



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Shad R,¹
Complainant,

v.

Michelle King,
Acting Commissioner,
Social Security Administration,
Agency.

Appeal No. 2024005112

Agency No. OCO240359SSA

DECISION

Complainant timely appealed to the Equal Employment Opportunity Commission ("EEOC" or "Commission"), from the Agency's August 20, 2024 dismissal of 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., Section 501 of the Rehabilitation Act of 1973 ("Rehabilitation Act"), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 ("ADEA"), as amended, 29 U.S.C. § 621 et seq. Upon review, the Commission AFFIRMS 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.

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 a Lead Customer Service Representative, GS-9, for the Learning Center at the Agency's Office of Central Operations, in Baltimore, Maryland.

On May 7, 2024, Complainant filed a formal EEO complaint alleging that the Agency subjected him to discrimination, including a hostile work environment, on the bases of race (African-American), sex (male), disability (physical and mental), age (56), and reprisal for prior protected EEO activity when:

1. From on or around December 2022 to February 2023, Complainant was assigned significantly more complex cases than his coworkers;
2. From on or around December 2022 to February 2023, the Agency failed to make Complainant's assigned cases visible on eTrac on numerous occasions;
3. From on or around July 25, 2023, to on or around November 15, 2023, the Agency failed to complete the necessary insurance paperwork after Complainant was involved in an accident;
4. On or around September 29, 2023, Complainant was put on Telework restriction, requiring him to go into the office five (5) days a week; and
5. From on or around February 2023 to October 2023, the Agency failed to provide Complainant with his assistive device (chair) as detailed in his approved Reasonable Accommodation Request.

The Agency dismissed the matter pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely contact with an EEO Counselor. The Agency reasoned that Complainant identified November 15, 2023 as the last day he was subject to discriminatory harassment, but did not contact an EEO Counselor until January 28, 2024, more than 45 days later. The instant appeal followed.

CONTENTIONS ON APPEAL

Complainant contends that his complaint was timely raised because the alleged harassment did not conclude on November 15, 2023. Rather, Complainant contends that he told the EEO Counselor that he experienced an *ongoing* hostile work environment from December 2022 to present. As support, Complainant refers to the EEO Counselor's Report, which frames Complainant's complaint as alleging hostile work environment from December 2022 through present.

The Agency contends that the complaint was properly dismissed because Complainant's Formal EEO Complaint does not reference any harassment past November 15, 2023. The Agency further contends that even if Complainant raised incidents with the EEO Counselor that occurred after November 15, 2023, these incidents were abandoned, as they were not included in the Formal EEO Complaint. Such a claim would fail to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1).

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

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.

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).

Complainant’s Formal EEO Complaint, submitted through legal counsel, was comprised of the five claims listed above. The most recent event of alleged harassment occurred on November 15, 2023, more than 45 days prior to Complainant’s initial EEO contact on January 28, 2024. On appeal, Complainant, through legal counsel, repeatedly asserts that the hostile work environment was “ongoing” but offers no examples of harassment that occurred after November 15, 2023.

Looking to the EEO Counselor’s Report for clarification, we find no reference to a specific discriminatory incident that occurred within 45 days of January 28, 2024. Although the EEO Counselor’s Report indicates that the harassing event in Claim 1 (assigned significantly more complex cases) may have been ongoing, Complainant’s Formal EEO Complaint states that the allegation in Claim 1 ended in February 2023. There is no indication that the harassment was “ongoing” beyond November 15, 2023.

We note that simply alleging that the harassment is “ongoing” is not specific enough to state a claim. See Elfrieda v. United States Postal Serv., EEOC Appeal No. 2022000085 (Feb. 2, 2022) citing Carlan v. Dep’t of the Treas., EEOC Appeal No. 01A32447 (Aug. 1, 2003) (finding failure to state a claim due to lack of specificity where “Complainant has not identified when the events occurred, what happened, how she was directly disadvantaged, or how these matters altered the terms, conditions, or privileges of her employment”).

Likewise, we will not accept a generalized claim of “ongoing” harassment as a means of meeting the 45 day limitation period for EEO contact. See Farah S. v. Dep’t of the Navy, EEOC Appeal No. 2019001061 (Mar. 29, 2019).

The Commission finds it unnecessary to review the Agency’s alternative argument that the complaint should be dismissed pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim.

CONCLUSION

Accordingly, 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

February 11, 2025

Date