



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Winford M.,<sup>1</sup>  
Complainant,

v.

Denis R. McDonough,  
Secretary,  
Department of Veterans Affairs,  
Agency.

Appeal No. 2022000340

Agency No. 200P-0593-2021104702

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated October 12, 2021, dismissing a formal complaint alleging 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**

During the period at issue, Complainant worked for the Agency as a Biomedical Engineering Technician in Las Vegas, Nevada.

On June 18, 2020, Complainant filed an EEO complaint, identified as Agency Case No. 200P-0593-2020103461. On August 25, 2020, the Agency accepted some of those claims for investigation, but dismissed several claims on procedural grounds.

On July 9, 2021, the Agency issued a final decision on the merits of the accepted claims in Agency Case No. 200P-0593-2020103461, finding no discrimination was established.<sup>2</sup>

---

<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.

<sup>2</sup> Commission records reflect that Agency Case No. 200P-0593-2020103461 is currently pending before us on appeal in EEOC Appeal No. 2021003942.

In a footnote in the Agency's July 9, 2021 final decision, the Agency stated that "one of the dismissed claims, alleged as a HIPAA and Privacy Act violation, could potentially be construed as a per se violation of the Rehabilitation Act regarding improper disclosure of confidential medical records...Should Complainant wish to pursue this matter, he should contact an EEO Counselor within 15 days of receipt of this decision, and such contact must be deemed timely."

Complainant subsequently initiated EEO counseling contact with respect to this claim on July 14, 2021. On August 16, 2021, Complainant filed the instant complaint alleging unlawful reprisal. In its final decision for the instant complaint dated October 12, 2021, the Agency framed Complainant's claim in the following fashion:

Whether Complainant was subjected to a hostile work environment based on reprisal when on April 20, 2020, Complainant's former supervisor contacted his medical provider to verify his medical status in violation of his privacy.

The Agency dismissed Complainant's instant complaint for failure to state a claim. The Agency reasoned that the alleged matter was not sufficiently severe or pervasive to set forth an actionable claim of harassment. The Agency further reasoned that the alleged incident was not reasonably likely to deter Complainant or others from engaging in protected activity. Moreover, the Agency found that to the extent Complainant was alleging HIPAA and Privacy Act violations that these matters were outside of the Commission's jurisdiction and thus failed to state a claim.

The instant appeal followed. On appeal, Complainant, through his attorney, asserts that the Agency improperly dismissed his formal complaint. Complainant asserts that he was raising a per se violation of the Rehabilitation Act for improper disclosure of medical information. Complainant asserts that the Agency, in a footnote in its final decision for his prior EEO case, referenced that this allegation may have been improperly dismissed to the extent he was alleging a per se violation of the Rehabilitation Act for improper disclosure of medical records. The Agency had then advised him to contact the Agency's EEO Office if he wished to pursue this claim. Complainant submits, with his appeal, a copy of a letter from the Agency's Privacy Officer dated April 30, 2020, stating that Complainant had filed a privacy complaint and that the Agency found subsequent to an investigation that "a privacy violation along with policy violations were found." Complainant also asserts that the Agency improperly fragmented this matter from his hostile work environment claim set forth in his prior EEO case, Agency Case No. 200P-0593-2020103461.

In response, the Agency requests that we affirm its final decision dismissing Complainant's complaint. The Agency asserts that the supervisor at issue is no longer supervising Complainant.

### ANALYSIS AND FINDINGS

To the extent Complainant is alleging violations of HIPAA and/or the Privacy Act we find that the Agency properly dismissed this matter for failure to state a claim. Regarding the alleged HIPAA violation, the Commission has previously determined that matters concerning HIPAA are not within regulations enforced by the Commission. See Grove v. U.S. Postal Serv., EEOC Appeal No. 0120110456 (Jan. 5, 2012); Price v. U.S. Postal Serv., EEOC Appeal No. 0120111033 (Dec. 8, 2011). The Department of Health and Human Services' Office of Civil Rights enforces that HIPAA privacy rule and the administrative EEO complaint process is the improper forum to raise a HIPAA violation. See Lee v. U.S. Postal Serv., EEOC Request No. 0520110481 (Nov. 4, 2011).

Additionally, to the extent that Complainant is alleging a violation of the Privacy Act, we note that the Privacy Act provides an exclusive statutory framework governing the disclosure of identifiable information contained in federal system of records, and jurisdiction rests exclusively in the United States District Courts. See Bucci v. Dep't of Educ., EEOC Request Nos. 05890289, 05890291 (Apr. 12, 1989). Thus, the EEO complaint process is the improper forum to raise a Privacy Act violation.

We find, however, that Complainant is also alleging a per se violation of the Rehabilitation Act for improper disclosure of medical information when his supervisor contacted his medical provider for information regarding his medical status without his authorization. When Complainant initiated EEO contact he asserted he was raising a per se violation of the Rehabilitation Act for improper medical disclosure as set forth in the footnote of the final decision in his prior EEO case. In addition, Complainant, on appeal, reiterates that he is raising a per se violation of the Rehabilitation Act. Section 102(d) of the Americans with Disabilities Act and by extension Section 501(g) of the Rehabilitation Act, also specifically prohibits the disclosure of medical information, except in certain limited situations. See Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC Notice No. 915.002 (Oct. 17, 2002) (describing the limited exceptions to the medical confidentiality requirements); Titus v. Dep't of Homeland Sec., EEOC Appeal No. 0120102384 (Apr. 17, 2013). The Commission has previously stated that the disclosure of "medical information pertaining to appellant in a manner that did not conform to the conditions prescribed in [the Commission's regulations pertaining to confidentiality of medical records] is "a per se violation of the Rehabilitation Act and no showing of harm beyond the violation would be necessary for appellant to state a claim." Valle v. U.S. Postal Serv., EEOC Request No. 05960585 (Sept. 5, 1997). Therefore, Complainant's allegation of a per se violation of the Rehabilitation Act for improper disclosure of medical information sets forth an actionable claim.

Accordingly, we AFFIRM the Agency's dismissal of Complainant's complaint with respect to his claims that HIPAA and the Privacy Act were violated. However, we REVERSE the Agency's dismissal of Complainant's claim alleging a violation of the Rehabilitation Act due to improper disclosure of medical information 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 (defined herein as a per se violation of the Rehabilitation Act for improper medical disclosure) in accordance with 29 C.F.R. § 1614.108 et seq. 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 (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

February 7, 2022

Date