



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

[REDACTED]
Anastasia C.,¹
Complainant,

v.

Marcia L. Fudge,
Secretary,
Department of Housing and Urban Development,
Agency.

Appeal No. 2021003693

Agency No. HUD-00019-2021

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated May 10, 2021, dismissing a formal 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 as Economist, GS-13, at the Social Economic and Housing Statistics Division (SEHSD), Department of Commerce's Census Bureau in Washington, District of Columbia (Department of Commerce or Census Bureau).

Beginning June 2017, Complainant worked on an interagency research project known as the American Housing Survey (AHS). Although Complainant remained a Department of Commerce Census Bureau employee, the AHS was funded and directed by the Department of Housing and Urban Development (Agency or HUD).

On December 31, 2020, Complainant initiated contact with an EEO Counselor at HUD. After HUD issued a notice of right to file a formal complaint, Complainant filed a formal complaint on March 18, 2021.

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.

In the formal complaint, Complainant alleged that she had been subjected to discriminatory harassment (nonsexual) based on sex and reprisal for EEO-protected activity (a prior complaint identified as 63-2019-00058) when:

1. Since Complaint initiated her prior EEO complaint, Complainant's direct supervisor, SESHD Assistant Chief ("Supervisor"), with her second-level supervisor, the SESHD Chief ("Chief"), "left off" Complainant as Lead of the AHS that Complainant stated she had created and had been leading since 2014. When she discussed this matter and other concerns with the newly appointed Census Bureau Associate Director of the Demographic Directorate ("Associate Director"), in November 2019, Chief restored her as the head of the AHS.
2. Since Complainant initiated her prior EEO complaint, Supervisor has routinely interfered with and undermined her role in the AHS. Examples included falsely claiming that Complainant yelled at HUD officials who were participating in the AHS and preventing Complainant, on an ongoing basis, from meeting with the Census Bureau's HUD Survey Liaison ("Liaison") without Supervisor being present. When Complainant obtained permission from Associate Director to meet with Liaison without Supervisor being present, Liaison refused to respond to Complainant's requests to meet.
3. Supervisor directed Complainant to document that she was on an annual leave status for eight hours on December 5, 2019, because Complainant had accidentally teleworked that day rather than reporting to the office. Supervisor did so knowing that Complainant had accidentally performed telework for that entire workday. Human resources officials later intervened and instructed Supervisor that forcing Complainant to falsely report being on annual leave was illegal. This action constituted one of many alleged incidents in which Supervisor subjected Complainant to harassment beyond work on the AHS which are at issue in formal complaint number 63-2019-00058.
4. On March 19, 2020, the AHS was shut down. This shut down was effectuated by Chief and Supervisor, with the knowledge and apparent approval Associate Director. Then on March 20, 2020, Supervisor told Complainant that the AHS had a "low probability" of ever restarting.

On May 10, 2021, the Agency issued the instant final decision. The Agency dismissed the formal complainant for failure to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1). Essentially, the Agency determined that Complainant had failed to state a claim because HUD was not her employer. The Agency acknowledged its interagency agreement with the Census Bureau for the AHS, but decided that HUD did not have jurisdiction or control over terms and conditions of Complainant's employment citing Anette B. v. Dep't of the Army, EEOC Appeal No. 2019005098 (Dec. 11, 2019).

The instant appeal followed. On appeal, Complainant's representative contends the Department of Commerce's legal representative had stated that "HUD alone" had controlled the AHS project and that HUD managers decided to remove Complainant from the AHS.

ANALYSIS AND FINDINGS

Under the regulations set forth at 29 C.F.R. §§ 1614.103, 1614.106(a) the Agency must accept a complaint from an aggrieved employee who states that she has been subjected to employment discrimination because of her sex or because of retaliation for EEO-protected activity. Upon review, the Commission finds that Complainant's complaint was improperly dismissed for failure to state a claim. Complainant satisfied the threshold inquiry for stating a claim that described an employment harm under EEOC regulations. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994).

