassment when he learned second-hand about comments by another employee regarding the ratio of male employees and the rate of sexual assault within the Agency), Complainant v. Department of Veterans Affairs, EEOC Appeal No. 0120151655 (August 28, 2015) (Complainant's complaint dismissed pre-investigation for failure to state a claim of harassment when she alleged that her former supervisor told her current supervisor that several employees witnessed Complainant screaming at a co-worker over the telephone and when the former supervisor told her current supervisor that Complainant held a check for an extended period of time instead of processing it in a timely manner), Dulce v. USPS, EEOC Appeal No. 2021001953 (May 25, 2021) (Complainant's complaint dismissed pre-investigation for failure to state a claim of harassment when the Postmaster threatened to charge her with, and subsequently tried to make her sign a leave slip charging her with, an unscheduled absence, and the Postmaster conducted a driving observation of her on her route).

Following a review of the record we find that the actions complained of in the instant complaint are simply insufficiently severe, even assuming they happened as Complainant alleged, to state a claim of harassment.

With regard to Claim 3, we note that we have consistently affirmed the dismissal of complainants' claims alleging that they were subjected to discrimination due to their security clearance being revoked, delayed, 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 such complaints fail 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).

Complainant on appeal argues that she is not challenging the inner workings of the security clearance process but is alleging that her former manager and coworkers influenced the investigation process to prevent her from timely obtaining her security clearance, and that such a claim falls within the EEOC's purview. We note, however, that in her informal and Formal complaints, Complainant made no mention of her former managers' and coworkers' alleged involvement, specifically alleging that "the Top Secret security clearance I require in order to hold my current position has been unnecessarily delayed due to DS Investigator \_\_\_\_'s (name omitted) errors." In both cases Complainant explicitly placed the blame solely on the DS Investigator and the manner in which the Investigator conducted her job.

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 the manner in which the Security Investigator performed the investigation. Such questions are 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)

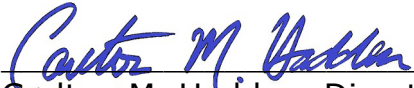
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department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

Date