



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

[REDACTED]  
Sheryl S.,<sup>1</sup>  
Complainant,

v.

Christine Wormuth,  
Secretary,  
Department of the Army,  
Agency.

Appeal No. 2021002818

Agency No. ARANAD21JAN00435

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated March 11, 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

**BACKGROUND**

During the period at issue, Complainant worked as an Explosives Operator at the Agency's facility in Anniston, Alabama.

On January 21, 2021, Complainant initiated EEO Counselor contact. Informal efforts to resolve her concerns were unsuccessful.

On March 5, 2021, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on race (African-American), sex (female), color (Brown), disability, and age (51 years old at the time of the alleged incidents).

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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 March 11, 2021, the Agency issued a final decision. The Agency determined that Complainant's complaint was comprised of the following claims:

- a. on January 6, 2021, [Complainant] received a letter from the Civilian Personnel Center, Anniston Army Depot, withdrawing a Tentative Job offer extended to [her] for a permanent Explosives Operator, WG-6502-08 position at the Anniston Munitions Center, reason given failure to meet condition of employment. (Disqualifying injury occurred on the job).
- b. On December 19, 2020, a table was provided as a workstation instead of a desk as requested. The table was pushed into [her] work area without any explanation and was provided without any measurements being taken to see if it was the proper height.
- c. On December 8, 2020, the chair [Complainant] was using to perform the duties of her term Explosives Operator position was suddenly taken away. The removal of the chair made [her] feel it was an attempt by [her] supervisor to prove [she] could not do the job.
- d. On September 17, 2020, the physical process for the permanent Explosive Operator and [a named Agency official, A1] allegedly discriminated against [her] due to [her] disability when [A1] added on [her] restrictions no use of respirator that was not part of [her] restrictions that were provided by the doctor. Allegedly discrimination occurred again on October 20, 2020 and November 4, 2020, due to [her] disability when [A1] stated [she] needed to go back to her doctor to remove her restrictions for her to accept the permanent position.

The Agency dismissed the formal complaint on various grounds. Regarding claims (a) and (b), the Agency dismissed these matters for failure to state a claim. Regarding claim (a), the Agency reasoned that the job offer was withdrawn because Complainant was deemed not medically qualified for the position. Regarding claim (b), the Agency reasoned that the podium was not specifically for Complainant's use and Complainant's request for a reasonable accommodation for a sit-stand desk was not received until January 14, 2021. The Agency dismissed claim (c) on the grounds it has been rendered moot. The Agency reasoned that an Agency official directed all chairs be removed. However, the official requested the chairs be returned the next day. The Agency dismissed claim (d) for untimely EEO Counselor contact reasoning that Complainant did not initiate EEO contact until January 21, 2020, outside the applicable time limit.

The instant appeal followed.

In response, the Agency requests that we affirm its final decision dismissing Complainant's complaint. The Agency reiterates its reasoning set forth in its final decision.

### ANALYSIS AND FINDINGS

The Agency improperly dismissed the formal complaint on various procedural grounds. As an initial matter, we find that Complainant is alleging that she was subjected to a hostile work environment, comprised of the incidents set forth in (a)-(d), and that the Agency improperly fragmented the incidents comprising her hostile work environment claim.

We find that the Agency improperly dismissed incidents (a) and (b) for failure to state a claim. The only questions for an agency to consider in determining whether a complaint states a claim are: (1) whether complainant is an aggrieved employee; and (2) whether complainant raises employment discrimination on a basis covered by EEO statutes. If these questions are answered in the affirmative, an agency must accept the complaint for processing regardless of its judgment of the merits. See Odoski v. Dep't of Energy, EEOC Appeal No. 01901496 (April 16, 1990). Complainant, in the incidents set forth in (a) and (b), is alleging that the Agency withdrew a job offer and failed to provide her with a reasonable accommodation based on her protected classes. Complainant has therefore set forth an actionable claim.

The Agency's statements that Complainant's offer was withdrawn because she was not medically qualified and that she did not request reasonable accommodation until January 2021 go to the merits of the formal complaint, and are irrelevant to the procedural issue of whether she has stated a justiciable claim. See Osborne v. Dep't of the Treasury, EEOC Request No. 05960111 (July 19, 1996); Lee v. U.S. Postal Serv., EEOC Request No. 05930220 (Aug. 12, 1993); Ferrazzoli v. U.S. Postal Serv., EEOC Request No. 05910642 (Aug. 15, 1991). In addition, we find that when the alleged incidents set forth in (a) and (b) are viewed collectively with the other alleged incidents, Complainant has set forth an actionable claim of harassment.

We further find that the Agency improperly dismissed incident (c) for mootness. The regulation set forth at 29 C.F.R. § 1614.107(a)(5) provides for the dismissal of a complaint when the issues raised therein are moot. To determine whether the issues raised in complainant's complaint are moot, the factfinder must ascertain whether: (1) it can be said with assurance that there is no reasonable expectation that the alleged violation will recur; and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged discrimination. See County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979); Kuo v. Dep't of the Navy, EEOC Request No. 05970343 (July 10, 1998). When such circumstances exist, no relief is available and no need for a determination of the rights of the parties is presented.

The record reflects that Complainant is requesting compensatory damages. Specifically, Complainant, in her formal complaint and the EEO Counselor's Report, asserts, in pertinent part, that she is seeking to be made whole by the Agency, which we interpret as a request for compensatory damages. Should Complainant prevail on this formal complaint, the possibility of an award of compensatory damages exists. See Glover v. U.S. Postal Serv., EEOC Appeal No. 01930696 (Dec. 9, 1993). As the issue of compensatory damages was not addressed, we find that dismissal on the grounds that the EEO complaint was rendered moot was improper. See Rouston v. Nat'l Aeronautics and Space Admin., EEOC Request No. 05970388 (Mar. 18, 1999).

Finally, we find that the Agency improperly dismissed incident (d) for untimely EEO Counselor contact. As set forth above, we find that Complainant is alleging a hostile work environment. The Commission has held that “[b]ecause the incidents that make up a hostile work environment claim collectively constitute one unlawful employment practice, the entire claim is actionable, as long, as at least one incident that is part of the claim occurred within the filing period. This includes incidents that occurred outside the filing period that the [Complainant] knew or should have known were actionable at the time of their occurrence.” EEOC Compliance Manual, Section 2, Threshold Issues at 2 -- 75 (revised July 21, 2005) (citing National Railroad Passenger Corp. v. Morgan, 536 U.S. 101, 117 (2002)).

The record reflects Complainant initiated EEO contact on January 21, 2021. The record further reflects that at least one of the incidents comprising Complainant’s hostile work environment claim occurred within the 45 days preceding Complainant’s EEO contact. For example, in incident (a), Complainant alleges that she received notification that the Agency was withdrawing her job offer on January 6, 2021. Thus, we find that the Agency improperly dismissed incident (d) which is part of Complainant’s overall hostile work environment claim.

Accordingly, we REVERSE the Agency’s final decision dismissing Complainant’s complaint and we REMAND this matter to the Agency for further processing in accordance with the ORDER below.

#### ORDER (E0618)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant’s request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency’s letter of acknowledgment to Complainant, 2) a copy of the Agency’s notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant’s request for a hearing, a copy of complainant’s request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

### 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 (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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 filed your appeal with the Commission. 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. **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:



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Carlton M. Hadden, Director  
Office of Federal Operations

July 28, 2021

Date