



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

[REDACTED]  
Rosie T.,<sup>1</sup>  
Complainant,

v.

Pete Hegseth,  
Secretary,  
Department of Defense  
(Defense Health Agency),  
Agency.

Appeal No. 2024005060

Agency No. DHA-202404-0248

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated August 15, 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. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, we AFFIRM the Agency's decision to dismiss the complaint.

ISSUE PRESENTED

The issue presented is whether the Agency properly dismissed Complainant's complaint for failure to timely contact an EEO Counselor and 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

At the time of events giving rise to this complaint, Complainant worked as a Chief of Perioperative Services at the Agency's Kimbrough Ambulatory Care Center on Fort Meade, Maryland.

Believing that the Agency subjected her to discrimination, Complainant initiated EEO counseling on March 29, 2024. On May 20, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination and harassment on the bases of race (African American), sex (female), age (over 40), and in reprisal for prior protected EEO activity when:

1. On October 11, 2023, the Chief Medical Officer placed Complainant on administrative leave.
2. On October 11, 2023, the Deputy of Clinical Services directed military police to arrest Complainant and escort her to the military police station.
3. On October 11, 2023, the Deputy of Clinical Services continuously called Complainant asking if she was done in surgery.
4. On October 11, 2023, the Deputy of Clinical Services inappropriately hugged Complainant without her consent.
5. Since June 2022 to October 11, 2023, the Commander prevented Complainant from taking disciplinary action against subordinate employee(s).
6. From February 2022 to December 2023,<sup>2</sup> a Staff Sergeant encouraged Complainant's subordinate employees to not pay attention to Complainant.

On August 6, 2024, Complainant amended the complaint to "ongoing harassment, discrimination, and reprisal" when:

7. Since August 6, 2024, a U.S. Army employee failed to respond to her Freedom of Information Act (FOIA) request for a police report.

The Agency ultimately dismissed claims 1-6, pursuant to 29 C.F.R. § 1614.107(a)(2), for failure to timely contact an EEO Counselor.

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<sup>2</sup> Complainant did not provide the exact dates of the alleged incidents.

As for claim 7, the Agency dismissed this claim, pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim. The instant appeal followed.

### CONTENTIONS ON APPEAL

On appeal, Complainant contends that her complaint involves ongoing harassment, which she argues is supported by emails that she sent to the Agency on January 8, 2024, and February 20, 2024. Complainant claims that in these emails, she accused the Agency of engaging in prohibited personnel practices in violation of 5 U.S.C. § 2302, but her concerns were dismissed and ignored. Complainant also asserts that her claims as identified by the Agency are incomplete and inaccurately represented and provides a timeline of the harassment that she has allegedly suffered on an ongoing basis since 2022. She contends that the alleged harassment is timely based on the continuing violation doctrine.

The Agency opposes the appeal and requests that Complainant's appeal be denied, and that the Commission affirm the Agency's decision to dismiss the 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. Dep't of the Treas., 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

#### *Untimely EEO Counselor Contact*

EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination should be brought to the attention of the Equal Employment Opportunity Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action.

The Commission has adopted a "reasonable suspicion" standard (as opposed to a "supportive facts" standard) to determine when 45 day limitation period is triggered. See Grier v. Dep't of the Air Force, EEOC Appeal No. 0120093482 (Feb. 16, 2010). Thus, the time limitation is not triggered until a complainant reasonably suspects discrimination, but before all the facts that support a charge of discrimination have become apparent.

Here, claims 1-6 occurred between June 2022 and December 2023, with most of the claims pertaining to October 11, 2023. However, Complainant did not contact an EEO Counselor until March 29, 2024, nearly three months after December 2023, and well beyond the 45-day time limitation.

On appeal, Complainant argues that her complaint is timely because she initiated contact with an EEO Counselor approximately 38 days after her last good faith attempt on February 20, 2024, to internally resolve her allegations of prohibited personnel practices. However, we note that the Commission has no jurisdiction over prohibited personnel practices. See Davis v. Dep't of Homeland Sec., EEOC Appeal No. 01A53256 (Apr. 7, 2016). Moreover, as noted above, aggrieved individuals are required to, in relevant part, initiate EEO contact within 45 days of when they first reasonably suspect discrimination, not 45 days of when they last engaged in a good faith attempt to resolve the alleged harassment. Based on our review of the timeline provided by Complainant, we find that she should have reasonably suspected discrimination regarding her issues in claims 1-5 no later than October 11, 2023, when she was not only arrested but also allegedly touched inappropriately and placed on administrative leave. As for claim 6, Complainant should have reasonably suspected discrimination no later than December 2023.

While Complainant attempts to rely on the continuing violation doctrine to sidestep her failure to initiate EEO contact within 45 days of the alleged incidents, we ultimately reject this argument. Complainant is correct that the Commission has held that "[b]ecause the incidents that make up a hostile work environment claim 'collectively constitute one unlawful employment practice,' the entire claim is actionable as long as at least one incident that is part of the claim occurred within the filing period. This includes incidents that occurred outside of the filing period that [Complainant] knew or should have known were actionable at the time of their occurrence." EEOC Compliance Manual, Section 2, Threshold Issues at 2-75 (rev. July 21, 2005) (citing National Railroad Passenger Corp. v. Morgan, 536 U.S. 101,117 (2002)). Because claims 1-6 are all untimely, they cannot serve as timely acts to make Complainant's claims of harassment/hostile work environment timely.

Therefore, we find that the Agency properly dismissed claims 1-6, pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely EEO Counselor contact.

#### *Failure to State a Claim*

Under 29 C.F.R. § 1614.107(a)(1) an agency shall dismiss a complaint that fails to state a claim. This Commission has generally held that complaints involving other administrative proceedings, and related processes, do not state a claim within the meaning of its regulations. See Hogan v. Dep't of the Army, EEOC Request No. 05940407 (Sept. 29, 1994); Heard v. Dep't of Justice, EEOC Appeal No. 0120092680 (Aug. 27, 2009). Additionally, the Commission has held that an employee cannot use the EEO complaint process to lodge a collateral attack on another proceeding. See Wills v. Dep't of Def., EEOC Request No. 05970596 (Jul. 30, 1998). A claim that can be characterized as a collateral attack, by definition, involves a challenge to another forum's proceeding. See Lingad v. U.S. Postal Serv., EEOC Request No. 05930106 (Jun. 23, 1994).

Here, the complaint includes allegations that an Army FOIA Officer failed to release a police report to Complainant. The Commission has long held that it does not have jurisdiction over the processing of FOIA requests. Instead, persons having a dispute regarding such requests should bring any appeals about the processing of his or her FOIA requests under the appropriate FOIA regulations. See Gaines v. Dep't of the Navy, EEOC Request No. 05970386 (Jun. 13, 1997); Kasi J v. Dep't of Justice, EEOC Request No. 2021002280 (Jun. 3, 2021); Nicki B v. Dep't of Vet. Affs., EEOC Request No. 2020001389 (Sep. 9, 2020); Cortez v. Dep't of Homeland Sec., EEOC Request No. 0120160744 (Mar. 18, 2016); Raether v. Dep't of the Navy, EEOC Request No. 01A42191 (Jul. 15, 2004). Therefore, we find that the Agency properly dismissed claim (2) for failure to state a claim.

#### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's dismissal of the formal complaint.

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).

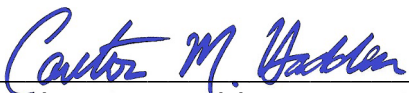
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0124)

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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

February 18, 2025

Date