



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

[REDACTED]  
Shameka M,<sup>1</sup>  
Complainant,

v.

Mark Averill,  
Acting Secretary,  
Department of the Army,  
Agency.

Appeal No. 2025000059

Agency No. ARCENYC24MAY001719

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated September 4, 2024, dismissing 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. For the reasons set forth herein, we MODIFY that Agency's final decision.

**ISSUES PRESENTED**

Whether the Agency's final decision properly dismissed Complainant's complaint on procedural grounds.

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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

During the period at issue, Complainant worked for the Agency as a Staff Accountant in Brooklyn, New York. On August 11, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on race (Chinese) and in reprisal for prior protected EEO activity.

The Agency's September 4, 2024 final decision framed Complainant's claims in the following fashion:

Complainant alleged she was subjected to discrimination on the bases of race<sup>2</sup> and reprisal when:

1. Pressure from Supervisor to perform Quality Assurance (QA) duties and other duties.
2. Unwarranted Memorandum for the Record (MFR).
3. On May 2, 2024, despite being qualified and referred to the hiring official, she was not contacted for an interview for the Financial Manager Position (GS-14) at New York District, where [two named Agency officials] were on the interview panel. She received a Notice of Results on May 4, 2024, indicating that she was not selected for the position.
4. False statements regarding her performance, hindering her reasonable accommodation request.<sup>3</sup>
5. Gaslighting and demanding assistance for other staff.<sup>4</sup>

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<sup>2</sup> The record reflects that Complainant raised race as a basis in her formal complaint, but the Agency did not include this basis in its final decision. Complaint File at 6, 21.

<sup>3</sup> Complainant alleged that the Agency, in an internal memo, falsely claimed that her medical condition prohibited her from performing her essential duties. Complaint File at 10.

<sup>4</sup> Complainant lists various allegations regarding this matter: conflicting demands from different supervisors, management wrongfully associating her with the QA team, not receiving proper acknowledgment for her work etc.

6. Workstation was reassigned to the new Staff Accountant.
7. Lowered performance appraisal ratings.
8. Unfair workload distribution.

The Agency dismissed claims (1), (2), (4-8) on the grounds that the Commission had addressed these matters in a prior EEO complaint, Agency Case No. ARCENYC22AUG03508. Complaint File at 21.

The Agency dismissed claim (3), the non-selection claim, for failure to state a claim reasoning that there is no information Complainant was treated differently than any other candidate. Complaint File at 22.

The instant appeal followed.

#### CONTENTIONS ON APPEAL

On appeal, Complainant alleges the Agency improperly dismissed her complaint. Complainant discusses claim (3) on the merits. In addition, Complainant reiterates that she has been subjected to a hostile work environment and retaliation.

In response, the Agency asserts that Complainant raised claims of retaliation and breach of a settlement agreement both in the instant matter and a prior appeal before the Commission, EEOC Appeal No. 2024004242. Thus, the Agency asserts that we should affirm its final decision in the instant matter for Complainant having raised some of these same claims in a prior complaint. Regarding claim (3), the Agency asserts that there is no nexus between Complainant's prior protected activity and the non-selection.

#### 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

#### *Dismissal of Claims (1), (2), (4)-(8)*

To the extent Complainant is alleging breach of a settlement agreement with respect to these matters, we find that these matters are properly dismissed. Complainant raised her breach allegations in a prior EEO complaint, Agency Case No. ARCENYC22AUG03508. The Agency issued a final decision on this matter finding no breach. Complainant appealed to the Commission's Office of Federal Operations, which is pending in EEOC Appeal No 2024004242.

To the extent, however, that Complainant is alleging race discrimination and retaliation in the instant complaint regarding incidents (1), (2), and (4)-(8), we find that the Agency improperly dismissed these matters for having been previously decided by the Commission. We acknowledge that Complainant raised allegations of retaliation and being subjected to a hostile work environment, on appeal for a prior case, EEOC Appeal No. 2024004242. However, in EEOC Appeal No. 2024004242, we *only* addressed Complainant's allegations of breach. We did *not* address Complainant's allegations of discrimination and/or retaliation subsequent to the execution of the settlement agreement. Specifically, in EEOC Appeal No. 2024004242, we set forth that Complainant filed a subsequent complaint alleging retaliation, Agency Case No. ARCENYC24MAY001719 (the instant complaint before us), and that Complainant appealed this matter to OFO which was docketed as the instant appeal. In addition, in EEOC Appeal No. 2024004242, we further set forth that "29 C.F.R. § 1614.504(c) provides that claims that subsequent acts of discrimination violate a settlement agreement shall be processed as separate complaints."

#### *Dismissal of Claim (3)*

The only questions for an agency to consider in determining whether a complaint states a claim are: (1) whether complainant is an aggrieved employee; and (2) whether complainant raises employment discrimination on a basis covered by EEO statutes. If these questions are answered in the affirmative, an agency must accept the complaint for processing regardless of its judgment of the merits. See *Odoski v. Dep't of Energy*, EEOC Appeal No. 01901496 (April 16, 1990).

We find that the Agency improperly dismissed claim (3) for failure to state a claim. In the instant matter, Complainant is alleging that she was not called for an interview and subsequently not selected for a position based on her protected EEO classes (reprisal and race). Thus, she has set forth an actionable claim.

To the extent that the Agency is alleging that Complainant was treated the same as other candidates in terms of scoring for the position and that she has not set forth a nexus between her prior protected EEO activity and this claim, we find these assertions go to the merits of complainant's complaint, and is irrelevant to the procedural issue of whether she has stated a justiciable claim. See Osborne v. Dep't of the Treasury, EEOC Request No. 05960111 (July 19, 1996); Lee v. U.S. Postal Serv., EEOC Request No. 05930220 (August 12, 1993); Ferrazzoli v. U.S. Postal Serv., EEOC Request No. 05910642 (August 15, 1991).

#### CONCLUSION

Accordingly, to the extent Complainant is alleging breach of a settlement agreement, we AFFIRM the Agency's final decision dismissing these matters. However, for the reasons set forth herein, we REVERSE the remainder of Complainant's complaint and REMAND these matters to the Agency for further processing in accordance with 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)

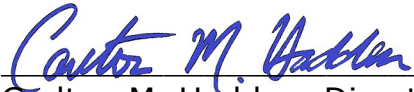
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from 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 4, 2025

Date