



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

[REDACTED]
Joleen M.,¹
Complainant,

v.

Mark Averill,
Acting Secretary,
Department of the Army,
Agency.

Appeal No. 2024004710

Agency No. ARPOM24APR001400

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 19, 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. 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's final decision properly dismissed Complainant's formal complaint pursuant to 29 C.F.R. § 1614.107(a)(1).

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 an Assistant Professor at the Agency's Defense Language Institute Foreign Language Center (DLIFLC) in Monterey, California. On July 8, 2024, Complainant filed a formal equal employment opportunity (EEO) complaint alleging that the Agency subjected her to discrimination on the bases of sex (female) and national origin (Russia, Belarus) when, in March and April 2024, a coworker with whom she shared an office ("Coworker") referred to Russian people as "racist-terrorists" and the Russian language as "the language of terrorists" during everyday conversation with Complainant, and management failed to address Complainant's concern's about Coworker's behavior.² Complainant alleged that Coworker subjected her to hostile work environment harassment and turned other employees against her.

In a decision (FAD) dated July 19, 2024, the Agency dismissed Complainant's complaint pursuant to 29 C.F.R. § 1614.107(a)(1), citing failure to state a claim. The FAD stated that Complainant failed to allege actions that rendered her aggrieved or rose to the level of a hostile work environment. The FAD stated there were "personality conflicts arising from misunderstanding and miscommunication." The Agency stated that the alleged actions did not indicate a discriminatory undertone. The instant appeal from Complainant followed.

CONTENTIONS ON APPEAL

On appeal, Complainant stated that the Agency erroneously included sex as a basis in her complaint and that national origin is the sole basis. Further, Complainant alleged that she has experienced retaliatory harassment, management continued to fail to properly address harassment in the workplace, and the Agency released private information about her complaint.

In opposition to Complainant's appeal, the Agency stated, "[a] dismissal by the Agency is proper where, as here, [Complainant] fails to link workplace unpleasantries with status-based discriminatory harassment."

² Complainant alleged that Coworker's behavior began in May 2023 and stopped in November 2023 after she again addressed her unprofessional behavior and ceased all personal communication with her. Complainant stated that Coworker's behavior resumed in March 2024.

The Agency stated that Complainant's allegations do not rise to the level of a hostile work environment.

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

The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that an agency shall dismiss a complaint that fails to state a claim. 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, disabling condition, genetic information, or reprisal. 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).

The Commission has held that where a complaint does not challenge an agency action or inaction regarding a specific term, condition, or privilege of employment, a claim of harassment may survive if it alleges conduct that is sufficiently severe or pervasive to alter the conditions of the complainant's employment. See Harris v. Forklift Systems, Inc., 510 U.S. 17, 23 (1993).

In the instant case, the Commission finds that the Agency improperly dismissed the complaint for failure to state a claim. In this case, Complainant alleged that Coworker, with whom she shared an office, referred to her national origin (Russia) as "racist-terrorists" and her native language (Russian) as "the language of terrorists" on a daily basis for at least two months, and turned others against her.

She alleged further that the Agency failed to properly address her concerns about Coworker's behavior.

We find a reasonable person in Complainant's situation could perceive the conduct as hostile or abusive and Complainant attests that she did perceive it as such. See e.g., Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 82 (1998) (Actionable conduct is "conduct which a reasonable person in the plaintiff's position would find severely hostile or abusive"). Construing all facts in favor of the Complainant the Agency was incorrect in holding that Complainant failed to state a claim of hostile work environment harassment based on her national origin. Complainant is entitled to fact-specific inquiry into her allegations.

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. In response to Complainant's allegations on appeal of additional harassment, any time prior to the agency's mailing of the notice required by 29 C.F.R. § 1614.108(f) at the conclusion of the investigation, Complainant may ask to amend her pending EEO complaint to add claims that are like or related to those claim(s) raised in the pending complaint. EEO Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110), Chapter 5, Section III.B (as revised, August 5, 2015). Complainant shall submit a letter to the agency's EEO Director or a designee describing the new incident(s) and stating that she wishes to amend her complaint to include the new incident(s). Id. The EEO Director or designee shall review this request, determine whether a fair and impartial investigation of the new claims can be accomplished within a timely manner pursuant to 29 C.F.R. Part 1614, and determine the correct handling of the amendment in an expeditious manner. Id.

CONCLUSION

Accordingly, we REVERSE the Agency's final decision dismissing Complainant's complaint and REMAND the matter for further processing consistent 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)

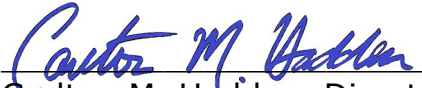
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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:



Carlton M. Hadden, Director
Office of Federal Operations

February 18, 2025

Date