



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

[REDACTED]
Anton S.,¹
Complainant,

v.

Robert Wilkie,
Secretary,
Department of Veterans Affairs
(Veterans Health Administration),
Agency.

Appeal No. 2020002168

Agency No. 200P-0644-2019105697

DECISION

On January 22, 2020, Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final Agency decision (FAD) dated December 27, 2019, dismissing his complaint of unlawful employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

BACKGROUND

At the time of events giving rise to this complaint, Complainant served the Agency as a volunteer Veterans Affairs (VA) Ambassador at the Phoenix VA Health Care System facility in Phoenix, Arizona.

On October 10, 2019, Complainant filed an equal employment opportunity (EEO) complaint alleging that the Agency subjected him to discrimination and harassment based on his disabilities when:

1. On September 6, 2019, the Volunteer Services Manager threatened to bar him from the facility, and
2. On September 9, 2019, he was removed as a volunteer.

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.

The Agency characterized Complainant's EEO complaint as alleging only issue 1. We disagree because Complainant, who is pro se, raised his removal with the EEO counselor, and although he did not list issue 2 in his EEO complaint claims field, he requested compensation for lost pay in his EEO complaint, which is consistent with issue 2.

The Agency dismissed the EEO complaint for failure to state a claim because Complainant was not harmed by the threat and was a beneficiary of the Vocational Rehabilitation Work Study Program (Chapter 31), not an employee. We take administrative notice that Chapter 31 participants receive a stipend. The counselor's report indicates Complainant has Title 38 status. Title 38 of the United States Code regards Veterans' Benefits.

On appeal, Complainant makes no comment.

ANALYSIS AND FINDINGS

The matter before us is whether the Agency properly dismissed Complainant's complaint for failure to state a claim because he was not an employee. EEOC Regulation 29 C.F.R. § 1614.103(a) provides that complaints of employment discrimination shall be processed in accordance with Part 1614 of the EEOC regulations. EEOC Regulation 29 C.F.R. § 1614.103(c) provides that within the covered departments, agencies and units, Part 1614 applies to all employees and applicants for employment therewith.

The Commission has repeatedly found that participants in the Agency's Chapter 31 program as part their Title 38 benefits are beneficiaries, not employees of the Agency. Hammett v. Veterans Affairs, EEOC Appeal No. 01A44933 (Nov. 16, 2004) (claim regarding complainant being terminated from Chapter 31 training position failed to state a claim); West v. Veterans Affairs, EEOC Appeal No. 01A45819 (Feb. 23, 2005) (claim regarding not being selected to participate in a Chapter 31 Vocational Rehabilitation and Employment work-study program failed to state a claim); Shabazz v. Veterans Affairs, EEOC Appeal No. 0120071625 (May 18, 2007) (claim regarding not being selected to participate in a Chapter 31 Vocational Rehabilitation and Employment work-study program failed to state a claim).

Complainant has not raised facts which suggest he should be excepted from the above rule.

Accordingly, the FAD is AFFIRMED.²

² Because we affirm the FAD because Complainant is not an employee of the Agency, we need not address whether issue 1 fails to state a claim.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which 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 to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in 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). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your 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(c).


COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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 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. 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

July 22, 2020

Date