



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

[REDACTED]
Lenny W,¹
Complainant,

v.

Todd Hunter,
Acting Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2024004666

Agency No. 200I-509-2024-158274

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final 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 Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the reasons set forth herein, we MODIFY the Agency's final decision dismissing Complainant's complaint.

ISSUES PRESENTED

Whether the Agency's final decision properly dismissed Complainant's complaint on procedural grounds.

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

During the period at issue, Complainant worked as a Chaplain Resident for the Agency's Augusta, Georgia facility.

The record reflects the following chronology of events.

On February 23, 2024, Complainant contacted an EEO Specialist (EEO1) and signed a form entitled "Summary of Contact with Facility/Area EEO Program Manager."² Complaint File at 9, Complainant's Brief, Exhibit (Ex.) 1. Therein, the form sets forth "today, my intent in contacting the EEO program Manager was/is to begin the EEO complaint process." Section 8 of the Summary of Contact form sets forth Complainant's various claims. Finally, the form also contains the following language "[f]or individuals whose intent is to begin the EEO complaint process, please immediately contact [the Agency's] Office of Resolution Management (ORM) Hotline at [specified phone number], and provide the basic information that is requested...[Complainant] was also advised of the EEO Discrimination Complaint Process of 45 calendar days of the last occurrence to contact a Counselor at [ORM] to file a complaint."³ Complaint File at 9.

On April 16, 2024, Complainant emailed another Agency EEO Specialist (EEO2) looking for an update on his "EEO complaint" and stating he was unable to reach the initial EEO Specialist (EEO1) he spoke with on February 23, 2024. Complainant's Brief, Ex. 5.

On April 16, 2024, EEO1 emailed Complainant and stated "I apologize for any inconvenience this may have caused, but unfortunately your [point of contact] to file an EEO complaint is listed below.

² The record reflects that Complainant was not represented at the time of his EEO contact on February 23, 2024. According to the final agency decision, Complainant did not obtain representation until after counseling concluded. Final Agency Decision at n.1 (Complaint File at 68).

³ In an email from EEO1 to Complainant dated February 23, 2024, EEO1 also set forth that "contact with a facility EEO service provider does not initiate the EEO Complaint process. You must contact the Counselor at [ORM] directly by dialing [specified phone number] to file an EEO complaint. Complaint File at 6-7.

Again, I apologize for just relaying this information to you but as a non-VA employee you will have to file your complaint with the [point of contact] below..." EEO1 provided the contact information for a named Agency Official. Complainant's Brief, Ex. 5.

Complainant emailed this Agency Official and explained he had initially contacted EEO on February 23, 2024 regarding an EEO complaint and was just recently informed that he was the proper point of contact. Complainant's Brief at 6. The Agency official responded that Complainant reached the "right division, but the wrong office" and that he does not handle any EEO claims. The Agency official, however, set forth that he would refer him to the correct office for his case. Complainant's Brief, Ex. 6.

Finally, on April 17, 2024, an EEO Counselor with ORM emailed Complainant seeking to schedule a counseling session with him. Complainant's Brief, Ex. 7.

On July 23, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination based on race (Caucasian), disability, and reprisal (non-EEO). Complaint File at 5.

In its final decision, the Agency determined that Complainant's complaint was comprised of the following claims:

Whether Complainant was subjected to a hostile work environment based on race (Caucasian), disability, and reprisal when:

1. On December 20, 2023, [the named Chief Chaplain] verbally counseled Complainant.
2. Effective December 30, 2023, Complainant resigned from Federal Service.⁴
3. On January 11, 2024, [the Chief Chaplain], stated to

⁴ The record reflects that Complainant asserts that he submitted his resignation on December 14, 2024, with an effective date of December 30, 2023, and on December 18, 2024, he informed Agency officials that he was rescinding his resignation. Complaint File at 31, 98. The record contains a Notification of Personnel Action form reflecting Complainant's termination was effective February 5, 2024. Complaint File at 99.

Complainant “No, you need to sit in the chairs around the corner,” or words to that effect.

4. On January 31, 2024, [the Chief Chaplain] told Complainant “the withdrawal of your resignation is rejected and [you are] no longer [an Agency] employee effective immediately,”
5. Effective February 5, 2024, [a named Agency official] terminated Complainant from Federal Service.
6. On March 29, 2024, Complainant was notified he owed the federal government \$3599.30 for pay period, January 13, 2024-February 10, 2024.⁵

The Agency dismissed Complainant’s complaint on various procedural grounds. The Agency dismissed claims (1)-(5) on the grounds of untimely EEO Counselor contact. Complaint File at 69-70. The Agency reasoned that Complainant initiated EEO contact on April 16, 2024, more than 45 days after the alleged discriminatory events. The Agency set forth that Complainant did not provide a justification for his untimely EEO contact.

The Agency dismissed claim (6) for failure to state a claim reasoning that this matter this matter was alleging dissatisfaction with processes related to the Defense Accounting Finance Service (DFAS) and that this matter was a collateral attack on another proceeding. Complaint File at 68.

Finally, the Agency dismissed the basis of reprisal for failure to state a claim reasoning that this matter does not fall within the purview of EEO laws. *Id.* at 69.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant, through his attorney, asserts that he timely initiated EEO contact in February 2024, when he contacted an EEO Specialist (EEO1), who is logically connected to the EEO process and exhibited an intent to initiate the EEO complaint process.

