



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

[REDACTED]
Aline A.,¹
Complainant,

v.

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

Appeal No. 2024005070

Agency No. 2003-629-2024-159698

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated August 19, 2024, dismissing her complaint of unlawful employment discrimination. For the reasons set forth herein, we AFFIRM the Agency's final decision dismissing the formal complaint.

ISSUE PRESENTED

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

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Supply Technician, Logistics at the New Orleans VA Medical Center in New Orleans, Louisiana.

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.

On August 5, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination in reprisal for non-EEO related activity when:

1. On June 22, 2023, the Supervisory Supply Technician charged Complainant with eight hours of annual leave.
2. On June 23, 2023, the Supervisory Supply Technician charged Complainant with eight hours of annual leave.
3. On October 4, 2023, the Supervisory Supply Technician denied Complainant's request for a schedule change to have Friday and Saturday off instead of Sunday and Monday off.
4. On November 26, 2023, management failed to take appropriate corrective action when Complainant reported not being selected for various GS-9 positions.
5. On December 14, 2023, the Supervisory Supply Technician denied Complainant's request to revert annual leave and sick leave from four hours each, or eight hours total.
6. On December 15, 2023, the Supervisory Supply Technician downgraded Complainant's fiscal year 2023 Performance appraisal from Outstanding the previous year to Excellent.
7. On December 19, 2023, the Supervisory Supply Technician forced Complainant to sign each night that she worked overnight even though the union sent a cease-and-desist order.
8. On January 3, 2024, the Supervisory Supply Technician failed to respond to Complainant's rebuttal of the downgraded Performance Appraisal.
9. On February 20, 2024, the Supervisory Supply Technician requested Complainant sign in for a training that she was not present for nor was she on site when the training began and no other employee on night shift had to sign in.
10. On May 1, 2024, the Supervisory Supply Technician instructed Complainant to report to the supervisor when arriving for work and failure to do so would result in Absent Without Leave (AWOL) charges.

11. On June 6, 2024, the Supervisory Supply Tech accused Complainant of not following mandates regarding the stocking of emergency room supplies during overnight shifts.
12. On June 13, 2024, the Supervisory Supply Technician charged Complainant with eight hours of AWOL.
13. On June 16, 2024, the Supervisory Supply Technician charged Complainant with eight hours of AWOL.
14. On June 17, 2024, the Supervisory Supply Technician charged Complainant with eight hours of AWOL.
15. On June 21, 2024, the Supervisory Supply Technician denied Complainant's request for 10 hours of annual leave.

The Agency dismissed the complaint for failure to state a claim. The Agency reasoned that Complainant did not allege a basis of discrimination within the purview of EEO laws and regulations. The Agency added that Complainant failed to identify any prior EEO activity and further failed to specify an acceptable basis for the complaint even though she had the opportunity to do so. The Agency explained that Complainant's allegations of fraud, waste, and abuse were not appropriate matters for the EEO process. Rather, the proper forum to address that allegations raised was the Agency's Office of Inspector General and the Office of Accountability and Whistleblower Protection.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant asserts that she was subjected to a hostile work environment, favoritism, harassment, retaliation, and defamation of character. Complainant states that her supervisors violated Title VII, the Agency's own harassment prevention policies, and the collective bargaining agreement. Complainant argues that her rights were violated under the Rehabilitation Act because she was forced to work despite suffering a migraine, which may be considered a disability. Complainant also takes issue with the speed of the informal EEO investigation and the identified responsible management official.

The Agency requests that the Commission affirm dismissal of 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

As a preliminary matter, Complainant during EEO Counseling and in her formal complaint only raised the basis of reprisal. On appeal, Complainant is raising, for the first time, disability as a basis. Absent a compelling reason, a complainant may not claim a new basis of discrimination on appeal. See Valdez v. U.S. Postal Serv., EEOC Appeal No. 01A00196, (May 11, 2000). Complainant has not presented a compelling reason in this matter for not raising this basis prior to her appeal.

Commission regulations provide that an agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that he or she has been discriminated against by the agency because of race, color, religion, national origin, sex, age, disability, or retaliation. EEOC Regulation 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 under § 1614.103.

To state a viable claim of unlawful retaliation in the EEO complaint process, an individual must initially assert that he or she 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. We note that the Commission has a policy of considering reprisal claims with a broad view of coverage. See Johnson v. U.S. Postal Serv., EEOC Appeal No. 0120093169 (June 27, 2014).

However, formal complaints that fail to identify a purview under EEO laws must be dismissed for failure to state a claim. See Nobuko M. v. Dep't of Vet. Affs., EEOC Appeal No. 2024004507 (Jan. 8, 2025), citing Alisa M. v. U.S. Postal Serv., EEOC Appeal No. 2021003515 (July 8, 2021).

In this case, the record does not disclose that Complainant engaged in EEO activity prior to the filing of her complaint on August 5, 2024. Complainant alleged that management's action was in retaliation for her complaints about correcting her leave. Administrative File at 95. There is no claim by Complainant or other evidence in the record that the basis for Complainant's retaliation claim, was an effort to oppose a discriminatory practice within the Agency. Accordingly, we find that the Agency properly dismissed Complainant's complaint for failing to state a claim.

CONCLUSION

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)

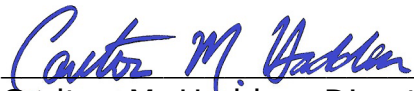
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department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

March 4, 2025

Date