



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

[REDACTED]  
Dudley H.,<sup>1</sup>  
Complainant,

v.

Scott Bessent,  
Secretary,  
Department of the Treasury  
(Internal Revenue Service),  
Agency.

Appeal No. 2024005097

Agency No. IRS-24-0900

**DECISION**

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated August 15, 2024, dismissing his 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 Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, we AFFIRM the Agency's final decision to dismiss Complainant's complaint.

**ISSUE PRESENTED**

The issue presented is whether the Agency properly dismissed Complainant's complaint pursuant to 29 C.F.R. §§ 1614.107(a)(1) and (a)(4).

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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 an Internal Revenue Agent, GS-12, at the Agency's Small Business Self-Employed Division in Philadelphia, Pennsylvania.

On July 11, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of race (African American), color (black), disability (mental), and in reprisal for prior protected EEO activity when:

1. Since October 23, 2023, the Agency attempted to coerce Complainant into signing a Declaration of Federal Employment Form (OF-306), improperly requiring him to undergo a background check, and threatened Complainant that he would not have access to the IRS computer system if he did not complete and sign the OF-306, even though he had been retroactively placed in the position by an EEOC Order.
2. On May 23, 2024, Complainant was issued a Letter of Admonishment (LOA) after declining to complete the OF-306.

The Agency subsequently dismissed the entire complaint on August 15, 2024. Regarding claim 1, the Agency dismissed this claim pursuant to 29 C.F.R. § 1614.107(a)(1) because the Agency found that Complainant's disagreement with the way the Agency implemented the Commission's remedial order constituted a collateral attack on the Commission's processes and consequently failed to state a claim. In reaching this conclusion, the Agency emphasized to Complainant that if he believed that the Agency failed to comply with the Commission's remedial order, his recourse was to file a petition for enforcement with the Commission, not file another EEO complaint with the Agency. As for claim 2, the Agency dismissed this claim pursuant to 29 C.F.R. § 1614.107(a)(4) because the Agency found that Complainant had already challenged the requirement to complete the OF-306 and the resulting LOA through the negotiated grievance process. The instant appeal followed.

### CONTENTIONS ON APPEAL

On appeal, Complainant argues that his discrimination complaint was improperly dismissed because the Agency mischaracterized the essence of his claim as a collateral attack against the Orders issued in a prior EEO matter. In this regard, Complainant argues that since the OF-306, background investigation, and LOA all occurred after the Commission's prior decision in EEOC Request No. 2023002188 (Aug. 15, 2023), they do not involve the same matters addressed in the Commission's prior decision. Complainant also disagrees with the Agency's decision to dismiss claim 2 based on Complainant's election to challenge the LOA through the negotiated grievance process and emphasizes that the Agency has not yet issued a decision regarding his grievance.

The Agency opposes the appeal and asserts that the final decision properly dismissed Complainant's complaint pursuant to § 1614.107(a)(1) and § 1614.107(a)(4).

### 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 (Mar. 13, 1997). Thus, all reasonable inferences that may be drawn from the complaint's allegations must be made in favor of the complainant.

### ANALYSIS

Regarding claim 1, we find that Complainant's claim was appropriately dismissed as a collateral attack on another proceeding in the equal employment opportunity (EEO) process. Complainant must challenge the Agency's alleged failure to implement the Commission's order in EEOC Request No. 2023002188 (Aug. 15, 2023) by filing a petition for enforcement with the EEOC, not by filing a separate administrative EEO complaint on the matter. See Clemente v. Dep't of Justice, EEOC Appeal No. 0120093279 (Oct. 14, 2010).

As for claim 2, our review of Complainant's formal complaint reveals that he challenged the issuance of the LOA through the grievance process on May 31, 2024, prior to filing his July 11, 2024, formal complaint of discrimination concerning the same issue. See Administrative File at 172-177. As Complainant elected the negotiated grievance process to challenge the LOA, we find that Complainant is precluded from pursuing the same matter under the EEO process. See Rolf v. Dep't of Def., EEOC Appeal No. 2024003365 (Oct. 23, 2024), citing 29 C.F.R. § 1614.301(a).

### CONCLUSION

Accordingly, we AFFIRM the Agency's final decision dismissing Complainant's 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)

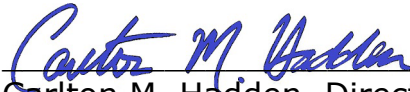
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department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



Carlton M. Hadden, Director  
Office of Federal Operations

February 18, 2025

Date