



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Vaughn L,¹
Complainant,

v.

Marco Rubio,
Secretary,
Department of State,
Agency.

Appeal No. 2024004693

Agency No. DOS-186-2

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 17, 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. Upon review, the Commission finds that Complainant's complaint was properly dismissed for raising the same claims previously raised and untimely EEO Counselor contact.

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), and (2) for raising the same claims previously raised and untimely EEO Counselor contact.

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 Special Agent - FS4 at the Agency's Embassy in Yerevan, Armenia.

On April 19, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of race (Caucasian), national origin (American), sex (male), sexual orientation (Straight), religion (Christian), color (White), and reprisal for prior protected EEO activity, when on an unknown date, he was required to sign a training pledge, and subsequently subjected to a hostile work environment to include proposed discipline, unwarranted investigations into his conduct, and loss promotions, among other things.

The Agency dismissed the training pledge claim for untimely EEO Counselor contact. The Agency explained that on March 5, 2024, Complainant initiated EEO Counseling. An EEO Counselor e-mailed Complainant using both his personal and work e-mail addresses. On March 20, Complainant responded stating, "some ongoing discrimination/retaliation, but I only received a proposal for discipline and learned many more details about what has been going on." The Agency noted that this was not enough information for an EEO Counselor to begin Counseling. Therefore, the EEO Counselor requested more information from Complainant. On March 22, Complainant stated he wanted to keep the above referenced allegation separate from a pending EEO complaint but failed to respond to other requests for information. Since the EEO Counselor was bound to conclude Counseling within 30 days of its initiation, Complainant received the Notice of Right to File on April 4, 2024, noting that no response had been received from him. To date, the Agency's Office of Civil Rights Office (OCR) has not received Complainant's signed Notice of Right to File. On April 19, 2024, Complainant e-mailed OCR to file his formal complaint. Based on a review of his formal complaint and the EEO Counselor's Report, the Agency determined that Complainant did not discuss the training pledge allegation with an EEO Counselor to attempt to informally resolve the matter, which is a prerequisite to filing a formal complaint. Thus, the above allegation was dismissed in accordance with 29 C.F.R. § 1614.107(a)(2) for raising a matter that has not been brought to the attention of an EEO Counselor. Additionally, the Agency noted that Complainant's refusal to engage with the EEO Counselor made it difficult to determine timeliness, which is an important threshold issue for consideration.

The Agency also determined that the above, training pledge allegation failed to state a claim. Specifically, requiring Complainant to sign a training pledge is not sufficiently severe or pervasive to rise to the level of establishing a prima facie claim of a hostile work environment nor does it constitute an adverse employment action that renders Complainant aggrieved.

Finally, the Agency noted that from what it could make out of Complainant's formal complaint, it appears Complainant is reasserting the same allegations from Agency Case No. DOS-067-24. To the extent Complainant's current allegations have already been raised in that complaint presently under investigation, they may not be raised again. The accepted claims are repeated below:

ACCEPTED ALLEGATIONS (DOS-067-24)

Because of Complainant's race (Caucasian), color (White), national origin (American), sex (Male), religion (Christian), gender identity (Male), sexual orientation (Straight), and retaliation (protected opposition activity), Complainant was discriminated against when:

1. On November 9, 2023, he was notified that his promotion was rescinded.
2. On February 4, 2024, he received a proposal for disciplinary action (six-day suspension without pay).
3. He was subjected to a hostile work environment, characterized by but not limited to, in addition to the above actions, mocking of his dating profile, being reported to the Insider Threat Program, being subjected to allegations that he was a white nationalist and associated with extremist groups, being called a terrorist, and being required to submit to interviews as an investigation subject conducted by Diplomatic Security personnel, since November 9, 2023, and as recently as February 4, 2024.

CONTENTIONS ON APPEAL

Complainant disagrees that he failed to respond to EEO Counseling. He asserts that he did request an extension for Counseling, but OCR was not responsive. In a narrative, Complainant also asserts:

Although OCR discussed only one small aspect of my allegations, the "training pledge," I never even claimed the "training pledge" document itself constituted a hostile work environment. Rather, I

mentioned it primarily to give background for the conflict with my office leadership that later manifested in a hostile work environment and adverse action. Additionally, the "training pledge" itself was not the adverse action, but rather after I stated my objections to the training pledge, the adverse action was MSD leadership removing me from training and then inappropriately counseling me, criticizing my religious convictions regarding the training pledge, and then eventually retaliating by encouraging an improper OSI investigation, reporting me to Insider Threat, etc.

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

Failure to Engage in EEO Counseling and Untimely EEO Counselor Contact

Pursuant to 29 C.F.R. § 1614.105(a), aggrieved persons who believe they have been discriminated against on the basis of race; color; religion; sex; national origin; age; disability; genetic information; or pregnancy, childbirth, or related medical conditions *must consult a Counselor prior to filing a complaint in order to try to informally resolve the matter*. An agency shall dismiss an entire complaint that raises a matter that has not been brought to the attention of a Counselor and is not like or related to a matter that has been brought to the attention of a Counselor. 29 C.F.R. § 1614.107(a)(2).

EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination should be brought to the attention of the Equal Employment Opportunity Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) days of the effective date of the action.

The Commission has adopted a "reasonable suspicion" standard (as opposed to a "supportive facts" standard) to determine when the forty-five (45) day limitation period is triggered. See Howard v. Dep't of the Navy, EEOC Request No. 05970852 (Feb. 11, 1999). Thus, the time limitation is not triggered until a complainant reasonably suspects discrimination, but before all the facts that support a charge of discrimination have become apparent.

EEOC Regulations provide that the agency or the Commission shall extend the time limits when the individual shows that he was not notified of the time limits and was not otherwise aware of them, that he did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence he was prevented by circumstances beyond his control from contacting the Counselor within the time limits, or for other reasons considered sufficient by the agency or the Commission.

The record reveals that because Complainant failed to timely follow up with the EEO Counselor in order to provide clarity of his allegations and of those allegedly involved, the Agency ultimately dismissed this matter because it, essentially, had not been brought to the attention of an EEO Counselor. Further, since timeliness of claims was never established during Complainant's exchanges with the assigned EEO Counselor, this entire complaint is also arguably untimely and beyond the forty-five (45) day limitation period. On appeal, Complainant has presented no persuasive arguments or evidence warranting an extension of the time limit for initiating EEO Counselor contact.

Same Claims Previously Raised

EEOC Regulation 29 C.F.R. § 1614.107(a)(1) provides that prior to a request for a hearing, the Agency shall dismiss a complaint that states the same claim that is pending before or has been decided by the agency or Commission.

Complainant has contended that managers and security personnel have engaged in a campaign of harassment against him. The Agency properly dismissed Complainant's complaint for previously raising the same matter which is currently pending and under investigation before the Agency.

We agree with the Agency's assessment that issues contained in this appeal are simply additional incidents of alleged harassment arising from the same harassment claim in Complainant's prior complaint, claims 1-3 above in Agency Case No. DOS-067-24. See National Railroad Passenger Corporation v. Morgan, 536 U.S. 101, 117 (2002) (A hostile work environment claim is composed of a series of separate acts that collectively constitute one 'unlawful employment action'). As the Agency noted, the training pledge claim can be raised with the current investigation of Complainant's prior complaint (DOS-067-24).

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.**

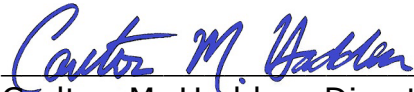
RIGHT TO REQUEST COUNSEL (Z0815)

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

February 6, 2025

Date