



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

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

v.

Robert Wilkie,  
Secretary,  
Department of Veterans Affairs,  
Agency.

Appeal No. 2020000192

Agency No. 200I-0675-2019103459

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision (FAD) dated August 27, 2019, 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 the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Health Technician, GS-06, at the Agency's Medical Center in Orlando, Florida.

On July 18, 2019, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of race (African-American), national origin (Nigerian descent), age (over 40, exact age unspecified), and reprisal for prior protected EEO activity when:

1. between September 17, 2017 and October 29, 2017, Complainant was attacked four times by a male Caucasian Registered Nurse;
2. on November 3, 2017, Complainant received a proposed reprimand;
3. on November 7, 2017 Complainant received written counseling;
4. on November 8, 2017, Complainant was punched in both eyes by a patient;

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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.

5. on December 13, 2017 Complainant was charged with negligence in performance of duty, being Absent Without Leave (AWOL), and with failure to follow leave procedures;
6. on December 13, 2017, Complainant was advised that he was the subject of an administrative investigation to begin on January 29, 2018, and Complainant was taken off his regular tour;
7. on January 8, 2018 Complainant's performance rating was lowered from "Excellent" to "Fully Successful";
8. effective January 15, 2018, Complainant was placed on a five-day suspension;
9. on March 7, 2018, despite being exonerated by the administrative investigation board (AIB), Complainant was forced to return to the Residential Treatment Center instead of the Mental Health Unit and forced to work day tour for a month; and
10. on or about March 21, 2018, Complainant was notified that he was the subject an OIG criminal investigation for the incident surrounding the AIB investigation in which he was cleared.

The Agency dismissed the complaint for untimely EEO Counselor contact, noting that Complainant's initial EEO Counselor contact was not until May 9, 2019, which was over a year after the most recent incident.

The instant appeal followed.

### ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination 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 record discloses that the latest alleged discriminatory event occurred on March 21, 2018, but Complainant did not initiate contact with an EEO Counselor until May 9, 2019, which is well beyond the forty-five (45) day limitation period.

Complainant argues that he did not reasonably suspect discrimination until he learned of two incidents in April 2019 when patients were aggressive towards two Caucasian nurses and management "took swift actions" in discharging the aggressive patients, in contrast to claims 1 and 4 when management "took no action in my case despite the fact that my cases were more severe."

The Commission has adopted a reasonable suspicion standard to determine when the forty-five (45) day limitation period is triggered. See Howard v. Dep't of the Navy, EEOC Appeal No. 01965648 (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.

We, however, are not persuaded that Complainant should not have reasonably suspected discrimination until he learned of the comparators he asserts were treated more favorably after an assault by a patient. In looking at the complaint as a whole, Complainant is alleging that he believed he had been discriminated against by management with regard to a broad range of events that occurred between September 2017 through March 2018. With the exception of claim 4, the nature of these events reveals no logical connection to the discovery of the comparators who were similarly assaulted by a patient. Complainant has not explained how learning of the different treatment of Caucasian nurses assaulted by patients provided him with previously unavailable information of discrimination with regard to: his assault by a coworker; receiving a reprimand or written counseling; being charged with negligence, being AWOL, or failure to follow leave procedures; being taken off his regular tour; receiving a lowered evaluation; being suspended, or being subjected to a criminal investigation. Instead, we find that Complainant should have developed reasonable suspicion at or around the time of each incident. However, it is undisputed that he did not initiate the EEO counseling process on any of these matters until more than a year after the most recent event and well beyond the 45-day limitation period. Moreover, within the context of this broad range of events which should have caused Complainant to reasonably suspect discrimination when they occurred, we conclude that even with regard to claim 4, Complainant should have suspected discrimination when management allegedly failed to protect him from a violent patient even before his subsequent discovery of the two comparators.

On appeal, Complainant has presented no persuasive arguments or evidence warranting an extension of the time limit for initiating EEO Counselor contact. We therefore find that the Agency correctly dismissed the complaint.

The Agency's dismissal decision is AFFIRMED.

#### 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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

September 9, 2020

Date