



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

[REDACTED]
Sylvester C.,¹
Complainant,

v.

Terence Emmert,
Acting Secretary,
Department of the Navy,
Agency.

Appeal No. 2025000297

Agency No. 24-00070-00508

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated October 21, 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, we AFFIRM the Agency's decision to dismiss the complaint.

ISSUE PRESENTED

Whether the Agency properly dismissed the complaint.

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 worked as a Human Resources Specialist, GS-0201-09, at the Agency's Puget Sound Naval Shipyard and Intermediate Maintenance Facility in Bremerton, Washington.

On April 25, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of sex, disability (mental and physical), and in reprisal for prior protected EEO activity when:

1. On or about March 15, 2022, and April 5, 2022, the Deputy General Counsel withheld both the harassment investigation summary and the final draft of the investigation until November 18, 2022.
2. On or about June 1, 2022, the Deputy General Counsel received a request that the Agency return documents relevant to 22-41137-00433, and then subsequently deleted Complainant's emails and work samples, seven days later on June 8, 2022.
3. On or about July 13, 2022, the EEO Director advised the Supervisory Labor/Employee Relations (LER) Specialist to delay convening a Reasonable Accommodation Advisory Team (RAAT) at a time when Complainant was waiting on an accommodation for six months without response, resulting in a RAAT never being convened before his termination.
4. On or about July 31, 2023, the Supervisory LER signed a declaration attributing misconduct to Complainant when he implied that Complainant sexually harassed another employee and disclosed his sexual orientation.
5. On or about August 8, 2023, an EEO Specialist signed a declaration stating that the Complainant's supervisor was "very patient" with Complainant and that Complainant was "accommodated," knowing he was not being paid, was not being assigned work, and was having his time recorded as absence without leave (AWOL).
6. On or about March 1, 2023, through January 21, 2024, the Deputy EEO Director failed to provide Complainant with reasonable time to rebut management declarations, resulting in nine declarations being excluded

from the respective reports of investigations for which they were written.

7. On or about November 18, 2022, and January 21, 2024, the Deputy EEO Director closed the investigation four months early excluding relevant material including data on vacant, funded positions run during Complainant's tenure, telework data, and Complainant's declarations.
8. On or about May 3, 2022, through May 21, 2024, Agency Counsel refused to communicate with Complainant regarding his EEO complaint (22-41137-00433).
9. On or about April 3, 2023, and the present day, the OEEO Director has continued to withhold Complainant's Final Agency Decision for more than 336 days, and counting, without any justifiable reason for doing so.

The Agency ultimately dismissed the complaint, pursuant to 29 C.F.R. § 1614.107(a)(8). In doing so, the Agency reasoned that the claims alleged dissatisfaction with the processing of a previously filed complaint. The Agency explained that the complaint primarily focused on issues related to the handling and processing of an earlier complaint rather than introducing new claims of discrimination or harassment. The instant appeal followed.

CONTENTIONS ON APPEAL

Complainant on Appeal

On appeal, Complainant asserts that the dismissal notice did not discuss how the Agency arrived at the conclusion that the complaint raised a spin-off complaint and did not make distinctions between each claim. Complainant contends that the claims relate to his membership in protected classes and/or reprisal for protected activities and not dissatisfaction with the EEO process. He focuses on claims 1-5 and 9.

Regarding claim 1, Complainant avers that the Agency subjected him to a hostile work environment as a direct result of the allegations of disability discrimination that he raised in EEOC Appeal No. 2024004195 (Mar. 4, 2025). According to Complainant, the Agency conducted an internal investigation into his allegations of a hostile work environment and substantiated his allegations.

However, the Agency withheld this document from him for seven months. Complainant alleges that when he contacted the Agency's EEO Office to file a new EEO complaint regarding the withholding of the internal investigation report, the Agency avoided including this allegation. Complainant emphasizes that his allegation in claim 1 does not allege dissatisfaction with the handling of his prior EEO complaint. To the contrary, he argues that "it concerns the handling of an HWE Investigatory Summary that was produced outside the EEO administrative complaint process and violations of Department of Defense Instruction 1020.04, "Harassment Prevention and Responses for Civilian Employees."

For claim 2, concerning Complainant's allegation that the Deputy General Counsel deleted Complainant's emails and work samples, Complainant notes that in Appeal Nos. 2024003853 and 2024004195, he filed a motion to sanction the Agency for the Deputy General Counsel's conduct. Complainant emphasizes that no decision on his motion has been reached at the time he filed his brief in the instant appeal.

As to claim 3, Complainant states that the claim refers to a sequence of facts that occurred during investigations into the complaints in Appeal Nos. 2023002880, 2024003210, 2024003853, and 2024004195, and was not previously raised or investigated as a claim. With respect to claims 4 and 5, Complainant states that the allegations pertain to declarations from a Supervisor and an EEO Specialist. As to claim 9, Complainant argues that the Agency wrongly withheld a final decision on his prior EEO complaint with no justification.

