



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

[REDACTED]
America K.,¹
Complainant,

v.

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

Appeal No. 2022000432

Agency No. ARBELVOIR21AUG02539

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated October 6, 2021, dismissing a formal complaint alleging 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., and 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 as a Management Support Assistant at the Agency's Fort Belvoir in Virginia.

On September 22, 2021, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on race (African American), sex (female), disability, and in reprisal for prior protected EEO activity (current EEO complaint and requesting a reasonable accommodation). On October 6, 2021, the Agency issued a final decision. The Agency determined that the formal complaint was comprised of the following claims:

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.

- a. On or about March 16, 2021, [named Deputy Joint Personnel Property Shipping Office Mid-Atlantic, (D1)], denied [her] request through [a named Human Resources Assistant] to receive the highest previous rate of pay and or pay of a GS-7, step 10, despite [her] prior federal service as a Program Analyst, GS-12.
- b. On or about April 21, 2021, [Complainant] received a letter from [a named Human Resources Specialist, HR2] withdrawing the offered position.
- c. On or about July 22, 2021 and July 30, 2021, [Complainant was] not provided with requested in-processing/onboarding information from [D1] nor [a named Senior Administrative Specialist].
- d. On or about July 27, 2021, [Complainant] sought in processing/onboarding information from the civilian personnel office and did not receive it.
- e. On or about August 2, 2021, [Complainant was] not provided with a clean, vacant desk area, nor a computer upon reporting for duty.
- f. On or about August 3, 2021, [D1] sent [her] reasonable accommodation request to telework to Labor Management Employee Relations.²
- g. On or about August 9, 2021, after great difficulty, [she] received a SF-50 with [her] name and pay information of a GS-0303-7 step 1, from [a named human resources assistant].
- h. On or about August 10, 2021, and July 27, 2021, [D1] placed a female in between [Complainant's] contact with [D1] for information.
- i. On or about August 10, 2021, [Complainant] received a burdensome/onerous and oppressive 28-page document requesting medical information and a medical release in response to [her] reasonable accommodation request to telework that [she] submitted on August 3, 2021, from [D1] and [a named EEO Specialist].

² Complainant asserts the reasonable accommodation request should have been forwarded instead to the Disability Program Manager.

- j. On or about August 10, 2021 and August 11, 2021, [Complainant] received harassing intimidating emails from [a named EEO Director] regarding [Complainant's] response to [D1] about the 28-page document [Complainant] received in response to [her] reasonable accommodation request to telework.
- k. On or about August 23, 2021, [Complainant was] required to take a Cybersecurity training and test on a technician's computer in the technician's cubicle with the technician sitting next to [her] socially talking to another co-worker.³
- l. On or about August 30, 2021, upon gaining access to [her] computer [she] requested refresher training in Microsoft Excel and as reprisal [D1] replied to [her], "I purchased a book, Excel for Dummies."
- m. On or about September 1, 2021, as retaliation [she] received an email from [a named EEO Specialist] requesting clarification on [her] submitted medical documentation.
- n. On or about September 9, 2021, as retaliation, [Complainant was] made to come into the office to receive training from [a named Senior Administrative Specialist], and [the Administrative Specialist] did not come into the office to conduct the training.
- o. On or about September 18, 2021, as reprisal, [Complainant has] not received a response to [her] reasonable accommodation request to telework that was submitted on August 3, 2021, and [she] continues to be badgered for additional medical information and explanations.

The Agency dismissed claims (a) and (b) for untimely EEO counselor contact. The Agency dismissed claims (c)-(e), (g)-(k), and (n) for failure to state a claim. The Agency reasoned that these matters were minor workplace slights. The Agency dismissed claims (f), (m), and (o) finding that these matters are not ripe and "may be revisited when [Complainant] receives a reasonable accommodation decision from [her] supervisor..."⁴

³ Complainant asserts that employees, in the office, were not wearing masks and socially distancing during the COVID-19 pandemic.

⁴ However, in response to the appeal, the Agency now asserts that Complainant's request for reasonable accommodation was not approved in its entirety and thus acknowledges that this matter now states a claim. The Agency references a document dated September 23, 2021 granting Complainant partial telework (but not full telework).

