



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

[REDACTED]  
Nicki B,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2024004959

Agency No. 200I6192024159554

DECISION

Complainant timely appealed with the Equal Employment Opportunity Commission ("EEOC" or "Commission") from the Agency's August 20, 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. For the reasons presented below, the Commission **AFFIRMS** the Agency's Final Decision dismissing Complainant's complaint.

ISSUES PRESENTED

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

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Program Support Assistant, GS-07 at the Agency's Chaplain Service, East

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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.

Campus, Central Alabama Health Care System facility in Tuskegee, Alabama.

On July 17, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the basis of sex (female) when:

On June 6, 2024, the Chief Chaplain ("Supervisor") began to yell at Complainant and stated, "I told you to do something and you're going to do what I told you to do," or words to that effect. Supervisor continued to yell and remained verbally disrespectful.

The Agency dismissed the matter pursuant to 29 C.F.R. §1614.107(a)(1) for failure to state a claim. The Agency reasoned that Complainant's allegation consisted of an isolated incident that was not sufficiently severe or pervasive to state a claim of harassment.

#### CONTENTIONS ON APPEAL

Complainant contends that during the incident, she experienced severe anxiety, heart palpitations, and elevated blood pressure, and afterward, she had to visit Employee Health. She further contends that the work environment has become hostile and unwelcoming, and she experiences increased stress and anxiety while at work. The event had a lasting impact on Complainant's performance, and she is concerned about serious health consequences, such as increased risk of stroke or heart attack. Complainant requests a transfer.

The Agency contends that dismissal of Complainant's complaint was proper and asks the Commission to affirm its final decision.

#### 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

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 disabling condition. 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 their complaint for failure to state a claim. 29 C.F.R. § 1614.107(a)(1).

The Commission has held that where, as here, a complaint does not challenge an agency action or inaction regarding a specific term, condition, or privilege of employment, the 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).

We have repeatedly found that allegations of a few isolated incidents of alleged harassment usually are not sufficient to state a harassment claim. See Elfrieda v. United States Postal Serv., EEOC Appeal No. 2022000085 (Feb. 2, 2022) (single incident where supervisor yelled at the complainant about her work duties and accused her of "stealing time" causing the complainant to feel "shook up" failed to state a claim of harassment) citing Banks v. Dep't of Health and Human Servs., EEOC Request No. 05940481 (Feb. 16, 1995) (finding allegations that on one occasion a supervisor threw a file on the complainant's desk and berated her in a loud voice in the presence of other employees insufficient to state a harassment claim) other citations omitted. Likewise, we find the instant complaint, comprised a single isolated incident of alleged harassment, fails to state a harassment claim.

Here, Supervisor allegedly yelled at Complainant about a work assignment, and another employee intervened on Complainant's behalf, ending the interaction. We note that it is well established that instances of a supervisor questioning an employee with respect to their duties, even if done in a confrontational manner, is a "common workplace occurrence." See Carver v. United States Postal Serv., EEOC Appeal No. 01980522 (Feb. 18, 2000).

On appeal, Complainant asserts that the event was sufficiently severe to constitute harassment, as it impacted her health. Although Complainant's health was impacted by this event, the Commission cannot order the Agency to grant her request for a transfer, as her complaint fails to state a claim. The Commission has held that allegations that fail to state a claim cannot be converted into a viable claim merely because the complainant claims to suffer damages and requests a remedy. Ulanoff v. United States Postal Serv., EEOC Request No. 05950396 (Jan. 26, 1996) (complainant not entitled to compensatory damages where allegation failed to state a claim).

### 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)

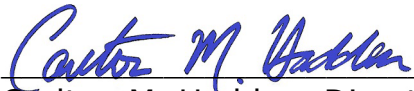
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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 4, 2025

Date