According to Complainant, the only common threads with issues that might represent dissatisfaction with the handling of a prior complaint are the claims that involve declarations signed during the investigation into a prior complaint or the claims that involve facts that occurred during an investigation into an unrelated complaint. Complainant, however, maintains that the claims are not spin-off claims because the incidents occurred in retaliation for filing an EEO complaint.

Agency Response

The Agency argues that Complainant should be barred from using a subsequent appeal, additional resources, and additional time and effort to raise issues that are discussed in, and more appropriately belong in an appeal that is pending a decision before the Commission.

The Agency contends that Complainant addressed claims 1, 2, and 3 in another currently pending appeal and/or previous motions for sanctions. Regarding claims 4 and 5, the Agency asserts that the claims are clear examples of Complainant's dissatisfaction with the processing of his prior EEO complaint, as both declarations were part of the investigative file in the prior EEO complaint. The Agency argues that Complainant did not offer any arguments in his brief regarding why claims 6 and 7 should survive. Similarly, Complainant did not offer any support for the survival of claim 8. Finally, the Agency contends that Complainant used claim 9 as a basis for requesting sanctions against the Agency and the claim represents dissatisfaction with the processing of the final decision, which he addressed in his appeal of the final decision. The Agency notes that this appeal has been docketed as EEOC Appeal No. 2023002880.

The Agency argues that even if the Commission concludes that the complaint is not a spin-off complaint, the Commission should affirm the dismissal because Complainant failed to state a claim by failing to prove prima facie claims of harassment, discrimination, and per se reprisal.

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 Treas., 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

As an initial matter, we note that Complainant only addresses four claims on appeal and does not challenge claims 6-8. The Commission exercises its discretion to address only those issues specifically raised on appeal and declines to address the remaining procedural dismissals. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110) at Chap. 9 § IV.A (Aug. 5, 2015).

Dismissal of Claims 1-5 and 9

Our regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that the Agency shall dismiss a complaint that fails to state a claim or states the same claim that is pending before or has been decided by the Agency or Commission. Our regulation at § 1614.107(a)(8) also directs the Agency to dismiss complaints that allege dissatisfaction with the processing of a previously filed complaint.

In this case, claim 1 involves an investigative summary that was developed outside of the EEO process. To the extent Complainant expresses dissatisfaction with the Agency's failure to provide him with a copy of the internal investigation, we note that the Commission has held that an employee cannot use the EEO complaint process to lodge a collateral attack on another adjudicatory proceeding. See Janeen S. v. Dep't of Vet. Affs., EEOC Appeal No. 2022003055 (Oct. 20, 2022), req. for recons. den., EEOC Request No. 2023000829 (July 27, 2023). Complaints involving internal investigations do not state a claim within the meaning of the Commission's regulations. See William G. v. Dep't of Def., EEOC Appeal No. 2021005151 (Jan. 20, 2022). As such, the Agency's failure to provide him with a copy of the internal investigative summary should be addressed through the Agency's processes for obtaining records of internal investigations.

As Complainant acknowledges that he previously raised similar allegations regarding the Deputy General Counsel's conduct in claim 2, we shall also dismiss this claim pursuant to § 1614.107(a)(1). Similarly, Complainant's arguments in claim 3 and 9, regarding the curtailment of the interactive process and delay in issuing the final decision were addressed in EEOC Appeal No. 2024004195 (Mar. 4, 2025) and EEOC Appeal No. 2023002880 (Apr. 22, 2024), respectively. As these claims relate to matters that were addressed in prior EEO complaints, we find § 1614.107(a)(1) to be applicable and shall dismiss them.

With respect to claims 4 and 5, we note that the Commission has long held that an allegation of discrimination and/or unlawful retaliation directly stemming from an agency's legal defense of a previously filed EEO complaint fails to state an independent actionable claim and is properly dismissed under either 29 C.F.R. § 1614.107(a)(1), as a collateral attack on the adjudicatory processing of the prior complaint, or under 29 C.F.R. § 1614.107(a)(8), as an allegation of dissatisfaction with the processing of the previously filed complaint. See Fredda J. v. Dep't of Treas., EEOC Appeal No. 2023003984 (Dec. 20, 2023).

The Commission has also held that “[a]n absolute privilege is provided for statements made as part of a judicial or administrative proceeding.” McBride v. Dep’t of Justice, EEOC Appeal No. 07A00010 (Jan. 16, 2001).

We ultimately find that the Agency properly dismissed these claims. Because the claims relate to declarations made during an investigation into an earlier complaint, the Agency properly determined that the claims represented dissatisfaction with the EEO process. While Complainant argues that the claims do not reflect dissatisfaction with the EEO process, the claims certainly reflect dissatisfaction with declarations made in connection with complaints that have already been processed. Therefore, we find that the Agency properly dismissed the claims.

CONCLUSION

Accordingly, we AFFIRM the Agency’s final decision dismissing the 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)

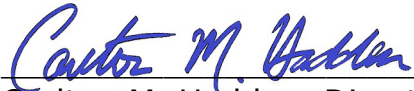
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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 6, 2025

Date