



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

[REDACTED]  
Opal V.,<sup>1</sup>  
Complainant,

v.

Michael R. Pompeo,  
Secretary of State,  
U.S. Department of State,  
Agency.

Appeal No. 2020004444

Agency No. DOS-0208-20

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 5, 2020, dismissing her 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.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as an Information Programs Supervisor, FS-03, at an Agency facility in Brussels, Belgium.

On May 31, 2020, Complainant filed a formal EEO complaint. The Agency, in its dismissal decision, characterized the complaint as alleging that Complainant was subjected to discrimination on the basis of sex (female) when:

1. On February 25, 2020, Complainant was verbally counseled.
2. Complainant was subjected to an ongoing hostile work environment characterized by management communicating directly with Complainant's subordinate employees without her, and management's failure to admonish subordinates about using the term "mothering" and management's own use, and condoning, of the use

---

<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.

of terms and actions that Complainant found sexist and offensive.

On July 5, 2020, the Agency issued a final decision dismissing the complaint for failure to state a claim and for untimely EEO contact, reasoning that Complainant initiated EEO contact on April 28, 2020. The Agency stated that, “even if Complainant did not have actual knowledge [of the timeframes for initiating EEO counseling], she had constructive knowledge because she completed a No Fear training on March 3, 2009,” and the Agency had notices posted on the Agency’s website regarding the EEO process. The Agency dismissed the second allegation, reasoning that it did not rise to the level of an adverse action. The Agency found that referring to Complainant as “mothering” and “tasking her subordinate employees, without including her is not sufficiently severe or pervasive to rise to the level of a hostile work environment.”

This appeal by Complainant followed.

### ANALYSIS AND FINDINGS

#### *Timeliness*

The regulation at 29 C.F.R. § 1614.107(a)(2) states, in pertinent part, that an agency shall dismiss a complaint which fails to comply with the applicable time limits contained in 29 C.F.R. § 1614.106, which, in turn, requires that Complainants make EEO contact within 45 days of the date of the alleged discrimination.

Here, as an initial matter, we find that the complaint at issue is more properly characterized as Complainant alleging she has been subjected to an ongoing pattern of harassment based on her sex by her supervisor and several subordinate employees sufficient to create a hostile work environment.

While in its dismissal decision that Agency finds Complainant’s initial EEO counselor contact was on April 28, 2020, the record shows that Complainant actually made EEO contact on March 18, 2020, via an email communication with the EEO Counselor.<sup>2</sup> Further, in her complaint, Complainant alleged a series of events which created a hostile work environment over several months and included an event on March 5, 2020 (she had a March 5 meeting with her supervisor to complain about the ongoing harassment, after which the supervisor subjected her to retaliation in the form of having her workload increased by 100%). The Supreme Court has held that a complainant alleging a hostile work environment will not be time barred if all acts constituting the claim are part of the same unlawful practice and at least one act falls within the filing period. See National Railroad Passenger Corp. v. Morgan, 536 U.S. 101, 122 S. Ct. 2061 (2002).

---

<sup>2</sup> While the Agency argues the EEO Counselor had recorded the contact as “for information only,” there is insufficient evidence of record to support the Agency’s claim that the March 18 contact should not be considered as a viable contact under 29 C.F.R. § 1614.105.

Since Complainant's March 5 and forward allegation was clearly related to her overall claim of ongoing harassment, her March 18 EEO counselor contact was timely made for her ongoing hostile work environment claim.

#### *Failure to State a Claim*

Under the regulations set forth at 29 C.F.R. Part 1614, an agency shall accept a complaint from an aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that agency because of race, color, religion, sex, national origin, age, disability, genetic information, or retaliation. See 29 C.F.R. 1614.103(a) and 1614.106(a).

On appeal, Complainant argues that when the Agency dismissed her complaint for failure to state a claim "the essence of the complaint is being ignored, that she was subjected to sex-based harassment by two employees over a six-month period, which was condoned by management." The EEO Counselor's Report stated that Complainant claimed that "because of sex, she was subjected to a hostile work environment characterized by, but not limited to, her supervisory position being treated as irrelevant" and that she was in a work environment that continually subjected her to "offensive gender-based comments or treatment". Complainant also stated that management condoned the subordinate employees' sexist attitudes. The EEO Counselor's Report also stated that Complainant claimed that her male supervisor "has a practice of tasking her with all of the section's trivial errands and personnel issues, while reserving the allocation of desirable, high profile projects for him to assign."

In Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993), the Supreme Court reaffirmed the holding of Meritor Savings Bank v. Vinson, 477 U.S. 57, 67 (1986), that harassment is actionable if it is sufficiently severe or pervasive to alter the conditions of the complainant's employment. Significantly, Complainant claims that her male supervisor, on an ongoing basis, undermined her own authority with her subordinates and condoned what she believed to be sexist comments and attitudes directed against her because of her sex. We conclude that Complainant has made sufficient allegations to state a viable claim of discriminatory harassment which requires further investigation and processing. While the Agency claims that Complainant has failed to establish a nexus between her sex and the alleged harassment, this is addressing the merits of the claim without a proper investigation and is irrelevant to the procedural issue of whether Complainant has stated a justiciable claim under Title VII. See Osborne v. Department of the Treasury, EEOC Request No. 05960111 (July 19, 1996); Lee v. United States Postal Service, EEOC Request No. 05930220 (August 12, 1993); Ferrazzoli v. United States Postal Service, EEOC Request No. 05910642 (August 15, 1991).

For the reasons stated above, we find that Complainant's complaint was improperly dismissed, pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim. We caution the Agency that, on remand, it should avoid fragmenting Complainant's overall hostile work environment claim in a piecemeal manner. See Felisha A. v. Department of Transportation, EEOC Appeal No. 0120140625 (June 2, 2016).

During the investigation, Complainant should be allowed to raise any relevant factual incidents that she believes supports her overall hostile work environment claim. We also note that Complainant may, if she wishes, amend her complaint to add the basis of retaliation for complaining about the harassment.

### CONCLUSION

Accordingly, we REVERSE the Agency's final decision dismissing Complainant's complaint. We REMAND the complaint to the Agency for further processing in accordance with this decision and the Order below.

### ORDER (E0618)

The Agency is ordered to process the remanded claim (hostile work environment) in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, a copy of complainant's request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

### 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.

STATEMENT OF RIGHTS - ON APPEAL  
RECONSIDERATION (M0620)

The Commission may, in its discretion, reconsider this appellate decision if the 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 his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>.

Alternatively, complainant can submit his or her 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, 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 his or her 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(c).

#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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:



Carlton M. Hadden, Director  
Office of Federal Operations

October 8, 2020

Date