



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Ria T.,¹
Complainant,

v.

Gina M. Raimondo,
Secretary,
Department of Commerce
(Bureau of the Census),
Agency.

Appeal No. 2024005028

Agency No. 63-2024-00225

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated August 22, 2024, dismissing their 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the reasons below, the Commission **AFFIRMS** the Agency's final decision dismissing the complaint.

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.

ISSUES PRESENTED

Whether the Agency properly dismissed Complainant's complaint of discrimination based on race (Asian/White), color (light yellow), religion (unspecified), sex, national origin (Korean), age (year of birth: 1986), disability (mental) and retaliation (prior EEO activity) for failure to state a claim.

BACKGROUND

Complainant is a former Field Representative, GS-0303-04 at the Agency's Denver Regional Office facility in Lakewood, Colorado.

On June 30, 2023, Complainant filed a formal complaint alleging that they were terminated based on their protected bases. (Agency Complaint No. 63-2023-00191). After receiving the report of investigation, Complainant requested a hearing with an EEOC Administrative Judge (AJ).²

On July 25, 2024, Complainant filed a formal complaint asserting that they were dissatisfied with the processing of Agency Complaint No. 63-2023-00191 and the delay in receiving a hearing before an EEOC AJ.

Specifically, Complainant asserts the Agency subjected them to discrimination on the bases of race (Asian), national origin (Korean American), sex, religion (Not Specified), color (yellow), disability (mental), age (year of birth: 1986), and in reprisal for prior protected EEO activity when:

Complainant was subjected to unfair processes/denied rights related to Complainant's hearing request in Agency Complaint No. 63-2023-00191/EEOC Hearing No. 541-2024-00028X by Administrative Judges and Agency attorneys. Additionally, Complainant believes these individuals may have tampered with Complainant's files.

On August 22, 2024, the Agency dismissed the complaint for failure to state a claim pursuant to 29 C.F.R. §1614.107(a)(1), (a)(8), finding that the claim was a collateral attack on the adjudicatory processing of a prior complaint. Complainant filed the instant appeal.

² On December 4, 2024, a decision was issued in Hearing No. 541-2024-00028X.

CONTENTIONS ON APPEAL

Complainant contends that their termination was improper, but does not make any specific contentions related to the Agency's dismissal of their current complaint. The Agency contends that the final decision is fully supported by the evidence and precedent.

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 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, 1614.106(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).

The Commission has long held that an allegation of discrimination and/or unlawful retaliation directly stemming from an agency's legal defense of a previously filed EEO complaint fails to state an independent actionable claim and is properly dismissed under either 29 C.F.R. § 1614.107(a)(1), as a collateral attack on the adjudicatory processing of the prior complaint, or under 29 C.F.R. § 1614.107(a)(8), as an allegation of dissatisfaction with the processing of the previously filed complaint. See Fredda J. v. Dep't of Treasury, EEOC Appeal No. 2023003984 (Dec. 20, 2023).

As Complainant's allegations relate to dissatisfaction with the processing of their prior complaint, we find that the Agency properly dismissed Complainant's complaint of discrimination. Arguments about the denial of rights regarding a prior hearing request should have been raised with the AJ during the adjudication of that prior complaint.

CONCLUSION

The Agency's final decision dismissing the 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

December 9, 2024

Date