



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

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Donny F,<sup>1</sup>  
Complainant,

v.

Scott Nathan  
Chief Executive Officer,  
U.S. International Development Finance Corporation,  
Agency.

Appeal No. 2024004855

Agency No. DFC-2405

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated August 1, 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. For the reasons set forth herein, we VACATE the Agency's final decision and REMAND this matter to the Agency for a supplemental investigation.

**ISSUES PRESENTED**

Whether the Agency's final decision properly dismissed Complainant's complaint for failure to state a claim.

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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

During the period at issue, Complainant worked as an Artificial Intelligence Specialist for the Agency through a contract which the Agency entered into with an entity identified as Aderas, Inc. [hereinafter Aderas].

On May 30, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the basis of race (African-American).

In its final decision, the Agency determined that Complainant's complaint was comprised of the following claim:

On February 23, 2024, Complainant was terminated from Aderas, Inc., for insubordination after directly communicating with clients after being specifically asked not to do so by his project manager [with Aderas, Inc.]. Complaint File at 42.<sup>2</sup>

In its final decision, the Agency dismissed Complainant's complaint for failure to state a claim reasoning that the Agency did not have sufficient control over Complainant's position. Complaint File at 43. The Agency acknowledged that it provided equipment to Complainant, but that Aderas personnel directed Complainant regarding his interactions with Agency personnel and providing feedback on work products. Id.

The Agency found that Agency personnel were not involved in Complainant's termination. Specifically, the final decision set forth: "Aderas personnel stated the decision to terminate was due to insubordination in regard to the Aderas program manager's directions." Id.

The instant appeal followed.

### CONTENTIONS ON APPEAL

On appeal, Complainant requests that we reverse the Agency's dismissal of his complaint. Complainant states that Agency Officials (the Chief Information Officer and the Chief Technology Officer) were directly involved in Complainant's termination. Complainant's Brief at 2.

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<sup>2</sup> Our citations to the Complaint File reference the page number of the pdf file before us on appeal.

Specifically, Complainant states that on February 23, 2024, he was informed by an Aderas official that he would be fired the next week because he made the client uncomfortable. Id. Complainant states that the direct cause of his termination is that the Agency insisted on having him removed. Id. Complainant asserts that the decision to terminate him occurred on February 23, 2024, but Aderas just accelerated the previous termination decision due to an insubordination issue. Complainant's Brief at 3. Moreover, Complainant asserts "I was fired as the behest of [Agency officials] who controlled my work, finalized it, and determined whether or not I would be employed because I make [them] uncomfortable." Id.

The Agency does not submit a brief or statement 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

The issue here is whether the Agency properly dismissed Complainant's complaint for failure to state a claim on the basis that Complainant was not its employee. EEOC Regulation 29 C.F.R. § 1614.103(a) provides that complaints of discrimination shall be processed in accordance with Part 1614 of the EEOC Regulations. EEOC Regulation 29 C.F.R. § 1614.103(c) provides that within covered departments, agencies, units, Part 1614 applies to all employees and applicants for employment.

In Serita B. v. Dep't of the Army, EEOC Appeal No. 0120150846 (Nov. 10, 2016), the Commission reaffirmed its longstanding position on "joint employers" and noted that it is found in numerous sources. See, e.g., EEOC Compliance Manual Section 2, "Threshold Issues," Section 2-III(B)(1)(a)(iii)(b) (May 1, 2000) (Compliance Manual); EEOC Enforcement

Guidance: Application of EEO Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms (Dec. 3, 1997) (Enforcement Guidance), "Coverage Issues," Question 2; Ma v. Dept of Health and Human Services, EEOC Appeal Nos. 01962389 & 01962390 (May 29, 1998). We reiterate the analysis set forth in those decisions and guidance documents in this decision.

Agencies often conclude that an individual is not an employee based solely on the fact that the individual performs work pursuant to a contract between the federal government and an outside organization and the outside organization, not the federal government controls the pay and benefits of that individual. See e.g. Helen G. Dep't of the Army, EEOC Appeal No. 0120150262 (Feb. 11, 2016); Nicki v. B. v. Dep't of Educ., EEOC Appeal No. 0120151697 (Feb. 9, 2016). These elements are, however, just two of the factors relevant to joint employment under the Commission's long-standing position and it is not at all surprising that they would be present when an individual working under a federal contract for a federal agency raises a complaint of discrimination.

