



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

[REDACTED]
Concepcion M,¹
Complainant,

v.

Gary Ashworth,
Acting Secretary,
Department of the Air Force,
Agency.

Appeal No. 2025000169

Agency No. 4L0J2400665

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated October 7, 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 REVERSE the Agency's final decision dismissing Complainant's complaint.

ISSUES PRESENTED

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

BACKGROUND

During the period at issue, Complainant worked as a Production Controller at Altus Air Force Base in Oklahoma. On July 31, 2024, Complainant initiated 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.

Informal efforts to resolve her concerns were unsuccessful. On September 18, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of sex (female) and reprisal (unspecified).²

The Agency's final decision framed Complainant's claims in the following fashion:

Whether Complainant was discriminated against when:

- a. On or about August 2023 to April 2024, [Complainant's supervisor] did not appropriately give [her] proper guidance and training required to complete scheduling and additional duties, including completing GPC training.
- b. On or about April 2024, [Complainant's supervisor] rated [her] lower than deserved on annual 2024 appraisal with no previous documented disciplinary actions or warning because of his lack of knowledge in that area.
- c. On or about August 2023 to September 2024, [Complainant's supervisor] continuously refused to professionally communicate with [her] on multiple occasions by not giving [her] complete details, instead making [her] hunt them down to finish the task and taking time away from [her] duties to not be able to complete] [them] within the deadline, creating a toxic work environment.
- d. On or about August 2023 to August 2024, [Complainant's supervisor] denied [her] multiple requests to work an eight-hour straight shift, although approving two front office male co-workers daily straight shifts and then put [her] on leave restriction status with no previous written or verbal warnings.
- e. On August 16, 2024, [a named Agency official] did not properly address [Complainant's supervisor's] alleged behavior.³

² Complainant listed reprisal as a basis in her formal complaint. However, the Agency did not set forth this basis in its final decision.

³ We refer to this claim as claim (e) herein. The Agency's final decision refers to this claim as both claim ii(a) and claim (e). Complaint File at 104.

The Agency's final decision dismissed incidents (a) and (b) for untimely EEO Counselor contact. The Agency reasoned that these matters occurred more than 45 days before Complainant's EEO contact. Complaint File at 104.

The Agency also dismissed claim (c) for failure to state a claim reasoning that no specific information was provided to support its connection to the alleged basis. Id.

Finally, the Agency dismissed incidents (d) and (e) on the grounds that Complainant previously raised these matters in the grievance process. Id.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant requests that we reverse its final decision dismissing her complaint. Complainant reiterates that various events comprising her hostile work environment claim are ongoing/continuous. In addition, Complainant states that while she filed a grievance pertaining to the issue of being placed on leave restriction, she did not raise, in the grievance process, the issue of being denied straight eight-hour shifts.

The Agency did not submit a statement or brief in opposition to Complainant's appeal.

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 Incidents (d) and (e) for Previously Raising These Matters in the Grievance Process

The regulation at 29 C.F.R. § 1614.107(a)(4) provides that an agency may dismiss a complaint where the complainant has raised the matter in a negotiated grievance procedure that permits claims of discrimination. EEOC Regulation 29 C.F.R. § 1614.301(a) provides that when a person is employed by an agency subject to 5 U.S.C. 7121(d) and is covered by a collective bargaining agreement that permits allegations of discrimination to be raised in a negotiated grievance procedure, a person wishing to file a complaint or grievance on a matter of alleged employment discrimination must elect to raise the matter under Part 1614 or the negotiated grievance procedure, but not both.

The Agency improperly dismissed incidents (d) and (e) for having previously raised these matters in the grievance process. We acknowledge that the record contains a copy of a Step 1 Grievance dated August 29, 2024, regarding the alleged matter set forth in incident (e). Complaint File at 96-97. In addition, the record contains a copy of a Step 2 Grievance, dated September 17, 2024, regarding Complainant being placed on leave restriction, a portion of the alleged incident set forth in claim (d). Complaint File at 98-99.

