



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

[REDACTED]
Zula T,¹
Complainant,

v.

Douglas A. Collins,
Secretary,
Department of Veterans Affairs
(Veterans Health Administration),
Agency.

Appeal No. 2024005075

Agency No. 200P5012024159541

DECISION

Complainant timely appealed to the Equal Employment Opportunity Commission ("EEOC" or "Commission"), from the Agency's August 15, 2024 dismissal of 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. Upon review, the Commission MODIFIES the Agency's decision to dismiss Complainant's complaint.

ISSUE PRESENTED

Whether the Agency properly dismissed Complainant's formal EEO complaint pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely EEO Counselor contact, and/or failing to raise a claim with an EEO Counselor.

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 was employed by the Agency as an Assistant Nurse Manager, RN-3, for Community Care Services at the Raymond G. Murphy Department of Veterans Affairs Medical Center in Albuquerque, New Mexico.

On August 8, 2024, Complainant filed a Formal EEO Complaint alleging that the Agency subjected her to discrimination on the bases of race (not specified) and reprisal for engaging in prior protected EEO activity.² The Agency, in its FAD, identified the following claims:

1. Complainant was subjected to a hostile work environment comprised of the following events:
 - a. In May 2023, the Chief of Community Care ("Chief") accused Complainant of enrolling in the Leadership Development Course without Management's involvement;
 - b. In October 2023, Complainant's supervisor, a Community Care Nurse Manager, ("Supervisor") degraded Complainant;
 - c. In October 2023, Supervisor told Complainant not to speak with any of the supervisors;
 - d. In October 2023, Supervisor made Complainant feel uncomfortable;
 - e. In October 2023, Supervisor told Complainant that as an Assistant Nurse Manager, Complainant will not have breaks and will work past her tour of duty;
 - f. In October 2023, Supervisor yelled at Complainant;
 - g. In October 2023, Supervisor told Complainant that she did not know Complainant was Mexican;

² Complainant identifies her protected EEO activity as testimony she provided during a non-EEO administrative investigation about her supervisor. Complainant explains that this constitutes EEO activity, as she raised her allegations of discrimination during the investigation.

- h. On March 16, 2024, Supervisor asked Complainant what responses Complainant gave during the Administrative Investigative Board ("AIB");
 - i. In March 2024, Supervisor asked Complainant who told the [AIB Investigators] that Supervisor did not train Complainant;
 - j. In March 2024, Supervisor waited in her car until Complainant arrived to work; and
 - k. On April 19, 2024, Supervisor told Complainant that sharks like to eat dark meat.
- 2. On October 18, 2023, Supervisor verbally counseled Complainant; and
 - 3. On June 18, 2023, Complainant was not selected for the position of Nurse Manager, Community Care.

The Agency dismissed the matter, citing 29 C.F.R. § 1614.107(a)(2). The Agency reasoned that Claims 1 and 2 were not timely raised with an EEO Counselor, and Claim 3 was not raised with an EEO Counselor at all.

Complainant filed the instant appeal, along with a supporting brief and attachments. On October 15, 2024, Complainant filed a request for additional time to submit additional documentation in support of her appeal. The Commission granted Complainant's request, but Complainant did not submit any additional statements or documentation.

CONTENTIONS ON APPEAL

Complainant contends that she initiated EEO contact on May 7 and 9, 2024, by calling the Agency's Harassment Prevention Program ("HPP") to report Claims 1 and 2. She provides the names of the individuals she spoke with, as well as screenshots of her phone records. When she did not hear back, Complainant called the Agency's EEO Office multiple times in June 2024, and ultimately confirmed that they received her HPP complaint, but "it had not

been placed.” An EEO Counselor subsequently contacted Complainant on June 24, 2024 and commenced informal complaint processing.³

Complainant further contends that she raised Claim 3 with an EEO Counselor because she maintained contact with her EEO Counselor in July and August 2024 prior to filing her Formal EEO Complaint.

The Agency did not file a response to Complainant’s appeal.

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

Pursuant to 29 C.F.R. §1614.107(a)(2), an agency shall dismiss a complaint or a portion of a complaint that fails to comply with the applicable time limits contained in §1614.105, §1614.106 and §1614.204(c), unless the Agency extends the time limits in accordance with §1614.604(c).

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 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.

³ Complainant provides a screenshot of her chat communication with an EEO employee from June 13, 2024 referencing both the instant complaint and another, unspecified EEO complaint. Given the timing, and, as the instant complaint alleges ongoing harassment, the Commission advises the Agency to review both complaints to determine whether consolidation is appropriate.

A hostile work environment claim, however, is comprised of a series of separate acts that collectively constitute one unlawful employment practice. Nat'l R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 117 (2002). Unlike a claim which is based on discrete acts of discrimination, a hostile work environment claim is based upon the cumulative effect of individual acts that may not themselves be actionable. *Id.* at 115. Furthermore, a hostile work environment claim will not be time barred if all acts constituting the claim are part of the same unlawful practice even if some component acts of hostile work environment fall outside the statutory time period so long as an act contributing to the claim falls within the filing period. *Id.* at 117. The Commission has stated 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 the filing period that the [Complainant] knew or should have known were actionable at the time of their occurrence." EEOC Compliance Manual, Sec. 2, Threshold Issues at 2-75 (revised July 21, 2005) (citing Morgan).

A complainant commences the EEO process by contacting an EEO Counselor and "exhibiting intent to begin the complaint process.", Gates v. Dep't of the Air Force, EEOC Request No. 05910798 (Nov. 22, 1991) (quoting Moore v. Dep't of Treasury, EEOC Request No. 05900194 (May 24, 1990)). For purposes of timeliness, contact with an agency official who is "logically connected with the EEO process" is deemed a Counselor contact. Jones v. Dep't of the Army, EEOC Request No. 05900435 (Sept. 7, 1990); see Kemer v. General Serv. Admin., EEOC Request No. 05910779 (Dec. 30, 1991).

For Claims 1 and 2, Complainant initiated EEO Contact on May 7, 2024, which is within 45 days of the most recent event of alleged harassment. Specifically, Complainant contacted the Agency's Harassment Prevention Program ("HPP"), which is logically connected to the EEO process. According to the Agency's website, by calling HPP, an employee may report harassment and file an EEO Complaint simultaneously. Complainant followed up by phone and email multiple times, indicating it was her intent to pursue an EEO complaint. Moreover, the EEO Counselor's Report contains a note stating that Complainant's initial EEO contact was on May 7, 2024. Claims 1 and 2 were improperly dismissed.

Claim 3 alleges nonselection, which is a personnel action, and therefore cannot be incorporated into Complainant's hostile work environment allegation.

It does not appear that Complainant raised this matter with an EEO Counselor prior to filing her Formal EEO Complaint. The only reference to the nonselection is in Complainant's Formal EEO Complaint. The Counselor's Report and the Notice of Right to File contain Claims 1 and 2 only. Although the complaint file contains emails supporting Complainant's contention that she maintained contact with her EEO Counselor in July and August 2024, Complainant has not shown that she raised the allegation in Claim 3 prior to filing her Formal EEO Complaint. Claim 3 was properly dismissed for failure to raise the claim with an EEO Counselor.

CONCLUSION

Accordingly, the Agency's dismissal of Claims 1 and 2 is REVERSED, and the Agency's dismissal of Claim 3 is AFFIRMED.

We hereby REMAND Claims 1 and 2 to the Agency for further 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.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar

days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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 (T0124)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. 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 on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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 5, 2025

Date