



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

[REDACTED]  
Alesia P.,<sup>1</sup>  
Complainant,

v.

Merrick B. Garland,  
Attorney General,  
Department of Justice  
(Federal Bureau of Prisons),  
Agency.

Appeal No. 2020001024

Hearing No. 480-2015-00391X

Agency No. BOP-2014-01001

**DECISION**

Following its November 7, 2019, final order, the Agency filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) pursuant to 29 C.F.R. § 1614.403(a). On appeal, the Agency requests that the Commission affirm its rejection of an EEOC Administrative Judge's (AJ) finding of discrimination on the basis of reprisal in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. The Agency also requests that the Commission affirm its rejection of the relief ordered by the AJ. For the following reasons, the Commission MODIFIES the Agency's final order.

**ISSUES PRESENTED**

The issues presented are whether the AJ properly determined that the Agency subjected Complainant to a hostile work environment based on reprisal for protected activity when it issued her a cease and desist letter and whether the AJ ordered appropriate remedies regarding training and issuing cease and desist letters.

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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.

### BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a probationary Correctional Officer, GL-007-05 at the Agency's Metropolitan Detention Center (MDC) in Los Angeles, California. Complainant was employed by the Agency from January 27, 2014 to July 8, 2014.

Beginning in February 2014, Complainant received on-the-job training from a coworker (C1). Complainant asserted that C1 told her that he was a "supervisory person because he is a Senior Officer Specialist" and he would not pass her through the probationary period if she did not do "certain things." Complainant believed that C1 was responsible for reporting her performance to the Lieutenants. Complainant and C1 shared the same position title during the relevant period, and testimony revealed that C1 was not responsible for performance evaluations and had no role in determining whether an employee passes their probationary year.

While C1 was Complainant's training officer, Complainant worked in the control room with him approximately five times. Complainant interacted with C1 in the same building approximately three to four times per week. C1 offered conflicting testimony regarding how often he worked with Complainant. Complainant stated that during her first couple of weeks working at MDC, C1 told her that his nickname in the building was "CB1" and that it was carved into his chit, a piece of Agency-issued equipment. According to Complainant, C1 threw the chit on Complainant's table and informed her that "CB1" stood for "cock-banging, cock-blocker No. 1 because [he blocks] cock and [bangs] cock all over this building."

Complainant further testified that C1 told her not to date anyone in the building and that if she were to become pregnant by someone that worked in the building and had a "Bureau baby," it would not be smart, that the father of the child would leave her, and C1 "would laugh at [her] and make fun of [her] because [she] would be stupid." C1 initially denied using the term "Bureau baby" but later admitted that he has used the term in general conversation.

Complainant testified that in February 2014, C1 asked Complainant why he was not allowed to use the "n" word and that C1 became upset and elevated his voice, demanding that Complainant "give him a reason why he shouldn't be allowed to use the 'n' word" because "Blacks use it."<sup>2</sup> Complainant stated that she told C1 that not every black person uses the "n" word, including her, and that it is "profane" in her family. C1 testified that he never said anything about using the "n" word. However, witness testimony confirmed that C1 had made similar comments about his desire to use the "n" word. Complainant testified that C1's comment made her feel disgusted "that he should be entitled to degrade [her]" and that "he somehow felt that he had the right to treat [her] like [she] was less than a human being."

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<sup>2</sup> The phrase "the 'n' word" is used throughout the record, but at least one brief submitted by Complainant specifically asserted that C1 used the full slur and not the term "'n' word."

Complainant stated that in February 2014, C1 also told her that "[she] was pretty and that [she] needed to prepare to get on [her] knees and lay on [her] back, spread [her] legs, and get gutted by management." Complainant took these statements as being sexual in nature and that she would need "to allow various Lieutenants access to [her] body in order to pass probation." Complainant testified that C1's comments were "unwelcomed" and "unwarranted." Complainant reported that she had multiple conversations with management officials regarding C1's harassing behavior in February 2014.