The record, however, does not contain a copy of the relevant provisions of the collective bargaining agreement.⁴ We are therefore unable to determine whether the negotiated grievance process allowed for claims of discrimination to be raised. See Irwin R. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120180492 (Feb. 15, 2018) (reversing the Agency's dismissal for complainant having raised these matters in the negotiated grievance process reasoning that the record did not contain a copy of the collective bargaining agreement indicating whether it allowed claims of discrimination to be raised).

⁴ The record contains a memorandum from the Agency's Labor Law Field Support Center to the Agency's EEO Office providing a legal review of the proposed dismissal regarding Complainant's complaint. The memorandum recommended, in pertinent part, that the Agency include in the record the provisions of the collective bargaining agreement pertaining to discrimination claims being raised in the grievance process. Complaint File at 25. However, the record does not contain a copy of these relevant provisions.

Dismissal of Incident (c) for Failure to State a Claim

As an initial matter, we find that Complainant is alleging a hostile work environment claim comprised of various incidents. We find that the Agency fragmented Complainant's hostile work environment by not viewing the alleged incidents collectively.

In Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993), the Supreme Court reaffirmed the holding of Meritor Sav. Bank v. Vinson, 477 U.S. 57, 67 (1986), that harassment is actionable if it is sufficiently severe or pervasive to alter the conditions of a complainant's employment. The Court explained that an "objectively hostile or abusive work environment [is created when] a reasonable person would find [it] hostile or abusive;" and the complainant subjectively perceives it as such. Harris, supra at 21-22. Thus, not all claims of harassment are actionable. Where a complaint does not challenge an agency action or inaction regarding a specific term, condition or privilege of employment, a claim of harassment is actionable only if, allegedly, the harassment to which the complainant has been subjected was sufficiently severe or pervasive to alter the conditions of the complainant's employment.

A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the complainant cannot prove a set of facts in support of the claim which would entitle the complainant to relief. The trier of fact must consider all of the alleged harassing incidents and remarks, and considering them together in the light most favorable to the complainant, determine whether they are sufficient to state a claim. Cobb v. Dep't of the Treasury, EEOC Request No. 05970077 (Mar. 13, 1997).

Complainant is alleging that she was subjected to harassment comprised of incidents (a)-(e) when her supervisor: continuously failed to provide her proper guidance and training to perform her duties; gave her a low performance appraisal and placed her on a performance improvement plan (PIP); placed her on leave restriction, denied her straight eight-hour shifts, and management failed to take appropriate action regarding the alleged harassment by her supervisor. When viewing the alleged incidents collectively, we determine that Complainant has set forth an actionable claim of harassment.

Dismissal of Incidents (a) and (b) for Untimely EEO Counselor Contact

EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination should be brought to the attention of the Equal Employment

Opportunity Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) days of the effective date of the action. 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. See 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.

EEOC Regulations provide that the agency or the Commission shall extend the time limits when the individual shows that she was not notified of the time limits and was not otherwise aware of them, that she did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence she was prevented by circumstances beyond her control from contacting the Counselor within the time limits, or for other reasons considered sufficient by the agency or the Commission.

As set forth above, Complainant alleges that she was subjected to a hostile work environment by her supervisor. The Commission has held 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 of the filing period that [Complainant] knew or should have known were actionable at the time of the occurrence." EEOC Compliance Manual, Section 2, Threshold Issues at 2-75 (rev. July 21, 2005) (citing National Railroad Passenger Corp v. Morgan, 536 U.S. 101, 117 (2002)).

In the instant matter, several of the alleged incidents occurred within the 45 days preceding Complainant's initial EEO contact on July 31, 2024. Complainant has repeatedly alleged that she was denied proper training and guidance on an ongoing basis. Complaint File at 86-87. In addition, Complainant alleges that she has continuously been denied straight eight-hour shifts. Moreover, the record contains a memorandum, dated July 24, 2024, to Complainant from her supervisor informing her that if her performance did not improve within 90 calendar days, she could be subject to various actions, including removal. Based on the foregoing, we find that incidents (a) and (b) were timely raised as part of Complainant's ongoing hostile work environment claim.

CONCLUSION

For the reasons set forth herein, we REVERSE the Agency's final decision dismissing Complainant's complaint and we REMAND this matter 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 (R0124)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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 filed your appeal with the Commission. 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. **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 26, 2025
Date