



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

[REDACTED]
Shelia D.,¹
Petitioner,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Petition No. 2021001103

MSPB No. CH-0752-20-0528-I-1

DECISION

On November 5, 2020, Petitioner filed a timely petition with the Equal Employment Opportunity Commission (EEOC or Commission) asking for review of a Final Order issued by the Merit Systems Protection Board (MSPB) concerning her claim of discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

BACKGROUND

In pertinent part, the record indicates that, on August 11, 2020, the MSPB Administrative Judge issued an Order on Jurisdiction and Proof Requirements. Following replies by both parties, the MSPB AJ issued an initial decision, on September 1, 2020, that dismissed Petitioner's appeal on the grounds that the MSPB lacked jurisdiction.

Petitioner's appeal concerned her allegation that she was subjected to a hostile work environment and that she was constructively discharged in May 2019. Petitioner provides a detailed appeal brief requesting the Commission to vacate the MSPB's decision and remand for the MSPB to reconsider.

¹ This case has been randomly assigned a pseudonym which will replace Petitioner's name when the decision is published to non-parties and the Commission's website.

ANALYSIS AND FINDINGS

EEOC regulations provide that the Commission has jurisdiction over mixed-case appeals and complaints on which the MSPB has issued a decision that makes determinations on allegations of discrimination. 29 C.F.R. § 1614.303 et seq. However, when the MSPB, as it did here, denies jurisdiction, the Commission has held that there is little point in continuing to view the matter as a “mixed case” as defined by 29 C.F.R. § 1614.302(a), because the MSPB did not address any matters within the Commission’s jurisdiction. Therefore, the Commission finds that it has no jurisdiction to review Petitioner’s petition. This matter will be considered a non-mixed case and processed accordingly. See generally Schmitt v. Dept. of Transp., EEOC Appeal No. 01902126 (July 9, 1990); Phillips v. Dept. of the Army, EEOC Request No. 05900883 (Oct. 12, 1990); 29 C.F.R. § 1614.302(c)(2)(i) and (ii). In accordance with these principles, Petitioner’s request for review is DENIED and Petition No. 2021001103 is hereby administratively closed. MSPB No. CH-0752-20-0528-I-1 is referred to the Agency for further processing as outlined below.

ORDER

Petitioner is advised by operation of 29 C.F.R. § 1614.302(b) that the Agency, if it has not already done so, is required to process her allegation of discrimination. Because Petitioner filed a mixed case complaint with the Agency, the Agency, pursuant to 29 C.F.R. § 1614.108(f), shall, within 30 calendar days of its receipt of this decision, notify Petitioner of the right to elect between a hearing before an EEOC Administrative Judge or an immediate final decision on his discrimination claim pursuant to 29 C.F.R. § 1614.110.²

A copy of the notification shall be provided to the Compliance Officer listed below.

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 Petitioner and his/her representative.

² We note that Petitioner’s EEO complaint included non-mixed claims which are currently pending before an EEOC Administrative Judge (AJ) under EEOC Hearing No. 560-2019-00416X. Therefore, if Petitioner elects to proceed to an EEOC administrative hearing on her constructive discharge claim, the Agency should ask the AJ assigned EEOC Hearing No. 560-2019-00416X to consolidate this matter with the non-mixed claims.

If the Agency does not comply with the Commission's order, the Petitioner may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Petitioner 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 Petitioner 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 Petitioner 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 CFR § 1614.503(f) for enforcement by that agency.

PETITIONER'S RIGHT TO FILE A CIVIL ACTION (W0610)


This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court, based on the decision of the Merit Systems Protection Board, **within thirty (30) calendar days** of 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.

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

February 24, 2021
Date