



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, DC 20507

[REDACTED]
Karma S.,¹
Complainant,

v.

Isabel Casillas Guzman,
Administrator,
Small Business Administration,
Agency.

Request No. 2022001076

Appeal No. 2021003708

Agency No. 06-14-041

DECISION ON REQUEST FOR RECONSIDERATION

Through legal counsel, Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 2021003708 (November 22, 2021). EEOC regulations provide that the Commission may, in its discretion, grant a request to reconsider any previous Commission decision issued pursuant to 29 C.F.R. § 1614.405(a), where the requesting party demonstrates 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. See 29 C.F.R. § 1614.405(c). For the reasons which follow, Complainant's request is GRANTED.

BACKGROUND

During the relevant time, Complainant worked as a Lead Economic Development Specialist, GS-1101-13, at the Agency's District Office in Pittsburgh, Pennsylvania.

In October 2014, Complainant filed a formal equal employment opportunity (EEO) complaint claiming sex discrimination and unlawful retaliation for engaging in prior protected activity. The Agency framed the issues in the complaint as alleging that Complainant received a June 2014 notice of non-selection stating that she was ineligible to apply for a GS-15 District Director position and that management made harassing comments regarding Complainant's initial hire by allegedly stating that her resume was so atrocious that an unnamed management official

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.

interviewed other applicants before having no choice but to hire Complainant which created a hostile work environment.²

In early November 2014, the Agency issued a Notice of Partial Acceptance/Dismissal that procedurally dismissed Complainant's harassment/hostile work environment claim for failure to state a claim, finding that Complainant's allegations regarding management's comments were not sufficiently severe or pervasive to alter the conditions of her employment and did not render her aggrieved with respect to a term, condition, or privilege of employment.

It is undisputed that by letter to the Agency dated November 18, 2014, Complainant's attorney objected to the manner in which the claims had been defined and requested reconsideration of the Agency's dismissal of the harassment/hostile work environment claim. In a November 21, 2014 response, the Agency determined that it had properly defined the complaint and the Notice of Partial Acceptance/Dismissal would remain as originally issued.

The Agency accepted for investigation Complainant's claim regarding her non-selection for the District Director position. The investigation into that claim was completed in May 2015. Complainant then requested a hearing before an EEOC Administrative Judge, but later withdrew that request.³ Thereafter, the Agency issued a final decision, pursuant to 29 C.F.R. § 1614.110(b), reiterating its dismissal of Complainant's harassment/hostile work environment claim, and concluding the evidence of record developed during the investigation did not establish discrimination occurred with regard to District Director position

The appellate decision in EEOC Appeal No. 2021003708 affirmed the Agency's final decision dismissing Complainant's allegations of harassment regarding management's comments, as well as the Agency's finding of no discrimination or retaliation concerning the non-selection.

On request for reconsideration, Complainant argues that the appellate decision erred in affirming the dismissal of Complainant's allegations of a hostile work environment. In so doing, Complainant notes that her formal complaint included sixty-four paragraphs identifying a wide variety of harassing events that were not considered by the Agency or in the appellate decision below. She requests that the Commission now reverse the dismissal of her

² In its brief submitted during the original appeal of this matter, the Agency concedes that the complaint included a 64-paragraph statement of allegations by Complainant, which it contended was correctly distilled into these two claims.

³ Complainant, in her brief submitted during the original appeal, explained that her hearing request was acknowledged in September 2016, but when no significant action had occurred on her case by February 2018, she withdrew her hearing request and asked that the case be remanded back to the Agency for an immediate final decision.

harassment/hostile work environment claim and remand it back to the Agency for investigation and further processing.

The Agency has not submitted a statement or brief in response to the request for reconsideration.

ANALYSIS

As an initial matter, we note that Complainant has raised no argument that we should reconsider the conclusion reached in EEOC Appeal No. 2021003708, that no discrimination or unlawful retaliation was established regarding the non-selection claim. Therefore, we will not consider that claim further. The conclusions reached in EEOC Appeal No. 2021003708 regarding the non-selection issue as a claim independent of the overall harassment/hostile work environment claim remains our final decision.

Under EEOC's regulations, an agency shall accept a complaint from an aggrieved employee or applicant for employment who believes that they have been discriminated against by that agency because of race, color, religion, sex, national origin or disabling condition, or unlawfully retaliated against for engaging in protected activity. See 29 C.F.R. §§ 1614.103, 1614.106(a). The Commission's federal sector case precedent has long found an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Department of the Air Force, EEOC Request No. 05931049 (April 21, 1994). See also Gilyard v. Dep't of Energy, Appeal No. 01A01550 (June 9, 2003).

Where an agency finds that the complainant is not aggrieved, 29 C.F.R. § 1614.107(a)(1) authorizes it to dismiss the EEO complaint for failing to state a claim for which relief can be granted. However, a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the complainant cannot prove a set of facts in support of the claim which would entitle that complainant to relief. Thus, a claim of discriminatory harassment should not be dismissed for failure to state a claim where the complainant has made factual allegations that, when considered together and treated as true, would be sufficient to state a viable claim under the employment discrimination statutes. See Cobb v. Dep't of the Treasury, EEOC Request No. 05970077 (Mar. 13, 1997).

Here, Complainant requests that we reconsider the dismissal of her claim of harassment/hostile work environment. 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. Thus, not all claims of harassment are actionable. As noted by the Supreme Court in Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998): "[S]imple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the 'terms and conditions of employment'."

An examination of Complainant's lengthy 64-paragraph statement of allegations in her formal complaint, as well as the related EEO counseling report, clearly supports a finding that, when

taken together and assumed to be true, Complainant's allegations are sufficient to state a viable claim of sex discrimination or unlawful retaliation which requires investigation and further processing. In brief, these allegations include, but are not limited to, stripping Complainant of her supervisory authority, assigning Complainant excessive performance goals, denigrating and degrading Complainant, forcing Complainant to work excessive hours for which she was not compensated, threatening Complainant about submitting requests for reimbursement of expenses, and management officials telling Complainant to "stop the emotion" when she expressed her feelings about how she was being treated and ignoring her complaints of discrimination.

Therefore, after reconsidering the previous decision's dismissal of Complainant's harassment claim and the entire record, the Commission finds that Complainant's request meets the criteria of 29 C.F.R. § 1614.405(c), and it is the decision of the Commission to GRANT the request to reconsider that claim. The portions of the decision in EEOC Appeal No. 2021003708 and the Agency's final decision dismissing Complainant's harassment/hostile work environment claim are REVERSED and REMANDED for further action in accordance with the Order below.

There is no further right of administrative appeal on the decision of the Commission on a Request to Reconsider.

ORDER (E0618)

The Agency is ordered to process the remanded hostile work environment/harassment claim in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall acknowledge to the Complainant that it has received the remanded claim **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.

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (Q0610)

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 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:

/s/Shelley E. Kahn

Shelley E. Kahn
Acting Executive Officer
Executive Secretariat

June 15, 2022
Date