



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

[REDACTED]
Cecille W,¹
Complainant,

v.

Lloyd J. Austin III,
Secretary,
Department of Defense
(Defense Health Agency),
Agency.

Appeal No. 2024004780

Agency No. DHA2024030231

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission ("EEOC" or "Commission") from the Agency's July 9, 2024 dismissal of 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. and Section 501 of the Rehabilitation Act of 1973 ("Rehabilitation Act"), as amended, 29 U.S.C. § 791 et seq. For the reasons presented below, the Commission MODIFIES the Agency's Final Decision dismissing Complainant's complaint.

ISSUES PRESENTED

Whether the Agency's final decision properly dismissed Complainant's formal complaint for failure to state a claim 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 was employed by the Agency as an Army Public Health Nurse, GS-0610-11 for the Evans Army Community Hospital in Fort Carson, Colorado.

On April 12, 2024, Complainant filed a Formal EEO Complaint alleging that she was subjected to discrimination, including a hostile work environment, on the bases of disability (physical and mental) and reprisal for protected EEO activity (request for reasonable accommodation and prior EEO Complaint). The Agency framed Complainant's claims as follows:

1. From August 11, 2023 to present, the Agency failed to accommodate Complainant's requests for structured time to discuss supervisory feedback, reduced face to face peer and staff interactions without scheduled meeting times, highlighting of prioritized tasks, performance, and work expectations, and increased remote options during episodes to navigate work requirements when not able to be in office;
2. From November 28, 2023 to present, the Agency failed to accommodate complainant's requests for leave to attend therapy;
3. From November 28, 2023 to present, the Agency failed to engage in the interactive process or process complainant's requests for reasonable accommodations of leave to attend therapy;
4. From December 4, 2023 to present, the Agency failed to conduct an adequate search for a vacant funded position as a reasonable accommodation; and
5. On August 24, 2023, and on November 7, 16, 20, 21, and 27, 2023, the Agency requested medical documentation from Complainant.

On July 9, 2024, the Agency dismissed the instant complaint for failure to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1).

The Agency reasoned that the claims in the instant complaint concerned identical matters as those raised in her prior EEO complaint, Agency No. DHA2024110091.²

Prior EEO Complaint – Agency No. DHA2024110091

On January 19, 2024, Complainant filed a Formal EEO Complaint alleging discrimination on the basis of disability. The Agency framed Complainant's claims as follows:

1. On November 16, 2023, Complainant's first line rater, an Army Nurse Officer, ("Supervisor") issued Complainant a "Request for Additional Medical Information in Support of Reasonable Accommodation Request;" and
2. From August 25, 2023 to present, Supervisor failed to process Complainant's Reasonable Accommodation request within 30 days or [within the time frame set forth in the Agency's] Reasonable Accommodation policy.

On March 12, 2024, the Agency procedurally dismissed Complainant's prior EEO complaint for failure to state a claim. Although the Agency's dismissal contained appeal rights to the Commission, Complainant, through her attorney, contacted the Agency's EEO Manager on March 12 and 20, 2024 requesting that the decision be rescinded, as it was based on legal error. Complainant also asserted that the Agency failed to adequately frame her claims to reflect her formal EEO complaint, and articulated the claims listed in the instant complaint. Complainant threatened to seek sanctions against the Agency if it did not rescind its March 12, 2024 decision and accept her complaint (as framed by Complainant) for investigation.

On March 21, 2024, the Agency's Associate EEO Director declined to rescind the March 12, 2024 dismissal and advised Complainant to appeal the dismissal with the Commission.

² The Agency also reiterated erroneous legal arguments set forth in its dismissal of Agency No. DHA2024110091 ("prior EEO complaint"), which, at the time, was still pending with the Commission. See Cecille W. v. Dep't of Def., EEOC Appeal No. 2024002895 (Sept. 16, 2024) (allegations of denied reasonable accommodation and improper medical inquiry state an actionable claim of discrimination under EEOC regulations).

The Associate EEO Director also declined to modify the framing of the prior EEO complaint, stating that Complainant's articulated claims "were not part of the issues presented to the [EEO] Counselor. If you, on behalf of your client wishes to seek counseling for the allegations you presented please let us know." On or about March 25, 2024, Complainant filed an appeal of her prior EEO complaint with the Commission and initiated the instant complaint with an EEO Counselor.

