



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

[REDACTED]  
Daisy W.,<sup>1</sup>  
Complainant,

v.

Andrew M. Saul,  
Commissioner,  
Social Security Administration,  
Agency.

Appeal No. 2021002581

Agency No. ATL-21-0107-SSA

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated February 23, 2021, 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 a Service Representative, GS-8, at the Agency's Field Office 622 facility in Birmingham, Alabama.

On February 8, 2021, Complainant filed a formal complaint alleging that the Agency subjected her to unlawful retaliation for prior protected EEO activity when she was required to take Social Security Administration Fundamentals training beginning on or about October 13, 2019 as though she were a new employee.

The Agency dismissed this claim, pursuant to 29 C.F.R. § 1614.107(a)(1), on the grounds that it stated the same claim as was presented in her prior EEO complaint (ATL-20-0271-SSA). Complainant filed the instant appeal.

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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.

On appeal, Complaint contends her previous and current claims are not identical and that they involve two different claims on two different dates, with different employees and different classes. She contends the Agency is not acknowledging her new claim with a different date of November 15, 2020 and different employees than her previous claim.

The Agency contends on appeal that the complaint was properly dismissed prior to investigation because the complaint stated the same claim previously brought before the Agency.

### 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 states the same claim that is pending before or has been decided by the Agency or Commission. To be dismissed as the “same claim”, the present and prior complaints must have involved identical matters. It has long been established that “identical” does not mean “similar.” The Commission has consistently held that in order for a complaint to be dismissed as identical, the elements of the complaint must be identical to the elements of the prior complaint in time, place, incident, and parties. See Jackson v. U.S. Postal Serv., EEOC Appeal No. 01955890 (April 5, 1996), rev'd on other grounds, EEOC Request No. 05960524 (April 24, 1997).

However, new evidence does not convert previous allegations into a new claim, Gantt v. Dep't of Veterans Affairs, EEOC Request No. 0120072183 (April 22, 2007). Neither does finding a new comparator employee or arguing a different theory of law. Doleshal v. HHS, EEOC Appeal No. 01A40020 (July 29, 2004) (finding the complainant's non-promotion claim, which was decided in a previous complaint, failed to state a claim, even though he raised his new complaint under the EPA and offered another comparator).

In her earlier EEO complaint (ATL-20-0271-SSA), Complainant alleged she was subjected to disparate treatment based on reprisal (prior EEO activity) when, around October 2019, she was required to take fundamental training as though she was a newly hired employee. (Agency Brief, p. 42). In that complaint, she alleged she become aware of training rules and the disparity on or about January 6, 2020. In the instant complaint, Complainant alleges she was subjected to disparate treatment based on reprisal (prior EEO activity) when, on October 13, 2019, she was required to take fundamental training as if she were a new employee. She stated that on November 15, 2020, she spoke with newly hired Agency employees and they said they had not taken the fundamentals training.

Complainant has not alleged or sustained a new, separate harm. She has alleged the same incident, time, place, and parties involved in Complainant being made to take fundamentals training beginning in October 2019. What she has alleged is merely new evidence and new comparators who were not required to take the fundamentals training. These are not new parties because they were not involved in making the decision to have Complainant take the training she alleges is the discriminatory action.

Rather, they are employees being used as comparators. Similarly, although she alleges different dates, she is merely alleging different dates on which she learned of comparators. The date the allegedly discriminatory training occurred is the same.

As this complaint raises the same matter as her previously filed complaint, the instant complaint was correctly dismissed by the Agency for failure to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1).

### CONCLUSION

The Agency's final decision dismissing the formal complaint is **AFFIRMED** for the reasons discussed above.

### 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).

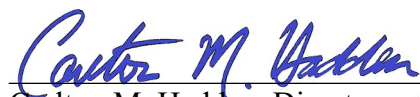
#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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

August 9, 2021  
Date