



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

[REDACTED]

Soo C,<sup>1</sup>  
Complainant,

v.

William P. Barr,  
Attorney General,  
Department of Justice  
(Federal Bureau of Investigation),  
Agency.

Appeal No. 2020005492

Agency No. FBI-2020-00076

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision (Dismissal) dated August 6, 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 Intelligence Analyst, GS 13, at the Agency's Federal Bureau of Investigation facility in Stafford, Virginia.

On February 10, 2020, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of sex (female) and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 when Complainant learned her SF-50, formalizing her resignation from the Agency, included the comment, "Employee was on a [Performance Improvement Plan] (PIP)."

The Agency dismissed the claim for untimely EEO Counselor contact. The instant appeal followed.

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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.

### 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 Agency found that Complainant learned of the adverse comment on her SF-50 on September 30, 2019, but that she did not initiate contact with an EEO Counselor until January 3, 2020, which is beyond the forty-five (45) day limitation period.

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.

In her formal complaint, Complainant explains that it was not until December 6, 2019, when she learned that a male former colleague, who had recently resigned in the face of pending adverse actions, did not have any derogatory comments on his SF-50, while Complainant, who faced no pending adverse action when she resigned, received an adverse comment on hers. Complainant argues that her January 3, 2020 counselor contact was therefore timely.

We, however, are not persuaded that Complainant did not reasonably suspect discrimination prior to December 2019. It is undisputed that Complainant had received a copy of her SF-50 containing the adverse comment on September 30, 2019. Moreover, as noted by the Agency in its dismissal decision, Complainant believed that the issuance of the PIP in February 2019 constituted “discriminatory, retaliatory, and abusive conduct” since she contacted the Agency’s Office of Inspector General (OIG) and in March 2019, the OIG referred her original complaint to the Office of Professional Responsibility (OPR). Finally, in her formal complaint, Complainant indicated that she recognized the negative implications of the language contained in the SF-50 once she received it in September 2019. The sum of these factors was sufficient to evoke a reasonable suspicion of discrimination or unlawful retaliation on the part of Complainant when she received the SF-50 in September 2019. The additional knowledge in December of a possible comparator who was treated more favorably only added additional evidence to support her claim. As such, we find adequate support for the Agency’s decision to dismiss the complaint on timeliness grounds.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we **AFFIRM** the Agency’s dismissal of the complaint as untimely raised.

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 (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:

A handwritten signature in blue ink, reading "Carlton M. Hadden", is written over a horizontal line.

Carlton M. Hadden, Director  
Office of Federal Operations

November 30, 2020

Date