CONTENTIONS ON APPEAL

Complainant contends, among other things, that the instant complaint cannot be dismissed as the "same claim" as her prior EEO complaint because the claims are not identical in all aspects. In the alternative, Complainant characterizes the instant complaint as a continuation of the claims in her prior EEO complaint and asks the Commission to consolidate the complaints. In addition, Complainant requests sanctions against the Agency.

The Agency did not submit a brief in response to Complainant's appeal.

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

Request for Sanctions

Where either party to an appeal fails to comply with the appellate procedures in 29 C.F.R. § 1614.404 or fails to respond fully and in a timely fashion to requests for information, without good cause shown, the Commission shall, in appropriate circumstances, impose sanctions. See 29 C.F.R. § 1614.404(c).

Sanctions may be used to effectuate the policies of the Commission by both deterring the non-complying party from similar conduct in the future and by providing an equitable remedy to the opposing party. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 ("EEO MD-110"). Ch. 9 (Aug. 5, 2015).

Complainant argues that sanctions against the Agency are warranted because the Agency "refused to correct its decision" to dismiss Complainant's prior EEO complaint, even when Complainant and the Commission notified the Agency that its dismissal was in error. Complainant also asserts that sanctions are warranted because it is "highly probable" that the Agency improperly dismissed similar complaints, raised by underrepresented complainants, thereby undermining the integrity of the EEO process. Moreover, the Agency's erroneous dismissal and failure to address the error prejudiced Complainant by prolonging the processing of the instant complaint and causing her to incur additional legal fees.

However, the record reflects that the Agency acted in accordance with EEOC regulations and procedures. When Complainant notified the Agency that she believed the dismissal of her prior EEO complaint was based on legal errors, the Agency properly advised Complainant to exercise her appeal rights, which, in accordance with EEOC regulations, it included with the dismissal notice. When the Commission also concluded that the Agency's decision was based on legal errors, and reversed the dismissal, the Agency properly accepted the prior EEO complaint for processing in accordance with the Commission's order.

Complainant has not provided evidentiary support for her assertion that the Agency continues to issue decisions based on the same erroneous analysis. While Complainant was negatively impacted by the Agency's error, the Agency's actions do not warrant sanctions. Ultimately, the record does not reflect that the Agency failed to comply with the appellate procedures provided under 29 C.F.R. § 1614.404 or failed to fully and timely respond to a request for information.

Accordingly, Complainant's request for sanctions is DENIED.³

³ If Complainant prevails on the merits of her complaint, she will be entitled to reasonable attorney's fees and costs, including legal work related to the instant appeal. See 29 C.F.R. § 1614.501(e).

Failure to State a Claim

Under the regulations set forth at 29 C.F.R. Part 1614, an agency shall accept a complaint from an aggrieved employee or applicant for employment who believes that they have been discriminated against by that agency because of race, color, religion, sex, national origin, age or disability. 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 (Apr. 21, 1994). If the complainant cannot establish that they are aggrieved, the agency shall dismiss a complaint for failure to state a claim. 29 C.F.R. § 1614.107(a)(1).

Here, Claims 1, 2, 3 and 4 concern denial of reasonable accommodation and Claim 5 alleges improper medical inquiry. As we previously explained in detail, allegations of denied reasonable accommodation (including delay or failure to engage in the EEO process), and allegations of improper requests for medical information state a claim of discrimination under the Rehabilitation Act. See Cecille W. v. Dep't of Def., EEOC Appeal No. 2024002895 (Sept. 16, 2024).

Same Claim or Inextricably Intertwined

EEOC Regulation 29 C.F.R. § 1614.107(a)(1) provides for the dismissal of a complaint that states the same claim 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 complaint must have involved identical matters. The Commission has consistently 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. See Jackson v. United States Postal Serv., EEOC Appeal No. 01955890 (Apr. 5, 1996) reversed on other grounds, EEOC Request No. 05960524 (April 24, 1997).

Claims are inextricably intertwined if, for example, the factual issues to be resolved in each are the same. See Chandhok v. Dep't of Commerce, EEOC Request No. 05930881 (Feb, 24, 1995) (the factual issue to be resolved in determining the propriety of the complainant's termination which was raised separately, was inextricably intertwined with the complainant's claim about his performance appraisal, because the same factual issue must be resolved, i.e. whether the complainant's performance was satisfactory), see also Alden

V. v. United States Postal Serv., EEOC Appeal No. 0120170323 (Mar. 7, 2017), Campbell v. Dep't of the Navy, EEOC Request No. 05A01007 (Sept. 26, 2003) (claims in separate EEO complaints were inextricably intertwined because the complainant's new claim alleging he was denied an upgrade was already fully addressed in a hearing on the complainant's prior complaint, which challenged the results of a desk audit).

