



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

[REDACTED]
Elliott L,¹
Complainant,

v.

Todd Hunter,
Acting Secretary,
Department of Veterans Affairs
(Veterans Health Administration),
Agency.

Appeal No. 2024004767

Agency No. 2001-679-2024-158337

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated July 22, 2024, dismissing a formal 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 determines that Complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(1).

ISSUES PRESENTED

Whether the Agency properly dismissed Complainant's complaint for stating claims which were previously raised, and for failure to state a claim.

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 Kinesiotherapy Supervisor, Grade GS-12, at the Agency's medical center in Tuscaloosa, Alabama.

On June 27, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination in reprisal for prior protected activity when:

- 1) On December 19, 2023, Complainant's supervisor and Chief of Rehabilitation Medicine, issued a Memorandum of a "grievance file" against Complainant were validated, Complainant was directed to apologize to staff, and take "Communication Training;"
- 2) On December 20, 2023, Complainant's supervisor, rescinded the memorandum because Complainant challenged the investigation against him;
- 3) On January 17, 2024, Complainant attended a meeting with the medical center's Chief of Staff and its EEO Manager, in reference to the grievance filed against him;
- 4) On February 22, 2024, the medical center's Director, instructed Complainant to conduct Grievance Training due to noncompliance; and
- 5) On March 28, 2024, Complainant completed the Grievance training directed by medical center's Director.

On June 22, 2024, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.107(a)(1). The Agency dismissed Claims 1) through 4) for Complainant having stated claims that the Agency was investigating or still pending before Agency. The Agency dismissed Claim 5) for failure to state a claim in raising an allegation that was insufficiently severe or pervasive to state a valid claim as well as in challenging activity that was unlikely to deter a reasonable employee from EEO-protected activity.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant argued that his allegations concerned Agency actions that had adversely affected his employment and would deter EEO-protected activity. Complainant further alleged that the investigation of his allegations was inadequate. Complainant accused the EEO staff of "twisting the words" of his claims in order to facilitate their dismissal. Complainant emphasized that his supervisory chain had bullied him. Complainant submitted emails in support of his position.

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

EEOC Regulation 29 C.F.R. § 1614.107(a)(1) provides for the dismissal of a complaint that states the same claims that is pending before or has been decided by the Commission or the Agency. To be dismissed as the "same claim," the present formal complaint and prior complaints must have involved identical matters. This Commission has long held that in order for a formal complaint to be dismissed as identical, the elements of the complaint must be identical to the elements of the prior complaint in time, place, incident, and parties. Jackson v. U.S. Postal Serv., EEOC Appeal No. 01955890 (Apr. 5, 1996).

We concur with the Agency's dismissal decision. Claims 1) and 2) concern Complainant's objection to the way his supervisor, in December 2023, handled a union grievance filed against him by those he supervised. Similarly, Claims 3) and 4) describe the medical center's managers communicating with him during early 2024, regarding the resolution of that grievance. The record revealed that Complainant has already raised these matters in Agency Case No. 200I-679-2024-156891.

The file contained the Agency's February 26, 2024 Notice of Right to File a Discrimination Complaint for Agency Case No. 200I-679-2024-156891. If Complainant wishes to expound on the allegations as stated in Agency Case No. 200I-679-2024-156891, he may do so when filing his formal complaint in that matter.

We also agree with the Agency that Complainant's fifth allegation failed to state a claim. In Claim 5), Complainant alleged that, in March 2024, Agency management required him to complete a course on effective team communications which Complainant deemed a "punitive grievance training." Generally, this Commission has consistently observed that training is not designed as a punitive measure or as form of discipline but as a corrective action. See Hannah C. v. Dep't of Justice, EEOC Appeal No. 0720150004 (Mar. 10, 2016). Here, we find that Complainant has failed to articulate how the training that Agency management required him to complete caused him to suffer a harm or loss with respect to a term, condition, or privilege of his employment for which there is a remedy under EEOC Regulations. See Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (April 21, 1994).

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