



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

████████████████████  
Sheena S,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2024004853

Agency No. 2003-549A4-2024-158641

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 24, 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. For the reasons presented below, we reverse the Agency's final decision dismissing Complainant's complaint and remand this matter to the Agency for further processing in accordance with the Order below.

ISSUES PRESENTED

Whether the Agency's final decision properly dismissed Complainant's formal complaint on the grounds of failure to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1).

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<sup>1</sup> 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 Registered Nurse at the North Texas Veterans Healthcare Center in Dallas, Texas.

On May 31, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to hostile workplace discrimination on the basis of reprisal for prior protected EEO activity. In support of this claim, Complainant raised the following allegations.

1. On February 12, 2024, the Nurse Manager denied Complainant's request for annual leave.
2. From February 13, 2024, thru April 24, 2024, the Nurse Manager called Complainant multiple times while she was on FMLA asking how she wanted to get paid while she was on leave and stating, "you don't need FMLA, do you?"
3. On March 21, 2024, the Nurse Manager charged Complainant 4.5 hours of Leave without Pay (LWOP).
4. On March 22, 2024, the Nurse Manager charged Complainant 8 hours of LWOP.
5. On March 22 and 26, 2024, the Nurse Manager refused to address Complainant's concerns and questions regarding a policy change that warranted moving her back to the Dallas clinic.
6. On March 25, 2024, the Nurse Manager charged Complainant 8 hours of Absent Without Leave (AWOL).
7. From March 26, 2024, thru April 1, 2024, the Nurse Manager instructed Complainant to turn in her keys for the fellow's clinic that were assigned to her and assigned Complainant tasks outside of her scope of practice, which was later resolved, and she is now doing patient care again.
8. On March 27, 2024, the Nurse Manager made several false statements about why Complainant did not receive correct pay from March 21, 2024, thru March 25, 2024.

9. On March 28, 2024, the Nurse Manager failed to give Complainant a performance bonus for receiving an "Outstanding" rating on her performance evaluation.

10. On March 28, 2024, the Nurse Manager did not promote Complainant to Nurse III.

11. On April 3, 2024, the Nurse Manager refused to allow Complainant to perform patient care duties.

12. On April 5, and 10, 2024, the Nurse Manager initiated a fact-finding investigation against Complainant for alleged misconduct and failure to follow instructions.

13. On April 8, 2024, the Nurse Manager charged Complainant 8 hours of AWOL.

14. On April 10, 2024, the Nurse Manager removed Complainant's duties as the primary float nurse on Mondays and Wednesdays.

15. On April 10, 2024, the Nurse Manager sent Complainant a memo instructing her to meet at the Union office for alleged misconduct and not following directions.

16. On April 12, 2024, the Nurse Manager instructed another manager to write a letter about Complainant's alleged misconduct.

17. On April 15, 2024, the Nurse Manager charged Complainant 4.5 hours of AWOL.

18. On May 10, 2024, the Nurse Manager attempted to coerce Complainant into altering her sick leave by deleting her time, causing Complainant to reenter it three times.

19. On May 21, 2024, the Nurse Manager requested Complainant report directly to her after she came in to work late due to a tire blow out.

20. On May 21, 2024, the Nurse Manager charged Complainant 5.0 hours of AWOL.

21. On May 22, 2024, the Nurse Manager falsely accused Complainant of not being at work and failing to attend the Cardiology MD Clinic.

22. On May 30, 2024, the Nurse Manager denied Complainant's leave request for June 3, 2024, that she requested back on January 3, 2024.

On July 24, 2024, the Agency issued a final decision dismissing the complaint for failure to state a claim. Specifically, because Complainant has not established that she has prior EEO activity, Complainant's sole basis of reprisal alleged in this matter fails, and she no longer has a viable EEO complaint. Complainant appeals.

### CONTENTIONS ON APPEAL

Complainant adds an additional basis to her complaint. Specifically, she alleges that based on her disability, she was subjected to the actions listed above. Complainant's counsel asserts that while Complainant did not initially have legal representation in this matter, it should have been reasonably apparent to the Agency that she was also alleging disability because of the context of her numerous claims. The Agency primarily argues that Complainant should be prohibited from adding a new basis on 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

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, disability or reprisal for prior EEO activities. 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). To successfully state a claim, a complaint must identify an alleged basis of discrimination (i.e. race, sex, age, national origin, color, religion, disability, and reprisal for prior EEO activity) within the purview of EEO law and regulations. If a complaint fails to clearly identify a covered basis within our jurisdictional purview, then it must be dismissed. See Emmanuel L. v. Dep't of the Air Force, EEOC Appeal No. 0120171680 (Jul. 11, 2017).

The Commission gives broad application to the court's decision in Sanchez v. Standard Brands, Inc., 431 F.2d 455, 465 (5th Cir. 1970). Under Sanchez, complainants are given liberal latitude to clarify the bases of discrimination in their charges, and to add bases of discrimination after filing their charges. The Sanchez court explained that there are at least three reasons why a complainant may fail to identify a basis of discrimination in a complaint. First, a complainant may not be aware of an employer's motivation. Second, a complainant may not fully comprehend the distinction between bases. Finally, a complainant may be unschooled and unsophisticated in the use of forms. Applying Sanchez, the Commission has held that a complainant may amend his or her complaint to add or delete bases without changing the identity of the claim. See, e.g., Dragos v. U.S. Postal Service, EEOC Request No. 05940563 (January 19, 1995).

Here, although Complainant did not explicitly raise disability as a basis prior to her appeal, we note "that once a timely complaint is filed with the EEOC it may later be amended to cure technical defects such as lack of verification or failure to attach a legal conclusion (racial discrimination) to the factual occurrences complained of." Sanchez (supra). Accordingly, because it is apparent from Complainant's appeal statement that she wishes to raise disability as a basis, we find that on remand the Agency should amend the complaint to include disability. Furthermore, because Complainant has raised all of her claims within the context of a hostile work environment, the Agency should include any *related* claims when conducting its investigation in this matter.

### CONCLUSION

We REVERSE the Agency's final decision dismissing the formal complaint 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 as an **overall complaint of hostile workplace discrimination based upon disability and reprisal** in accordance with 29 C.F.R. § 1614.108 et seq. 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 11, 2025  
Date