⁵ The claims are re-numbered herein for ease of reference.

In response, the Agency requests that we affirm its final decision dismissing Complainant's complaint. The Agency reiterates that Complainant's EEO contact is untimely. Regarding Complainant's assertion that he satisfied the EEO contact requirement on February 23, 2024, when he contacted EEO1, the Agency argues that Complainant failed to contact ORM as instructed.

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

Basis of Reprisal

The Agency properly dismissed the basis of reprisal. The Agency's final decision properly set forth that EEOC has jurisdiction over reprisal claims when a complainant participates in the EEO process and/or opposes discrimination on an EEO basis. Complainant's formal complaint lists "reprisal (non-EEO)" as the basis. In addition, the EEO Counselor's Report lists "reprisal (non-EEO)" as the basis. The Counselor's Report further sets forth that Complainant believes he was being subjected to retaliation for filing a congressional complaint. Complaint File 30-33. The record, before us on appeal, does not reflect that Complainant opposed discrimination on an EEO basis regarding his congressional complaint. In addition, Complainant, on appeal, does not address the Agency's dismissal of the basis of reprisal in his brief. Based on the foregoing, we find that the Agency properly dismissed the basis of reprisal.

Claim 6-Notification that Complainant owed the federal government a specified monetary amount

Regarding claim (6), Complainant, in his formal complaint, alleges that he was notified that he owed the federal government a specified monetary

amount related to a specific pay period. While the Agency found that this was a collateral attack on the DFAS process, we find that this matter is more properly analyzed pursuant to the Debt Collection Act. The Debt Collection Act under 31 U.S.C. § 3711 et seq., mandates that monetary disputes involving an agency of the United States government and any claimed debtor must be resolved through the provisions of the Debt Collection Act, challenges to an agency's actions under the Debt Collection Act are not within the scope of the EEO complaint process and the Commission's jurisdiction. See Melvin S. v. Dep't of Veterans Affairs, EEOC Appeal No. 2022001911 (Aug. 9, 2022), citing (Baughman v. Dep't of the Army, EEOC Appeal No. 01900865 (Feb. 26, 1990)). The proper forum for Complainant to challenge this matter is through the administrative process of the Debt Collection Act. Thus, we find that claim (6) is properly dismissed for failure to state a claim.

Hostile Work Environment-Comprised of Incidents (1)-(5)

It is well established that a complainant satisfies the requirement of counselor contact by contacting an agency official "logically connected" with the EEO process, even if that official is not an EEO Counselor, and by exhibiting the intent to being the EEO process. See Cristantiello v. Dep't of the Army, EEOC Appeal No. 01992817 (Dec. 19, 2000) (citing Cox v. Dep't of Housing and Urban Development, EEOC Request No. 05980083 (July 30, 1998); Allen v. U.S. Postal Serv., EEOC Request No. 05950933 (July 9, 1996)).

In the instant matter, we find that Complainant satisfied the EEO Counselor contact requirement on February 23, 2024, when he spoke with EEO1, an EEO Specialist. Complainant reasonably considered EEO1 to be logically connected to the EEO process.⁶ Complainant also exhibited an intent to begin the EEO process as set forth in the Summary of Contact form which set forth her intent was to begin the EEO complaint process. See Complaint File at 9, Janay K. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120172549 (Jan. 4, 2018) (OFO reversed agency's dismissal of complaint for untimely EEO Counselor contact when complainant previously contacted an EEO Manager's Office with the intent to initiate the EEO process, even though complainant did not contact ORM as instructed by the agency).

⁶ According to the EEO Counselor's Report, Complainant asserted, during EEO Counseling, that on February 23, 2024, he began the EEO process by contacting EEO1. Complaint File at 29-30.

The Commission has held that “[b]ecause the incidents that make up a hostile work environment claim ‘collectively constitute one unlawful employment practice,’ the entire claim is actionable as long as at least one incident that is part of the claim occurred within the filing period. This includes incidents that occurred outside of the filing period that [Complainant] knew or should have known were actionable at the time of the occurrence.” EEOC Compliance Manual, Section 2, Threshold Issues at 2-75 (rev. July 21, 2005) (citing National Railroad Passenger Corp v. Morgan, 536 U.S. 101, 117 (2002)). Complainant’s EEO contact date of February 23, 2024, occurred within 45 days of several of the incidents comprising Complainant’s hostile work environment claim (i.e. Complainant’s removal effective February 5, 2024). Thus, we find that Complainant’s entire hostile work environment claim, comprised of incidents (1)-(5), was timely raised.

CONCLUSION

Accordingly, for the reasons set forth herein, we AFFIRM the Agency’s dismissal of the basis of reprisal and claim (6). However, we reverse the Agency’s dismissal of the remainder of Complainant’s hostile work environment claim (comprised of incidents (1)-(5)) and we REMAND this matter to the Agency for further processing in accordance with the ORDER below.

ORDER (E0224)

The Agency is ordered to process the remanded claims (Complainant’s hostile work environment claim comprised of incidents (1)-(5)) 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 (T0124)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. 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 on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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 29, 2025
Date