



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

[REDACTED]
Alden G,¹
Complainant,

v.

Kristi L. Noem,
Secretary,
Department of Homeland Security
(Customs and Border Protection),
Agency.

Appeal No. 2024-00-2331

Agency No. HS-CBP-01789-2021

DECISION

Complainant filed an appeal to the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's final decision concerning his equal employment opportunity (EEO) complaint alleging 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 the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission AFFIRMS the Agency's final decision.

At the time of events giving rise to this complaint, Complainant was employed by the Agency as a CBP Officer-Enforcement, GS-12, assigned to the Criminal Enforcement Unit at Miami International Airport in Miami, Florida.

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.

Complainant filed an EEO complaint alleging discrimination by the Agency on the bases of sex (male), age (over 40), and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 when:

1. On June 11, 2019, management sent an email to the Enforcement Unit, telling them that they were to share their office with the Tactical Terrorism Response Team (TTRT).
2. Since on or about November/December 2019, and continuing, the Port Director (PD), Assistant Port Director (APD), and Watch Commander (WC), have kept the Enforcement Officers from acquiring a second unmarked vehicle for surveillances and court duties.
3. On February 27, 2020, in a meeting with the Enforcement Unit, the WC stated, "All I have to do is make a phone call and have the Enforcement Unit dissolved;" and "You are all Alpha Males here, and this Unit is not going to work."
4. Since April 2021, the WC, denied the Enforcement Unit overtime opportunities and opportunities to conduct offsite law enforcement activities.
5. On April 1, 2021, management issued an email implementing the policy that Enforcement Officers are not to conduct surveillance on their own targets/cases, thereby eliminating Enforcement Officer job duties and preventing them from doing their job of developing their own targets/criminal cases.
6. Since June 2021, the APD stated: "If it was up to me, I would not promote anyone over the age of 40"; "You are all going to be gone in 5 years"; and "Do you want me to leave them alone for the rest of their years here?"
7. On July 8, 2021, a Supervisory CBP Officer (SCBPO) sent Complainant home at approximately 8:30 p.m., while he was in the middle of waiting for a decision by the Assistant U.S. Attorney regarding a criminal investigation case he had presented, and Complainant was not paid overtime between 7:30 p.m. and 8:30 p.m.
8. On July 13, 2021, the PD, APD, and WC held a meeting with the Enforcement Unit and proposed changes to assigned duties.
9. Since August 4, 2021, management has utilized unqualified CBP Officers/SCBPOs to conduct criminal arrests to avoid paying Enforcement Officers overtime.
10. Since October 24, 2021, Enforcement Officers have been placed on different shifts in an effort to disband the Enforcement Unit.

The Agency issued a decision concluding that Complainant did not prove that the Agency subjected him to discrimination as alleged. Complainant then filed the instant appeal.

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at 9-16 (Aug. 5, 2015) (explaining that the de novo standard of review “requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker,” and that EEOC “review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission’s own assessment of the record and its interpretation of the law”).

Many of the Complainant’s allegations concern his unit as a whole as opposed to how he was treated differently, and uncorroborated routine workplace occurrences. However, even assuming that Complainant had established a prima facie case, he failed to establish that he was subjected to disparate treatment. Regarding harassment, we note that the Complainant has pointed to comments regarding the promotion of individuals over 40 and another comment regarding Alpha males directed at his unit. However, we do not find that Complainant has overall demonstrated that this conduct rose to the level of harassment. Finally, we find that even if Complainant had alleged that he engaged in protected activity prior to the instant EEO case, he could not prove that he was subject to such behavior.

Therefore, based on our review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency’s final decision finding no discrimination.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0425)

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:



Gul Chaudry, Acting Director
Office of Federal Operations

July 16, 2025
Date