



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

[REDACTED]
Melani F.,¹
Complainant,

v.

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

Appeal No. 2024005063

Agency No. 2001-508-2024-160122

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated September 11, 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. For the reasons set forth below, we AFFIRM, in part, and REVERSE, in part, the Agency's final decision dismissing Complainant's complaint.

ISSUE PRESENTED

Whether the Agency properly dismissed Complainant's complaint for failure to state a claim and untimely EEO Counselor contact.

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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Clinical Chaplain, GS-0060-12, at the Agency's Trinka Davis Veteran's Village Community Living Center (TDVV CLC) in Carrollton, Georgia.

On July 26, 2024, Complainant initiated contact with an EEO Counselor.

On August 6, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to harassment and discrimination on the bases of race (African American) and sex (female) when:

1. On February 20, 2024, the Chief Chaplain Supervisor denied Complainant union representation during a face-to-face TEAMS meeting about a mandatory change in tour.
2. On February 15, 2024, the Chief Chaplain Supervisor changed Complainant's tour of duty.
3. On February 21, 2024, the Chief Chaplain Supervisor spoke harshly to Complainant with an intimidating and condescending raised tone of voice.
4. On February 21, 2024, Complainant resigned her Chaplain position (constructive discharge).

On February 14, 2024, the Agency informed Complainant's union representative of its intent to change the schedule TDVV CLC, which would impact Complainant. In the notice, the Chief Chaplain Supervisor stated that Complainant would work a new 20-hour per week tour of duty that would no longer be a compressed Tuesday and Wednesday tour and would include four hours on Sundays. The Chief Chaplain Supervisor further explained that the change was necessary to align the frequency and quantity of Chaplain services at the TDVV CLC with the religious and spiritual needs of patients. Finally, the notice indicated that management intended to implement the change on March 10, 2024. Complainant's union representative provided Complainant with notification of the schedule change on February 15, 2024.

According to Complainant, in a subsequent conversation, held on February 20, 2024, the Chief Chaplain Supervisor denied Complainant union representation and spoke to Complainant harshly in an intimidating and condescending raised tone. On February 21, 2024, Complainant resigned with an effective date of March 5, 2024.

Complainant stated that on July 25, 2024, she learned that two newly assigned Chaplains were working on a rotational basis, causing her to believe that she had been subjected to discrimination because she had never been offered to preach/work on a rotational basis with other Agency Chaplains. Complainant asserted that she was only advised to submit to the new mandatory schedule unless she had a hardship to present. Complainant stated that she was uncomfortable with submitting a hardship request based on the way the Chief Chaplain Supervisor had spoken to her in their earlier conversation.

The Agency ultimately dismissed claim 1, pursuant to 29 C.F.R. §1614.107(a)(1), for failure to state a claim. The Agency reasoned that the proper forum to pursue a remedy on the claim was through the grievance process. The Agency further noted that the Commission lacks jurisdiction over unfair labor practice claims.

The Agency also dismissed claims 2, 3, and 4, pursuant to 29 C.F.R. §1614.107(a)(2), for failure to comply with regulatory time limits. In support, the Agency explained that Complainant submitted a signed resignation on February 21, 2024, which made April 8, 2024, the last day to make timely contact with an EEO Counselor. However, Complainant did not contact an EEO Counselor until July 26, 2024, which was 111 days untimely.

While Complainant argued that she did not reasonably suspect discrimination until July 25, 2024, when she learned that two newly assigned Chaplains outside of her protected bases were preaching/working on Sundays on a rotational basis, the Agency found that Complainant was aware of the possibility of discrimination, as she alleged that she was forced to resign nearly five months earlier due to alleged hostile working conditions. The Agency further found that Complainant was aware of the regulatory time limit for initiating EEO contact, as a record contained in the case file reflected that Complainant received training and there were posters in the facility setting forth the requirement to contact an EEO Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within 45 days of the effective date of the action.

With respect to Complainant's allegations of a hostile work environment, the Agency found that the alleged incidents failed to meet the severe or pervasive requirement for further processing.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant asserts that the Agency failed to appropriately develop the factual record, particularly concerning equitable tolling, prior to issuing the final decision. According to Complainant, the Agency's application of equitable tolling was too rigid and mechanical. Complainant contends that assuming the record was adequately developed, the record evidence supports tolling the 45-day deadline to contact an EEO Counselor. She adds that while she provided a factual basis for when she first knew of, or suspected, possible unlawful action, no meaningful inquiry was conducted concerning when she could or should have suspected or known of possible discrimination.