The record revealed that Complainant initiated EEO processes with Department of Commerce and also at HUD. The Department of Commerce attributed responsibility over Complainant's EEO complaint to HUD. HUD, in turn, denied EEO jurisdiction by reasoning that Complainant had always been the Census Bureau's employee. Nevertheless, both Census and HUD were responsible for the AHS as well as for Complainant's research work on the AHS.

Therefore, we conclude liability for the alleged discrimination must be determined by examining acts and decisions by both Department of Commerce managers and HUD supervision. If two agencies bear joint responsibility over the alleged discrimination, then both agencies must jointly process the EEO complaint. Carol K. v. Dep't of the Air Force, EEOC Appeal No. 2019004395 (Sept. 17, 2019) (holding both the Air Force and the Navy jointly responsible for a complaint by a Navy employee about the Air Force's negative assessment of the Navy employee's performance on the inter-agency project to develop the joint strike fighter aircraft). Fauntroy v. Gen. Servs. Admin., EEOC Appeal No. 01980259 (Sept. 15, 1998) (joining the Department of Treasury in its employee's complaint against GSA because an on-duty GSA security guard had been sexually harassing the Treasury employee while she was going to and from her Treasury workplace).

By this decision, EEOC hereby also places the Department of Commerce on notice of joinder to this matter.²

² It appears that on February 24, 2020, an EEOC Administrative Judge dismissed, without prejudice, Complainant's EEO complaint against the Department of Commerce because Complainant, through her union representative, agreed to attempt to informally resolve the matter.

CONCLUSION

The Agency's final decision dismissing Complainant's complaint is REVERSED. The complaint is hereby REMANDED to the Agency for further processing in accordance with the ORDER below.

ORDER

In accordance with the decision above, we ORDER the following actions:

- 1) The Department of the Housing and Urban Development is ORDERED to contact the Department of Commerce to commence jointly processing Complainant's complaint. The Agencies shall commence the joint-processing of this case by sending Complainant a joint letter acknowledging receipt of this remanded complaint **within thirty (30) calendar days** from the date this decision is issued.
- 2) **Within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time the Agencies are ORDERED to provide Complainant a copy a joint report of investigation and joint notice of her right to request a hearing before an EEOC AJ. If Complainant requests an Agency final decision in lieu of a hearing, then the Agencies are ORDERED to jointly issue a final decision, pursuant to 29 C.F.R. § 1614.110(b), with appeal rights to this Commission, in which case the joint final decision shall addresses each Agency's respective liability for Complainant's aforementioned discrimination claims based on sex/gender or retaliation. Unless Complainant requests a hearing, the Agencies shall issue their joint final decision **within sixty (60) calendar days** after either Agency is in receipt of Complainant's request for a final decision in lieu of a hearing.
- 3) A copy of a joint letter of acknowledgement to Complainant that her complaint is being jointly processed by the Department of the Housing and Urban Development and the Department of Commerce, and a copy of these Agencies' joint final decision on liability must be sent to the Compliance Officer as referenced below.

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. 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 Complainant and her representative.

If the Agency does not comply with the Commission's orders, Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). 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. 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, 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 Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** 29 C.F.R. § 1614.409.

Failure by the Agencies 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 the Agencies.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0920)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agencies submit 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 an 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. 29 C.F.R. § 1614.405; EEO Management Directive for 29 C.F.R. Part 1614, at Ch. 9 § VII.B (Aug. 5, 2015).

Complainant should submit her request for reconsideration, and a statement or brief in support of her request, via the EEOC Public Portal, found at <https://publicportal.eeoc.gov/Portal/Login.aspx>.

Alternatively, Complainant can submit her request and arguments to the Director, Office of Federal Operations, EEOC, via regular mail addressed to P.O. Box 77960, Washington DC 20013, or by certified mail addressed to 131 M St. NE, Washington DC 20507.

In the absence of a legible postmark, a request to reconsider shall be deemed timely filed if OFO receives within five days of the expiration of the applicable filing period. 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). 29 C.F.R. § 1614.403(g). Any party's request or statement or brief in opposition must also include proof of service on the other parties, unless Complainant files 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 a 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. 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 persons who are 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:



Carlton M. Hadden, Director
Office of Federal Operations

November 8, 2021

Date