The prior EEO complaint consisted of two claims: (1) denied reasonable accommodation from August 25, 2023 to present and (2) improper request for medical information on November 16, 2023. Complainant asserts that each claim is a discrete act, and, considered together, allege a hostile work environment.

Claims 1 and 4 of the instant complaint are inextricably intertwined with claim 1 of the prior EEO complaint. The record for the prior EEO complaint includes Complainant's request for a reasonable accommodation, which lists the same accommodations listed in Claim 1 of the instant complaint. The reasonable accommodation request and record documents for the prior EEO complaint show that Complainant's supervisor approved her for reassignment as a reasonable accommodation, which is referenced in Claim 4 of the instant complaint. As the factual issues to be resolved are the same as those underlying Claim 1 of Complainant's prior EEO complaint, Claims 1 and 4, while not "identical" to Complainant's prior EEO Complaint were properly dismissed.

Claim 5 is identical to Claim 2 of Complainant's prior EEO complaint, to the extent that both allege an improper medical inquiry on November 16, 2023. The remaining dates listed in Claim 5, are not identified in the prior EEO complaint, and cannot be dismissed as "identical."

Like or Related Claims

A complainant may amend a complaint to include a new claim if the new claim is like or related to a matter on which complainant has received counseling. A new claim is "like or related" to the original complaint if it adds to or clarifies the original complaint and could have reasonably be expected to grow out of the original complaint during the investigation. See Scher v. United States Postal Serv., EEOC Request No. 05940702 (May 30, 1995).

Claims 2, 3, and the remainder of Claim 5, concern events that were not articulated in Complainant's prior EEO complaint or referenced in the record of the prior EEO complaint.

A fair reading of Complainant's March 12, 2024 email to the Agency is that she sought to amend the prior complaint to include these claims. Upon review, we find Claims 2, 3, and 5 are "like or related" to the claims in Complainant's prior EEO complaint. Amendment was not possible on March 12, 2024, as the prior EEO complaint had been dismissed. As the dismissal has since been reversed, the Agency shall amend the prior EEO complaint to include these claims.

As the instant complaint alleges that the Agency was motivated by reprisal in addition to discriminatory animus, we note that a complainant may clarify the bases of discrimination in their allegations even after filing a Formal EEO Complaint. See Sanchez v. Standard Brands, Inc., 431 F.2d 455, 462 (5th Cir. 1970), Erick N. v. Dep't of Homeland Sec., EEOC Appeal No. 2019001688 (Jun. 12, 2019).

CONCLUSION

Accordingly, we AFFIRM the Agency's dismissal of Claims 1 and 4 and we REVERSE the Agency's dismissal of Claims 2, 3, and 5 (except the November 16, 2023 event).

We hereby REMAND Claims 2, 3, and 5 (except the November 16, 2023 event) to the Agency for further processing in accordance with this Decision and the Order below.

ORDER (E0224)

The Agency is ordered to AMEND Complainant's prior EEO complaint (EEOC Appeal No. 2024002895, Agency No. DHA2024110091) to include an additional discriminatory basis of reprisal and to include the remanded claims from the instant complaint.

- a. Within **thirty (30) calendar days** of this Decision, Agency shall provide written notice to Complainant acknowledging that it received the remanded claims and amended Agency No. DHA2024110091.
- b. If the EEO investigation for the prior EEO complaint concluded prior to the issuance of this Decision and Order, within **sixty (60) calendar days** of this Decision, the Agency shall conduct a supplemental investigation of the amended basis and claims, and include it in the record for the prior EEO complaint.

- c. A copy of the Agency's written notice to Complainant and, if applicable, a copy of the report of investigation for the supplemental investigation, must be sent to the Compliance Officer as referenced below.

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:

A handwritten signature in blue ink that reads "Carlton M. Hadden". The signature is written in a cursive style and is positioned above a horizontal line.

Carlton M. Hadden, Director
Office of Federal Operations

February 3, 2025

Date