



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
James R,¹
Complainant,

v.

Pamela Bondi,
Attorney General,
Department of Justice
(Federal Bureau of Prisons),
Agency.

Appeal No. 2025000051

Agency No. BOP-2024-000746

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated September 24, 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. For the reasons set forth herein, we AFFIRM the Agency's final decision.

ISSUES PRESENTED

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

BACKGROUND

During the period at issue, Complainant worked as a Correctional Officer at the Agency's Federal Correctional Institution in Phoenix, Arizona.

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 June 9, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the basis of reprisal.

In its final decision, the Agency determined that Complainant's complaint was comprised of the following claim:

On March 25, 2024, [Complainant was] wrongfully terminated from [his] Correctional Officer position based on reprisal.

The Agency dismissed Complainant's complaint for failure to state a claim. The Agency reasoned that Complainant does not allege that he opposed any discriminatory actions of the Agency and there is no record of Complainant previously participating in the EEO process. Final Agency Decision at 2.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant requests that we reverse the Agency's final decision. Complainant asserts that the Agency fabricated reasons to terminate his employment while in probationary status. Complainant alleges that the Agency is violating the "master agreement." Finally, Complainant alleges other Agency employees have engaged in excessive drinking and excessive force. In addition, he asserts that a named Agency official "had several pending sexual harassment/cyberstalking allegations against him and is forbidden from working around certain female staff." Complainant's Statement on Appeal at 1.

In response, the Agency requests that we affirm its final decision dismissing Complainant's complaint. The Agency reiterates that Complainant's sole basis of his complaint is reprisal and that he does not have any prior protected EEO activity. Agency Brief at 2.

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. § 1614.107(a)(1) provides that an agency shall dismiss a complaint that fails to state a claim under 29 C.F.R. § 1614.103.

To state a viable claim of unlawful retaliation in the EEO complaint process, an individual must initially assert that they 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.

The Agency properly dismissed Complainant's complaint for failure to state a claim. Formal complaints which fail to identify a purview under EEO laws must be dismissed for failure to state a claim. See Alisa M. v. U.S. Postal Serv., EEOC Appeal No. 2021003515 (July 8, 2021); Almeda B. v. Dep't of Veterans Affairs, EEOC Appeal No 0120162291 (Oct. 16, 2016). In the Request for EEO Counseling form, Complainant lists reprisal as the sole basis of his claim. In this document, he further asserts that that the Agency terminated him over false accusations. Complaint File at 64.² The EEO Counselor's Report also reflects that Complainant only raised the basis of reprisal. The Counselor's Report further sets forth that Complainant had no prior protected EEO activity. Complaint File at 39. Finally, in his formal complaint, Complainant listed reprisal as his sole basis and sets forth that the Agency was making false accusations regarding his removal.

Complainant has not alleged that he engaged in prior protected EEO activity. Complainant's allegations that the Agency violated the master agreement or was fabricating accusations against him does not constitute prior protected EEO activity.

² Our citations to the Complaint File reference the page number of the pdf document before us on appeal.

Moreover, regarding Complainant's assertion, on appeal, that an Agency Official had pending sexual harassment allegations against him, Complainant does not allege that he reported or opposed these allegations of sexual harassment. Rather, Complainant appears to be raising these matters as background information to his complaint. Based on the foregoing, we find Complainant has not alleged that he was subjected to reprisal based on prior protected EEO activity.

CONCLUSION

Accordingly, for the reasons set forth herein, 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)

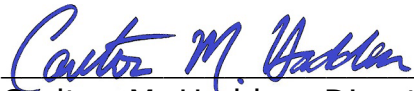
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department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

March 4, 2025

Date