



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

[REDACTED]  
Susan M.,<sup>1</sup>  
Complainant,

v.

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

Request No. 2025000374

Appeal No. 2022001003

Agency No. DON 21-68520-00305

**DISMISSAL OF REQUEST FOR RECONSIDERATION**

Complainant requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 2022001003 (June 12, 2023). EEOC Regulations provide that the Commission may, in its discretion, grant a request to reconsider any previous Commission decision issued pursuant to 29 C.F.R. § 1614.405(a), where the requesting party demonstrates 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. See 29 C.F.R. § 1614.405(c).

The record reveals that on April 5, 2021, Complainant filed a formal complaint alleging that the Agency subjected her to sexual harassment on the basis of sex (female). In support of this claim, she raised the following allegations:

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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.

1. In January 2020, the Rear Admiral (male) asked her to do him a favor by speaking to her husband on a matter and suggested she wear sexy lingerie to persuade him.
2. On several occasions in or around August 2020, when the Rear Admiral gave her a "high-five," he interlaced his fingers with hers.
3. In October 2020, while the Rear Admiral was recalling a story, he demonstrated the event that had taken place by turning her around and placing his back to her back.
4. In October or November 2020, the Rear Admiral, while standing by her desk, asked if a picture of her was a profile picture or a "porn" picture.
5. In November 2020, the Rear Admiral asked her what was wrong with her hair, commenting that, "it looked like you had a little morning action." When Complainant told him that she had had her hat on, he again alluded to her sex life.
6. On December 6, 2020, the Rear Admiral grabbed her face and kissed her on the mouth.

The Agency issued a decision finding that Complainant had proven her allegations of unlawful sexual harassment. However, the Agency also found that Complainant failed to demonstrate a basis for imputing liability to the Agency.

Complainant appealed the Agency's decision to the Commission. In EEOC Appeal No. 2022001003 (June 12, 2023), the Commission reversed the Agency's decision. We found the Agency could not establish its affirmative defense and thus, was liable for the harassing conduct of Rear Admiral which was sufficient to create a hostile and offensive work environment. As a result, we ordered the Agency to conduct a supplemental investigation on compensatory damages, provide training for management, consider taking appropriate disciplinary action against the Rear Admiral, and post a notice of a finding of discrimination.

By regulation, requests must be filed within 30 calendar days after the party receives the previous decision. 29 C.F.R. § 1614.405(b). A document is timely if it is received or postmarked before the expiration of the applicable filing period or, in the absence of a legible postmark, if it is received by mail

within five days of the expiration of the applicable filing period. 29 C.F.R. §1614.604(b).

Complainant admitted receiving notification of the Commission's decision on June 12, 2023. Complainant filed her request, arguably at the earliest, on May 1, 2024, which was beyond the 30-day limit set by regulation. Complainant acknowledges her request was untimely, but proceeds to take issue with some of the remedial provisions from the decision on appeal, i.e., the placement of the posting and who should receive training. To the extent Complainant is claiming she did not receive accurate notice of her rights, we find the prior decision properly advised Complainant of her appellate rights, including her right to file a request for reconsideration. To the extent she is claiming she timely filed her request after receiving the Commission's June 18, 2024 letter notifying her that compliance by the EEOC was closed on EEOC Appeal No. 2022001003, we note the Commission's compliance closure letter was not an appellate decision; nor were there any appeal rights contained in the closure letter. Upon review, we find Complainant failed to provide adequate justification for an extension of the applicable time limit for filing her request for reconsideration.

For the foregoing reasons, Complainant's request is DISMISSED. The decision in EEOC Appeal No. 2022001003 remains the Commission's decision and therefore, we reinstate the relief ordered in that decision. There is no further right of administrative appeal on the decision of the Commission on this request.

#### ORDER

To the extent that the Agency has not taken the previously ordered remedial actions, the Agency shall:

1. Within 90 days of the date this decision is issued, the Agency shall conduct a supplemental investigation with respect to Complainant's claim of compensatory damages related to the finding of sexual harassment in the instant decision. The Agency shall allow Complainant to present evidence in support of her compensatory damages claim. See Carle v. Dep't of the Navy, EEOC No. 01922369 (Jan. 5, 1993). Complainant shall cooperate with the Agency in this regard. The Agency shall issue a final decision addressing the issues of compensatory damages and costs, no later than 30 days after the completion of the investigation.

2. Within 90 days of the date this decision is issued, the Agency shall provide training for the management at its Naval Air Systems Command (NAVAIR), Commander, Fleet Readiness Centers (COMFRC) in Patuxent River, MD, particularly regarding recognizing a hostile work environment. The Agency shall address management's responsibilities with respect to eliminating harassment in the workplace.
3. Within 60 days of the date this decision is issued, and to the extent it has not already done so, the Agency shall consider taking appropriate disciplinary action against Rear Admiral. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If Rear Admiral leaves the Agency's employment, then the Agency shall furnish documentation of his departure date.
4. Within 30 days of the date this decision is issued, the Agency shall post notices in accordance with the paragraph below.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation of evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Naval Air Systems Command (NAVAIR), Commander, Fleet Readiness Centers (COMFRC) in Patuxent River, MD facility copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. §1614.403(g).

### ATTORNEY'S FEES (H0124)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), they are entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of receipt of this decision. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

### 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.

#### 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 his or her 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

February 12, 2025

Date