In early March 2014, Complainant began dating a fellow officer. Complainant stated that after she began dating this officer, C1 treated her differently, staring at her, improperly training her on the job, writing her up for mistakes that she made as a result of improper training, and becoming irritated with her. Complainant described C1 standing outside of the unit door "breathing and blowing kisses at the glass...and staring at [Complainant] while she worked." Complainant stated that she also began receiving calls to her unit where the caller would breathe heavily on the phone, say "disgusting filthy things," and hang up on her.

In April, May, and June 2014, Complainant complained to management officials regarding C1's harassment verbally and in writing. The record contains no evidence that officials took any actions in response to Complainant's reports of harassment until she submitted written allegations on or about May 29, 2014. Shortly thereafter, officials referred the matter for investigation.

On June 30, 2014, Complainant submitted more written allegations about C1's behavior and officials convened a Threat Assessment Committee that interviewed Complainant and C1. C1 denied Complainant's allegations and told the Committee that he felt that Complainant was a "threat" to him because she wanted to get him fired. The Committee issued "cease and desist" letters to Complainant and C1, which were identical in substance. Because the behavior that C1 found to be threatening was her complaints about him, Complainant believed that the cease and desist letter constituted an order to stop complaining about C1's behavior. In addition to the cease and desist letters, the Committee changed Complainant's shift so that she would not have to interact with C1. Complainant stated that she received more disturbing phone calls after the Threat Assessment, and that, at one point, C1 stood outside her unit door staring and blowing kisses at her, fogging up the door's glass.

On July 8, 2014, Complainant resigned.

On September 10, 2014, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (African-American), sex (female), and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 when:

1. On July 8, 2014, she was terminated from the position of Correctional Officer during her probationary year<sup>3</sup>; and
2. From March 2014 through July 2014, she was subjected to a hostile work environment and sexual harassment in the form of unwelcome verbal and racist comments.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing and the AJ held a hearing on April 30 through May 2, 2019. Prior to the hearing, the AJ granted the Agency's Motion for Summary Judgment in part, finding that Complainant voluntarily resigned.<sup>4</sup> Therefore, at the hearing, the issues were limited to Complainant's allegations that she was subjected to a hostile work environment and sexual harassment from March 2014 through July 2014. The AJ issued a final decision and order entering judgment on September 30, 2019, holding that Complainant established hostile work environment claims on the bases of race, sex, and reprisal.

The AJ ordered the Agency to:

4. [Training] Agency will provide effective training to the Warden, Deputy Wardens, Captains, Lieutenants, and other management personnel at MDC, as well as the staff psychologist, human resources director and OIA investigators at the MDC, the facility where [the harasser] and Complainant have been employed, on their responsibilities for enforcing the prohibition under Title VII of race harassment, sex harassment and retaliation, including but not limited to instruction on their duty to provide effective training of all other management and non-management employees; mandatory conduct of effective investigations; the mandatory duty to take prompt and effective action to prevent and remedy harassment; and the mandatory duty to avoid conduct which would deter a reasonable person from exercising their rights under federal civil rights statutes, specifically focusing on the prohibition of issuing cease and desist letters to employees who have reported discrimination, absent clear, documented evidence of some conduct other than reporting discrimination which Agency reasonably concludes would warrant discipline in the absence of the employee's protected activity.
5. [Cease and desist] Agency will immediately stop issuing cease and desist letters to employees who have reported discrimination, absent clear, documented evidence of some conduct other than reporting such discriminatory conduct which

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<sup>3</sup> Complainant was charged with misconduct for failure to follow post orders and providing inaccurate information. Complainant was given the option to be terminated or resign.

<sup>4</sup> Complainant does not challenge the AJ's finding on appeal.

Agency reasonably concludes would warrant discipline in the absence of the employee's protected activity.

The Agency subsequently issued a final order rejecting the AJ's finding that Complainant proved that the Agency subjected her to discrimination as alleged based on reprisal.

The Agency also rejected the relief ordered in remedy numbers 4 and 5. The Agency took no issue with the remainder of the AJ's decision.

