



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

[REDACTED]  
Clinton C.,<sup>1</sup>  
Complainant,

v.

Andrew Wheeler,  
Administrator,  
Environmental Protection Agency,  
Agency.

Appeal No. 2021000238

Agency No. 2020-0079-R06

**DECISION**

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

**BACKGROUND**

During the period at issue, Complainant worked for the Agency as a Special Agent in Washington, D.C.

On September 19, 2020, Complainant filed the instant formal complaint. Complainant claimed that the Agency subjected him to discrimination on the bases of race (Caucasian), color (white) and national origin when, on June 15, 2020, Complainant and "all EPA employees" received an email from [an identified EPA employee] entitled "A Message to Our Fellow SES [Senior Executive Service] Colleagues", containing a message from the Director, EPA Office of Civil Rights, which recommended that when discussing racism with their subordinates, senior leadership use reference material titled "Talking About Race," which discussed concepts that Complainant considered racist.

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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 dismissed the instant formal complaint for failure to state a claim, pursuant to 29 C.F.R. § 1614.107(a)(1). Specifically, the Agency determined that Complainant failed to allege he suffered a personal loss or harm to a term, condition or privilege of his employment.

The instant appeal followed.

### ANALYSIS AND FINDINGS

The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that an Agency shall dismiss a complaint that fails to state a claim. An Agency shall accept a complaint from any 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 or disabling condition. 29 C.F.R. §§ 1614.103, .106(a). The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Department of the Air Force, EEOC Request No. 05931049 (April 21, 1994).

In the instant case, we find that the Agency correctly concluded that Complainant has not alleged a personal loss or harm regarding a term, condition or privilege of his employment. The email was sent to all employees and not just to Complainant, concerning the reference material titled "Talking About Race."<sup>2</sup> The Agency noted although Complainant considered the concepts in "Talking about Race to be offensive, he was not required to access those materials. The materials were simply "recommended" for senior leadership as possible reference material when discussing racism with subordinates. Complainant did not indicate that he was in senior leadership or that anyone used the material to engage in a discussion with him.

We do not find that Complainant was subjected to adverse personnel action as a result of being the recipient of an email from the EPA employee that was sent to all employees concerning "Talking About Race." Moreover, to the extent Complainant is claiming discriminatory hostile work environment, we find that the events described, even viewed in the light most favorable to Complainant, would not indicate that he was subjected to harassment that was sufficiently severe or pervasive to alter the conditions of his employment. See Cobb v. Department of Treasury, EEOC Request No. 05970077 (March 13, 1997).

Accordingly, the Agency's final decision dismissing the formal complaint for failure to state a claim is AFFIRMED.

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<sup>2</sup> The record reflects that Complainant did not know the named EPA employee who sent out the reference material titled "Talking about Race."

STATEMENT OF RIGHTS - ON APPEAL  
RECONSIDERATION (M0920)

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, a 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

January 11, 2021

Date