The term "joint employer" refers to two or more employers that each exercise sufficient control of an individual to qualify as the worker's employer. Compliance Manual, Section 2- III(B)(1)(a)(iii)(b). To determine whether the Agency has the right to exercise sufficient control, EEOC considers factors derived from common law principles of agency. See Enforcement Guidance, "Coverage Issues," at Question 2. EEOC considers, inter alia, the Agency's right to control when, where, and how the worker performs the job; the right to assign additional projects to the worker; whether the work is performed on Agency premises; whether the Agency provides the tools, material, and equipment to perform the job; the duration of the relationship between the Agency and the worker; whether the Agency controls the worker's schedule; and whether the Agency can discharge the worker. EEOC Compliance Manual, Section 2 -III(A)(1) (citing Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 323-24 (1992)); EEOC v. Skanska USA Bldg., Inc., 550 F. App'x 253, 256 (6th Cir. 2013) ("Entities are joint employers if they 'share or co-determine those matters governing essential terms and conditions of employment'" (quoting Carrier Corp. v. NLRB 768 F.2d 778, 781 (6th Cir. 1985); see also Ma EEOC Appeal Nos. 01962389 & 01962390.

The language of the contract between the Agency and the staffing firm is not dispositive as to whether a joint employment situation exists.

In determining a worker's status, EEOC looks to what actually occurs in the workplace, even if it contradicts the language in the contract between the staffing firm and the agency. Baker v. Dep't of the Army, EEOC Appeal No. 01A45313 (Mar. 16, 2006) (while contract between staffing firm and agency provided that contract personnel were employees of staffing firm under its administrative supervision and control, agency actually retained supervisory authority over the contract workers).

On the factor of the right to control when, where, and how the worker performs the job and to assign additional projects, complete agency control is not required. Rather, the control may be partial or joint and still point to joint employment. Shorter v. Dep't of Homeland Sec., EEOC Appeal No. 0120131148 (June 11, 2013) (where both staffing firm and agency made assignments, this pointed to joint employment); Complainant v. Dep't of the Navy, EEOC Appeal No. 0120143162 (May 20, 2015), request for reconsideration denied, EEOC Request No. 0520150430 (Mar. 11, 2016) (where staffing firm wrote and issued complainant's appraisal with input from agency, this pointed toward joint employment). Likewise, where both the agency and staffing firm provided tools, material, and equipment to perform the job, this pointed to joint employment. Elkin v. Dep't of the Army, EEOC Appeal No. 0120122211 (Nov. 8, 2012). Similarly, where a staffing firm terminates a worker after an agency communicates it no longer wants the worker's services, this supports a finding that the agency has joint or de facto power to discharge the worker. *See, e.g., Complainants v. Dep't of Justice*, EEOC Appeal Nos. 0120141963 & 0120141762 (Jan. 28, 2015); *see also Skanska USA Bldg., Inc.*, 550 Fed. App'x at 254, 256 (where defendant removed staffing firm's workers from job site without challenge from staffing firm, and after such removals staffing firm generally fired worker, this pointed to joint employment); Butler v. Drive Auto. Indus. of America, Inc., 793 F.3d 404, 414-15 (4th Cir. 2015). The EEOC considers an entity's right to control the terms and conditions of employment, whether or not it exercises that right, as relevant to joint employer status. Enforcement Guidance, "Coverage Issues," at Question 2, Example 5 (where an entity reserves the right to direct the means and manner of an individual's work, but does not generally exercise that right, the entity may still be found to be a joint employer).

The EEO Counselor's Report contains very brief summaries of interviews with Agency and Aderas officials. Complaint File at 18-19.

The summary of the interview with the Agency's Chief Information Officer (CIO), set forth in the EEO Counselor's Report, seems to suggest that the Agency was involved in Complainant's termination. Specifically, the EEO Counselor's Report provides "[two named Agency officials] were directly involved in the termination. There were performance issues with [Complainant] and his removal of the contract was requested by [the Agency's Contracting Officer's Representative]." Complaint File at 18. However, the summary of the EEO Counselor's interview with the COR sets forth that he spoke to an Aderas official about Complainant's non-performance but was not part of the termination process. Id.