Furthermore, while Complainant concedes that she was aware of the Chief Chaplain Supervisor's harassing conduct prior to July 25, 2024, she argues that she had no reasonable suspicion that the harassing conduct was based on discriminatory animus. Complainant reiterates that she did not have reasonable suspicion that the Chief Chaplain Supervisor's actions were based on discriminatory animus until July 25, 2024, and she notes that she promptly initiated EEO contact the following day.

Additionally, Complainant asserts that the Agency erred in finding that the complaint failed to state a claim of harassment because she was subjected to inappropriate conduct accompanied by a change in her working conditions when her work schedule was altered.

The Agency opposes the appeal and succinctly argues that its final decision should be affirmed.

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

Claim 1

Upon review, we find Complainant's claim that she was denied union representation was properly dismissed by the Agency. 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 (July 30, 1998); Kleinman v. U.S. Postal Serv., EEOC Request No. 05940585 (September 22, 1994). Complainant's concerns regarding union representation are not within the Commission's jurisdiction but should have been addressed in the grievance procedure under the collective bargaining agreement.

Claims 2, 3, and 4

EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination be brought to the attention of the Equal Employment Opportunity Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (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 the forty-five (45) day limitation period is triggered. See Howard v. Dep't of the Navy, EEOC Request No. 05970852 (Feb. 11, 1999). 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.

EEOC Regulations provide that the agency or the Commission shall extend the time limits when the individual shows that she was not notified of the time limits and was not otherwise aware of them, that she did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence she was prevented by circumstances beyond her control from contacting the EEO Counselor within the time limits, or for other reasons considered sufficient by the agency or the Commission.

As such the regulations clearly allow for situations where a complainant only learns that a personnel action was discriminatory at some later date.

Complainant, on appeal, argues that she did not develop a reasonable suspicion of discrimination until she learned, on July 25, 2024, that despite never being offered the opportunity to work on Sundays on a rotational basis, two newly hired employees outside of her protected classes were able to do so. It is well established that a complainant may not have a reasonable suspicion of discrimination until the agency treats a coworker outside complainant's protected class(es) differently. See Matthews v. U.S. Postal Serv., EEOC Appeal No. 0120122956 (Dec. 18, 2012) (finding persuasive complainant's assertion that he did not reasonably suspect discrimination until he learned that a comparator employee had been treated more favorably than him); Swanigan v. U.S. Postal Serv., EEOC Appeal No. 01A33469 (Mar. 31, 2004). Here, Complainant argues that she previously did not suspect the Chief Chaplain Supervisor's conduct to be discriminatory, but her impressions of the conduct changed when she obtained knowledge of different treatment of the new Chaplains, which caused her to suspect discrimination. Complainant asserts that the Chief Chaplain Supervisor's inflexibility and treatment of Complainant, compared with employees outside of her protected classes, was not plainly evident until July 25, 2024, following her departure from the Agency. Complainant initiated EEO contact one day later, on July 26, 2024, well within the 45-day period. We are persuaded by Complainant's arguments on appeal and the Agency has not proffered evidence otherwise. Because Complainant did not develop reasonable suspicion until July 25, 2024, we find that her July 26, 2024, EEO Counselor contact was timely.

As to Complainant's allegations that she was subjected to harassment because of the incidents, we find that when viewing claims 2-4 together, Complainant has stated an actionable claim of harassment. Therefore, we find that the Agency's dismissal of the complaint (claims 2-4) pursuant to 29 C.F.R. § 1614.107(a)(1) was not appropriate.

CONCLUSION

Accordingly, we AFFIRM the Agency's dismissal of claim 1 but REVERSE the Agency's final decision dismissing claims 2-4. Claims 2-4 are REMANDED to the Agency for processing in accordance with this decision and the ORDER below.

ORDER (E0224)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, or a copy of the final agency decision ("FAD") if Complainant does not request a hearing.

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

March 6, 2025

Date