



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

[REDACTED]  
Cornell S.,<sup>1</sup>  
Complainant,

v.

Elaine L. Chao,  
Secretary,  
Department of Transportation  
(Federal Aviation Administration),  
Agency.

Appeal No. 2020002934

Agency No. 2019-28559-FAA-05

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated February 11, 2020, dismissing a formal 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**

During the period at issue, Complainant worked as an Air Traffic Control Specialist, 2152-JH at the Agency's Air Route Traffic Control Center in Albuquerque, New Mexico.

On November 21, 2019, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination based on race (African-American), sex (male), and in reprisal for prior protected EEO activity.

On February 11, 2020, the Agency issued the instant final decision. The Agency determined that the formal complaint was comprised exclusively of the following claim: on September 17, 2019, Complainant's first-level supervisor grabbed Complainant's arm. The Agency dismissed the formal complaint for failure to state a claim, pursuant to 29 C.F.R. 1614.107(a)(1).

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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.

The Agency also determined that during EEO counseling, Complainant's claim was limited to the isolated event when S1 purportedly grabbed Complainant's arm. The Agency denied that S1 grabbing Complainant's arm on one occasion was sufficiently severe or pervasive to create a hostile work environment.

The instant appeal followed.

### ANALYSIS AND FINDINGS

An agency shall accept a complaint from any aggrieved employee who believes that he has been discriminated against by the Agency because of his protected statuses. 29 C.F.R. §§ 1614.103, 1614.106(a). On the other hand, in accordance with EEOC Regulation 29 C.F.R. § 1614.107(a)(1), an Agency shall dismiss a Complaint that fails to state a claim.

After a fair reading of the entire record, we find that the improperly Agency made distinctions between the EEO Counselor report and Complainant's formal claim. The Agency's final dismissal reasoned that Complainant's initial statement to the EEO Counselor only described a single occurrence when S1 had touched him. More accurately, Complainant articulated to the EEO Counselor that this was the "the last straw" following a pattern of harassment over years. Complainant stated management denied him accommodations, breaks, leave, and on-the-job-training that were permitted for similarly-situated coworkers. Complainant states that he had been called "boy" and "lazy" by a supervisor. Additionally, Complainant submitted supporting statements from his primary certification training instructor (PTI). PTI stated he had witnessed another Air Traffic Controller loudly and inappropriately admonishing Complainant although that employee lacked authority to do so. PTI further corroborated Complainant's accusations that S2 had set-up Complainant to fail the certification training that Complainant successfully completed in 2018.

The Agency cites the Commission decision in Melissa H. v. Dep't of the Army, EEOC Appeal No 0120161158 (May 18, 2016). Specifically, the Agency cited that case to differentiate Complainant's informal counseling statement from his general description of mistreatment in the formal complaint. However, the decision cited by the Agency read the EEO Counseling report *in conjunction* with the complainant's formal complaint statement. When considered together, we conclude Complainant sufficiently summarized a pattern of harassment after making more a specific allegation during counseling. We read Complainant's narratives within record in the light most favorable to his discrimination complaint. In his written accompanying the formal complaint, Complainant wrote:

For years, I endured continuous harassment (non-sexual); threatening behavior including verbal and physical assaults; lack of job support; and all my concerns have been ignored. Even my future career (promotion release date refused which is causing additional expense) has been threatened. I have been treated differently and less favorably than similarly-situated employees resulting in loss of monies, leave usage, and health damage due to stress.

We therefore conclude Complainant's sufficiently summarized how the Agency had subjected him to a hostile work environment after his specific allegation regarding S1's purported arm-grab. Complainant ultimately stated a cognizable pattern of harassment claim under EEOC regulations. Cervantes v. U.S. Postal Serv., EEOC Request No. 05930303 (Nov. 12, 1993). Accordingly, Complainant's claim of ongoing harassment addresses a personal loss or harm to a term, condition, or privilege of his employment in accordance with 29 C.F.R. § 1614.107(a)(1). Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994).

### CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is REVERSED. This Complaint is REMANDED 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 claims in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall acknowledge to 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 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 Complainant and his representative.

If the Agency does not comply with the Commission's order, Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). 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, 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 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 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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

October 13, 2020

Date