



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

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Nita H,<sup>1</sup>  
Complainant,

v.

Douglas A. Collins,  
Secretary,  
Department of Veterans Affairs,  
Agency.

Appeal No. 2024004999

Agency No. 200P-678-2024-157791

**DECISION**

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated August 16, 2024, dismissing a formal complaint of unlawful employment discrimination. For the reasons set forth herein, we AFFIRM the Agency's final decision dismissing the formal complaint.

**ISSUES PRESENTED**

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

**BACKGROUND**

During the relevant time, Complainant worked as a Registered Nurse, Series 0610, at the Agency's Southern Arizona VA Health Care System (SAVAHCS) in Tucson, Arizona.

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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.

Complainant initiated contact with an EEO Counselor on March 22, 2024. Informal efforts at resolution were not successful.

On June 27, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to a hostile work environment in reprisal for prior protected EEO activity under an EEO statute that was unspecified in the record, when:

1. Complainant was not assigned to a permanent desk;
2. Primary Care Manager [hereafter Manager] took more than one hour to respond to Complainant's questions;
3. Manager failed to respond to Complainant's Liaison's contact attempt;
4. Manager greeted Complainant with the salutation "Hey" on a Teams message;
5. Since September 2022, Manager assigned Complainant, who is a Registered Nurse, to work as a Licensed Practical Nurse (LPN);
6. In May 2023, Manager did not allow Complainant to return to work;
7. In November 2023, Manager issued Complainant a rating of Unsatisfactory on her Commissioned Corp Evaluation Report (COER);
8. Manager denied Complainant's leave request for March 6 thru March 8, 2024; and,
9. Manager denied Complainant's leave request for April 1 thru April 11, 2024.

On August 16, 2024, the Agency dismissed the formal complaint for failure to state a claim. The Agency reasoned that reprisal is not a covered basis under EEOC regulations where Complainant stated during counseling and to EEO Counselor she had no prior EEO activity. Because reprisal was the sole basis raised, Complainant had no viable basis in support of the above referenced claims.

Complainant filed the instant appeal.

### CONTENTIONS ON APPEAL

On appeal, Complainant requests the Commission reverse the dismissal, reiterates her claims as stated in her formal complaint, and argues she continues to be subjected to retaliation by Manager since she contacted the EEO Counselor in the instant complaint.<sup>2</sup>

In opposition to the appeal, the Agency argues Complainant failed to meet the burden of proof with respect to her claim when complainant made the following statement, "I have never participated in prior EEO activity." In response to her brief on appeal, the Agency notes Complainant presents no further or supportive evidence to show she satisfied her burden of proof regarding the claim of reprisal, instead restating the same argument she previously asserted in support of her complaint.

### 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

As a preliminary matter, Complainant during EEO Counseling and in her formal complaint only raised the basis of reprisal. On appeal, Complainant again only alleges the Agency's actions were based on retaliation.

The formal complaint form provides the specific bases that are covered by EEOC regulations.

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<sup>2</sup> Complainant is advised that if she wishes to pursue any new discrimination allegations first raised on appeal, including an allegation she had to relocate due to Manager's actions, she should initiate contact with an EEO Counselor. The Commission will not accept a new claim raised on appeal.

Specifically, the formal complaint form sets forth that “you must list the bases (list one or more of the following): race (specify), color (specify), religion (specify), sex (male, female, sexual orientation, gender identity, including but not limited to, Transgender), national origin (specify) age (provide date of birth) disability (specify)...*and/or reprisal for participating in the EEO process or opposing unlawful discrimination.*” (emphasis added).

EEOC Regulation 29 C.F.R. § 1614.107(a)(1) provides that an agency shall dismiss a complaint that fails to state a claim under 29 C.F.R. § 1614.103. To state a viable claim of unlawful retaliation in the EEO complaint process, an individual must initially assert that they engaged in prior protected activity as defined by 29 C.F.R. § 1614.101(b). Under 29 C.F.R. § 1614.101(b), prior protected activity includes opposing any practice made unlawful by the statutes which the Commission enforces (i.e. Title VII, ADEA etc.), or participating in any stage of administrative or judicial proceedings under the statutes which the Commission enforces.

The Agency properly dismissed Complainant’s complaint. Formal complaints which fail to identify a purview under EEO laws must be dismissed for failure to state a claim. See Alisa M. v. U.S. Postal Serv., EEOC Appeal No. 2021003515 (July 8, 2021); Almeda B. v. Dep’t of Veterans Affairs, EEOC Appeal No 0120162291 (Oct. 16, 2016).

Here, Complainant stated that she was discriminated against based on retaliation. A review of the record, including Complainant's request for pre-complaint counseling and formal complaint, reveals no prior EEO activity by Complainant. The Agency noted in the final decision, that Complainant made statements *affirming she had no prior EEO activity*. On appeal, Complainant does not allege she had prior EEO activity, any other protected basis or clarify her vague basis for retaliation based on a *protected EEO basis*. The Commission finds that Complainant's claim of retaliation lacks the requisite prior EEO activity necessary for stating a retaliation claim. Therefore, the Agency properly dismissed the complaint, based solely on retaliation, for failure 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)

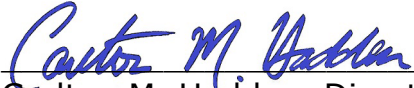
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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 11, 2025

Date