



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Alena C.,¹
Complainant,

v.

Antony Blinken,
Secretary,
Department of State,
Agency.

Appeal No. 2021001733

Agency No. DOS-0331-20

DECISION

On January 15, 2021, via his attorney, Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a December 17, 2020 final Agency decision (FAD) dismissing her complaint of unlawful employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

BACKGROUND

At the time of events giving rise to this complaint, Complainant was conditionally hired as a Peace Corps Volunteer in North Macedonia by the Peace Corps, an independent agency.

On February 25, 2020, the Peace Corps notified Complainant that it decided not to medically clear her as a Volunteer. She alleged that after her appeal of this determination was denied, the Peace Corps on August 5, 2020, rejected her as a Volunteer, because she was not medically cleared for service.

On November 23 or 24, 2020, Complainant filed a class action equal employment opportunity (EEO) complaint against the Department of State (State) alleging that she was discriminated against based on disability (anxiety and depression) when, as a result of the Peace Corps' and State's policies, practices, procedures, and guidelines which do not rely upon individualized

¹ 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.

assessment of individuals with disabilities nor engaging in an interactive process to provide accommodations to individuals with disabilities, she was denied a medical clearance and was not brought on as a Volunteer with the Peace Corps.

As of February 2021, Complainant represents that she also filed an EEO complaint with the Peace Corps EEO office which it is currently being investigated.

We take administrative notice that under Peace Corps Act, 22 U.S.C. § 2504(a), the Commission lacks jurisdiction to consider appeals from Peace Corps volunteers. Peace Corps C.F.R. Title 22 Part 306 requires that EEO complaints by Peace Corps volunteers are processed in accordance with 45 C.F.R. Part 1225. This includes the recruitment. This complaint procedure is somewhat similar to the complaint procedure established by this Commission, with some major exceptions, including no right to a hearing before an EEOC Administrative Judge, and no right to appeal a FAD to this Commission. Instead, after a FAD is issued, an aggrieved party may file a civil action in an appropriate U.S. District Court. 45 C.F.R. 1225.9(b); 1225.21. Correri v. Peace Corps, EEOC Request No. 05921050 (May 27, 1993); Taylor v. Peace Corps, EEOC Appeal No. 01930768 (Jul. 29, 1993).

State dismissed Complainant's EEO complaint for failure to state a claim because as an applicant to be a Peace Corps Volunteer, she was not an applicant for a position with State. The instant appeal followed.

On appeal, Complainant argues that State and the Peace Corps are jointly liable. She cites Katz v. State and United States Agency for International Development (USAID), EEOC Appeal Nos. 0720060024 & 0720060025 (Mar. 26, 2009). In Katz, the complainant was an applicant for a U.S. Foreign Service job with USAID. The Commission found State liable for denying her a Class 1 medical clearance, and USAID liable, under the direct threat theory for not subsequently granting her a medical waiver and not hiring her. Complainant contends that publicly available information indicates State plays a role in Peace Corps medical clearance process. Complainant argues that Correri is inapposite because she is prosecuting her other EEO complaint in accordance with the Peace Corps' complaint procedures. State represented that the Peace Corps did not use the Department of State's medical clearance process and Peace Corps has its own separate office and procedures to process medical clearances.

ANALYSIS AND FINDINGS

Complainant's class complaint concerns State's role in violating the Rehabilitation Act in the medical clearance process for those seeking to be Peace Corps Volunteers, resulting in them not being brought on by the Peace Corps. While Complainant's EEO complaint is against State, she cannot escape that it still regards a Peace Corps Volunteer position, depriving the Commission of jurisdiction, as explained above.

The FAD is AFFIRMED.

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:



Carlton M. Hadden, Director
Office of Federal Operations

June 2, 2021
Date