



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

████████████████████  
Ahmed S.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2024005138

Agency No. 200P-377-2024-159684

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated August 30, 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, the Commission AFFIRMS the Agency's dismissal decision.

ISSUE PRESENTED

Whether the Agency properly dismissed the complaint for untimely EEO Counselor contact.

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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

Until his removal in July of 2023, Complainant worked as a Veterans Service Representative, GS-0962-09 at the Agency's Regional Office in San Diego, California. Effective July 30, 2023, he was removed from his position as a result of a factfinding investigation into an incident that took place on May 30, 2023, and his responses to the inquiry on June 6, 2023. He was charged with conduct unbecoming, lack of candor, disruption in the workplace, and failure to follow instructions. The charges were set forth in a memorandum dated July 24, 2023.

At the time of his removal, Complainant had a previous EEO complaint pending: Agency No. 200P-377-3034-148925 (Agency No. 148925), in which he alleged that the Agency discriminated against him and subjected him to a hostile work environment between May 2022 and February 2023. The investigation of Agency No. 148925 was completed on June 6, 2023, and the investigative report for that complaint presented to the Regional EEO Officer.

On August 22, 2023, Complainant corresponded via email with an individual in the Agency's Office of Resolution Management, Diversity & Inclusion, whom he identified in his October 18, 2024 appeal brief as an EEO Counselor. The subject of the correspondence was Agency No. 148925. Complainant informed the Counselor that he had yet to receive any correspondence regarding the completion of his case. He mentioned that when he last attempted to voice concerns about the EEO process, the Agency decided to fabricate evidence for his removal. Further, he asked the Counselor to advise him on what rights he had.

On August 24, 2023, Complainant requested a hearing on Agency No. 148925. The matter was docketed as Hearing No. 480-2023-00476X and the Equal Employment Opportunity Commission Administrative Judge (AJ) issued an acknowledgement order on November 14, 2023.<sup>2</sup>

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<sup>2</sup> On September 29, 2024, the AJ issued a decision granting the Agency's motion for summary judgment, which the Agency adopted as its final order. Complainant appealed, and his appeal is currently pending before the Commission under EEOC Appeal No. 2025000457.

In an order setting the schedule for motions dated February 9, 2024, the AJ stated that at a status conference held that day, Complainant indicated that he wished to amend his complaint to include additional claims. The AJ further stated that Complainant could do so to the extent that the new issues or claims were like or related to those raised in Agency No. 148925. The AJ ordered Complainant to file a written motion to amend his complaint no later than February 20, 2024. In accordance with the AJ's order, Complainant filed his motion to amend on February 20, 2024, in which he set forth the following allegations:

1. The Agency discriminated against Complainant on the bases of race (African-American) and disability (Post-Traumatic Stress Disorder) when, on May 30, 2023, Complainant's work area was evacuated, and Complainant was detained, escorted out of the building, and placed on administrative leave.
2. The Agency discriminated against Complainant on the bases of race and disability when, on June 6, 2023, it conducted a fact-finding investigation rather than utilize an Administrative Investigation Board regarding the incident that occurred on May 30, 2023.
3. The Agency discriminated against Complainant on the basis of race when, on June 12, 2023, the Assistant Director fabricated evidence and added that false evidence to his investigative file in connection with the incident that occurred on May 30, 2023.
4. The Agency retaliated against Complainant for having filed EEO Agency No. 148925 by notifying him on July 24, 2023 that he would be removed from the federal service.

On May 16, 2024, the AJ issued an order denying Complainant's motion to amend his complaint, ruling that the new allegations were not like or related to the allegations set forth in Complaint No. 148925. That same day, Complainant contacted an EEO Counselor in connection with the above-referenced allegations. In accordance with the AJ's February 9, 2024 motion-scheduling order, the Agency identified the date of Complainant's initial EEO Counselor contact as February 20, 2024. On July 19, 2024, Complainant filed a formal EEO complaint raising those allegations.

In a notice dated August 27, 2024, the Agency dismissed the instant complaint. Using February 20, 2024 as the date of initial EEO Counselor contact in accordance with the AJ's order, the Agency determined that any event that occurred before January 6, 2024 would be untimely and subject to dismissal. According to the Agency, the initial contact to address the above-referenced allegations was untimely. The Agency found no grounds for extending the time limit set forth in 29 C.F.R. § 1614.105(b) or waiving the time limit on equitable grounds as permitted under 29 C.F.R. § 1614.604(f). This appeal followed.

### CONTENTIONS ON APPEAL

Complainant timely submitted two statements in support of his appeal: one on September 19, 2024 and the other on October 18, 2024. Throughout both statements, Complainant maintains that he met the timeliness requirement for contacting an EEO Counselor by corresponding with her on August 22, 2023 and by submitting his hearing request on August 24, 2023.

### 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 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

An aggrieved person must initiate contact with a 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. 29 C.F.R. § 1614.105(a)(1). Here, the most recent alleged discriminatory event was Complainant's removal from federal service. Complainant was notified by memorandum dated July 24, 2023, that the removal would be effective on July 30, 2023.

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. Carrol L. v. Dep't of Veterans Affairs, EEOC Appeal No. 2024004758 (Jan. 8, 2025) citing 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. Complainant's email conversation with the EEO Counselor on August 22, 2023, regarding the circumstances that led to his July 24, 2023 removal establishes that he had a reasonable suspicion of retaliation at that time. Therefore, Complainant had at the latest 45 days from August 22, 2023, within which to contact an EEO Counselor and pursue his claims. We note, however, that Complainant did not pursue his EEO complaint regarding his removal at that time, waiting instead until he was at the hearing level on his prior complaint to raise the subject issues. Due to the AJ's February 9, 2024 order, Complainant was deemed for timeliness purposes to have initially contacted an EEO Counselor on February 20, 2024, clearly more than 45 days following when Complainant reasonably suspected discrimination.

The agency or the Commission shall extend the 45-day time limit in paragraph (a)(1) of this section when the individual shows that he or she was not notified of the time limits and was not otherwise aware of them, that he or she did not know and reasonably should not have been known that the discriminatory matter or personnel action occurred, that despite due diligence he or she was prevented by circumstances beyond his or her control from contacting the counselor within the time limits, or for other reasons considered sufficient by the agency or the Commission. 29 C.F.R. § 1614.105(a)(2). In addition, the time limits in Part 1614, including the 45-day time limit for contacting an EEO Counselor are subject to waiver, estoppel and equitable tolling. 29 C.F.R. § 1614.604(f).

On appeal, Complainant has presented no persuasive arguments or evidence that would justify an extension or waiver of the time limit for initiating EEO Counselor contact on any of the regulatory grounds listed above.

#### 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).

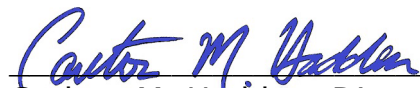
#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0124)

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 18, 2025

Date