The EEO Counselor's Report also contains a brief summary of the EEO Counselor's interview with the Program Manager (PM) at Aderas. According to the Counselor's Report, the PM set forth that Agency officials spoke to her about performance issues with Complainant. The PM asserted that she tried to assist Complainant to "course correct" his behavior but to no avail. The PM stated that "Aderas then determined the best course of action was to issue the termination to [Complainant] due to his performance and replace him with another employee...Although [the Agency] made [her] aware of their concerns, they did not play a part in Aderas's decision to terminate [Complainant]." Complaint File at 19. The summary of PM's interview, contained in the Counselor's Report, further provides that the grounds of Complainant's termination was insubordination because he violated an order not to communicate with the Agency.<sup>3</sup> Id. While the EEO Counselor's Report contains the foregoing interview summaries with Agency and Aderas officials, the record does not contain any affidavits or signed statements from these officials.

Complainant asserts that he was removed from his position at the Agency's direction. Complainant, in an attachment to his formal complaint, asserted that the PM told him that the Agency "demanded and required" his removal Complaint File at 8. In a statement on appeal, Complainant asserts that Aderas already decided to remove him at the direction of the Agency and just accelerated that decision after an insubordination issue arose.<sup>4</sup> Complainant's Brief at 3.

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<sup>3</sup> The record contains notes regarding Complainant which appear to be from Aderas' PM. However, these notes are not signed. Complaint File at 21-24.

<sup>4</sup> Complainant submitted a signed statement but not an affidavit or declaration under penalty of perjury.

Because Complainant is alleging he was subjected to discrimination based on his removal, the circumstances surrounding his termination are significant as to whether the Agency is a joint employer for EEO purposes. We find that the record before us on appeal, consisting mostly of brief interview summaries regarding Complainant's termination, is not sufficiently developed to make a determination as to whether the Agency is a joint employer in this matter for the purpose of using the 29 C.F.R. § Part 1614 complaint process.

### CONCLUSION

Accordingly, we VACATE the Agency's final decision dismissing Complainant's complaint and we REMAND this matter to the Agency for a supplemental investigation in accordance with the ORDER below.

### ORDER

Within sixty (60) calendar days from the date this decision is issued, the Agency is ORDERED to take the following actions:

1. Conduct a supplemental investigation to obtain evidence consistent with this decision and relevant in assessing whether the Agency is a joint employer for EEO purposes. The evidentiary record shall include, but is not limited to, the following matters: affidavits from the Agency's Chief Information Officer, Chief Technology Officer, and Contracting Officer Representative. These affidavits shall address the circumstances leading up to Complainant's removal and whether these Agency officials requested that Aderas take any action regarding Complainant prior to his termination. The Agency shall supplement the record with any additional affidavits from other Agency officials that appear to have knowledge of the circumstances surrounding Complainant's termination. The Agency shall also supplement the record with any other pertinent documentation regarding the circumstances surrounding Complainant's termination.
2. The Agency shall obtain an affidavit from Complainant addressing the circumstances surrounding his termination.
3. The Agency shall also obtain affidavits from relevant officials with Aderas, including but not limited to the PM and any relevant Aderas human resource officials, addressing, in detail the circumstances surrounding Complainant's termination and whether any Agency official requested Aderas to take any action prior to Complainant's

- termination. These affidavits from Aderas officials shall also address Complainant's assertion that he was already informed by Aderas that he was being terminated at the direction of Agency officials and that Aderas only "accelerated" the date of termination after an insubordination issue.
4. The Agency shall either issue a new final decision dismissing the formal complaint, with an appropriate analysis of relevant facts with appeal rights to the Commission, or a letter accepting Complainant's complaint for investigation.
  5. A copy of the supplemental investigation and new dismissal letter or letter of acceptance shall be provided as set forth below in the section entitled "Implementation of the Commission's Decision."

#### 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)

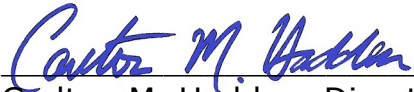
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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 24, 2025

Date