### CONTENTIONS ON APPEAL

On appeal, the Agency reiterates the arguments presented in its final order. Specifically, the Agency accepts the AJ's finding of racial and sexual harassment, the award of compensatory damages, the award of attorney's fees, and remedies 1 through 3. The Agency, however, rejects the Agency's finding of retaliation and remedies 4 through 5. According to the Agency, the AJ's conclusion that a cease and desist letter would dissuade a reasonable employee from engaging in EEO activity errs because the cease and desist letter was a routine letter cautioning employees about inappropriate behavior while a threat was being investigated. Regarding remedy 4, the Agency asserts that there is no basis for ordering training to individuals who were not involved in the events at issue. The Agency contends that remedy 5 is overbroad because it applies to institutions other than Complainant's facility and applying such a restriction on the issuance of cease and desist letters burdens the Agency by removing a tool to address employee violence. The Agency adds that it is unclear whether the cease and desist letter constituted an adverse employment action.

In response, Complainant maintains that she engaged in protected activity when she reported C1's harassment and that the cease and desist letter was an adverse action. Complainant states that the ordered remedies are not overbroad. Complainant contends that the case cited by the Agency on appeal in support of its appeal did not find that the AJ abused her discretion when ordering training for all employees. Complainant argues that the relief ordered in remedy 4 is less broad than the remedy in the cited case because it does not mandate training for all employees and is calculated to supplement training at MDC. Complainant adds that the Agency's reliance on Miriam B. v. Dep't of Veterans Affairs, EEOC Appeal No. 0720150022 (Mar. 20, 2018), is misplaced because the holding is not analogous to remedy 5.

### STANDARD OF REVIEW

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. National Labor Relations Bd., 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held.

An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony, or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), Chapter 9, at § VI.B. (Aug. 5, 2015).

### ANALYSIS AND FINDINGS

#### *Reprisal*

To establish a prima facie case of reprisal, a complainant must show that: (1) he or she engaged in protected activity; (2) the agency was aware of the protected activity; (3) subsequently, he or she was subjected to adverse treatment by the agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000).

Here, Complainant engaged in protected activity when she opposed and reported racial and sexual harassment. Agency officials were aware of Complainant's protected activity because she complained to several management officials and Agency personnel, including Supervisory Officers, Lieutenants, an EEO representative, a Captain, and an Acting Warden.

As for adverse treatment, the Commission has stated that adverse actions need not qualify as "ultimate employment actions" or materially affect the terms and conditions of employment to constitute retaliation. Lindsey v. U.S. Postal Serv., EEOC Request No. 05980410 (Nov. 4, 1999) (citing EEOC Compliance Manual, No. 915.003 (May 20, 1998)). Instead, the statutory retaliation clauses prohibit any adverse treatment that is based upon a retaliatory motive and is reasonably likely to deter the charging party or others from engaging in protected activity. Id.

We find, as did the AJ, the issuance of the cease and desist letter in response to Complainant's reports of harassment reasonably likely to deter Complainant or others from engaging in protected activity. Moreover, we find a nexus exists between Complainant's activity and the issuance of the cease and desist letter. The record indicates that Complainant's reports of harassment started the chain of events that led to her receipt of the cease and desist letter. Accordingly, we find that the AJ properly determined that Complainant established her reprisal claim.

#### *Remedy 4: Training*

The Agency contends that the AJ improperly ordered training for individuals that were not involved in the events at issue. However, the Commission has previously addressed what constitutes appropriate training orders. For example, in a prior appeal concerning the Bureau of Prisons, the Agency argued that it was an abuse of discretion for the AJ to order training for "every supervisory and managerial staff member," rather than the Warden who was responsible for the discriminatory actions. See Burton v. Dep't of Justice, EEOC Appeal No. 0720090046

(June 9, 2011). The Commission found no error or abuse of discretion by the AJ. See Id.; see also Complainant v. Dep't of Veterans Affairs, EEOC Appeal No. 0720140013 (June 13, 2014); Cairo v. Dep't of Justice, EEOC Appeal No. 0720100023 (Jan. 13, 2011). Likewise, we find that the AJ did not err in ordering training for the Warden, Deputy Wardens, Captains, Lieutenants, and other management personnel at MDC, as well as the Staff Psychologist, Human Resources Director, and OIA Investigators at the MDC.