The Agency dismissed claim (l) for failure to state a claim reasoning that this matter was a single isolated incident and not sufficiently severe or pervasive to set forth an actionable harassment claim.

The instant appeal followed. Complainant reiterates that she has been subjected to an ongoing hostile work environment based on her protected classes. Complainant states that the Agency has “broken [her complaint] into many pieces.”

ANALYSIS AND FINDINGS

As an initial matter, we find that Complainant is alleging a single ongoing hostile work environment claim. The Agency erred by fragmenting Complainant’s hostile work environment rather than viewing the alleged incidents comprising the hostile work environment claim collectively.

Dismissal for Untimely EEO Counselor Contact

The Agency improperly dismissed claims (a) and (b) for untimely EEO counselor contact. As set forth above, Complainant is alleging a harassment/hostile work environment claim. 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 of the filing period that [Complainant] knew or should have known were actionable at the time of the occurrence.” EEOC Compliance Manual, Section 2, Threshold Issues at 2-75 (rev. July 21, 2005) (citing National Railroad Passenger Corp v. Morgan, 536 U.S. 101, 117 (2002)).

Complainant initiated EEO contact on August 11, 2021. There are numerous alleged incidents that occurred within the 45 days preceding Complainant’s August 11, 2021 EEO contact (see incidents (e)-(i)). Based on the foregoing, we find that Complainant’s entire hostile work environment claim is timely. To the extent the Agency asserts, on appeal, that claims (a) and (b) involve actions by human resources and not by D1 and thus are not part of Complainant’s single hostile work environment claim, we disagree. A review of the record and Complainant’s statement, on appeal, reflect that Complainant is alleging that D1 worked in conjunction with human resources regarding these alleged actions. For example, Complainant, on appeal, states that “[D1] placed me in a Step -1 because I am an African American female with a psychiatric disability...[D1] has been working with the [Civilian Personnel Advisory Center] to prevent me from entering on duty in my new position...” Thus, we find that Complainant is alleging that D1 was involved in the actions at issue in incidents (a) and (b) and that they are part of Complainant’s hostile work environment claim.

Dismissal for Failure to State a Claim

The Agency improperly dismissed the remaining incidents for failure to state a claim or reasoning that they were not ripe. In Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993), the Supreme Court reaffirmed the holding of Meritor Savings Bank v. Vinson, 477 U.S. 57, 67 (1986), that harassment is actionable if it is sufficiently severe or pervasive to alter the conditions of the complainant's employment. The Court explained that an "objectively hostile or abusive work environment [is created when] a reasonable person would find [it] hostile or abusive:" and the complainant subjectively perceives it as such. Harris, supra at 21-22. Thus, not all claims of harassment are actionable. Where a complaint does not challenge an agency action or inaction regarding a specific term, condition or privilege of employment, a claim of harassment is actionable only if, allegedly, the harassment to which the complainant has been subjected was sufficiently severe or pervasive to alter the conditions of the complainant's employment.

In the instant matter, Complainant is alleging, among other things, that the Agency initially withdrew the offered position, placed her at a lower salary, denied her a reasonable accommodation of 100% telework, requested overly broad and burdensome medical documentation with respect to her reasonable accommodation request, forwarded her reasonable accommodation request to parties other than the Disability Program Manager, and did not provide her with a computer upon starting her employment. When viewing these incidents collectively, we find that Complainant has set forth an actionable hostile work environment claim.

Regarding the Agency's assertion, on appeal, that claims (f) and (m) should be dismissed because the Agency's requests for medical documentation were reasonable, we find that these assertions go the merits of the complaint and not the procedural issue of whether Complainant has set forth an actionable claim. Therefore, when incidents (f) and (m) are viewed collectively, along with the other alleged incidents, Complainant has set forth an actionable claim of harassment.

Accordingly, we REVERSE the Agency's final decision dismissing Complainant's complaint and we REMAND this matter, defined herein as a harassment/hostile work environment claim, to the Agency for further processing in accordance with the ORDER below.

ORDER (E0618)

The Agency is ordered to process the remanded claims (harassment/hostile work environment) 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 (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:



Carlton M. Hadden, Director
Office of Federal Operations

March 29, 2022

Date