The ordered remedy appears tailored to supplement the training provided to decision-making officials at the MDC and to prevent the recurrence of the discriminatory conduct. As such, we determine that the AJ's order concerning training was a proper exercise of discretion after hearing the evidence in the matter.

#### *Remedy 5: Cease and Desist Letters*

On appeal, the Agency takes issue with the order to discontinue the use of cease and desist letters with "employees who have reported discrimination, absent clear, documented evidence of some conduct other than reporting such discriminatory conduct which the Agency reasonably concludes would warrant discipline in the absence of the employee's protected activity." However, the Agency also notes that MDC Los Angeles no longer issues cease and desist letters to all parties involved in threat assessment incidents.

We do not find abuse of discretion or error in the AJ's order regarding the cease and desist letters. We find that issuing Complainant a cease and desist letter gives the appearance that Complainant, who complained of ongoing racial and sexual harassment, was just as culpable as her harasser. Therefore, we find that the ordered relief was appropriate.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we MODIFY the Agency's final order.

### ORDER

To the extent that it has not already done so, the Agency shall take the following action within 120 days of the date of this decision is issued:

1. The Agency shall provide effective training to C1 regarding race and sex discrimination in federal employment, harassment, and his obligation not to create a hostile work environment based on race or sex, including but not limited to the prohibition of using derogatory racial slurs such as the use of the "n" word at work, of using other sexually offensive terms including "cock blocker" in conversation or in connection with agency equipment and of directing employees to take or not take actions affecting their private lives;

2. The Agency shall consider disciplining C1 for acts which have been found to be unlawful harassment for which the Agency is liable;
3. The Agency shall prominently post at the facility where Complainant was employed, in the location commonly used for employee notices, a notice of this finding of discrimination, in conformity with 29 C.F.R. Part 1614. The notice shall indicate that it is being posted pursuant to this Decision, that harassment based on race and sex was found to have occurred, that agency retaliated against the employee who complained, and that the EEOC awarded compensatory damages, attorneys' fees and other remedies because of the unlawful conduct of the Bureau of Prisons;
4. The Agency will provide effective training to the Warden, Deputy Wardens, Captains, Lieutenants, and other management personnel at MDC, as well as the staff psychologist, human resources director and OIA investigators at the MDC, the facility where [the harasser] and Complainant have been employed, on their responsibilities for enforcing the prohibition under Title VII of race harassment, sex harassment and retaliation, including but not limited to instruction on their duty to provide effective training of all other management and non-management employees; mandatory conduct of effective investigations; the mandatory duty to take prompt and effective action to prevent and remedy harassment; and the mandatory duty to avoid conduct which would deter a reasonable person from exercising their rights under federal civil rights statutes, specifically focusing on the prohibition of issuing cease and desist letters to employees who have reported discrimination, absent clear, documented evidence of some conduct other than reporting discrimination which Agency reasonably concludes would warrant discipline in the absence of the employee's protected activity; and
5. The Agency will immediately stop issuing cease and desist letters to employees who have reported discrimination, absent clear, documented evidence of some conduct other than reporting such discriminatory conduct which Agency reasonably concludes would warrant discipline in the absence of the employee's protected activity.
6. The Agency shall pay Complainant an award of \$50,000 compensatory damages.

#### POSTING ORDER (G0617)

The Agency is ordered to post at its Metropolitan Detention Center copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).



### ATTORNEY'S FEES (H1016)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), he is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency.

The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of the date this decision was issued. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

### 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 (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).

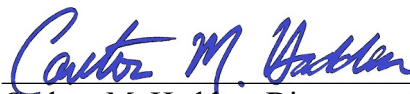
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. 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 on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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:



Carlton M. Hadden, Director  
Office of Federal Operations

June 14, 2021

Date