



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

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Shenika B.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2022001571

Agency No. 200I-0534-2021105634

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated December 28, 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., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Prosthetic Clerk, GS-6, at the Agency's Medical Center in Charleston, South Carolina.

On November 30, 2021, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of sex (female), age, and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 when:

1. From June 1, 2021, and ongoing, Prosthetics Representative harassed and bullied Complainant "on a regular basis" and management failed to take action to resolve the situation.
2. From June 1, 2021, and ongoing, Prosthetics Representative subjected

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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.

Complainant to the following: treated Complainant like his subordinate, micromanaged and directed Complainant's work without being in a supervisory position, and spoke about her work in a "demeaning" way.

3. From June 1, 2021, and ongoing, Prosthetics Representative subjected Complainant to the following "sexist, intimidating/threatening, and derogatory comments": "Why are you so hard to talk to?", "Why did they hire you if you are not mechanically inclined?" or words to that effect, and a person up front wanted her position, and he could make her job "hard" for her.
4. From June 1, 2021, and ongoing, Prosthetics Representative subjected Complainant to the following: claimed Complainant was "unteachable," "constantly" questioned her prosthetics knowledge in a "demeaning/insulting" way and talked "negatively" about her to other employees.
5. From June 1, 2021, and ongoing, Prosthetics Representative came into the department and "glared" at Complainant in an "intimidating" manner, after she reported him to management and a no contact order was implemented.
6. On June 7, 2021, Prosthetics Representative made the "sexist" comment he knew what Complainant's problem was, "you are redhead like my first ex-wife" or words to that effect.
7. From August 1, 2021, to September 30, 2021, management failed to "thoroughly" investigate Complainant's harassment complaint involving Prosthetics Representative.
8. On September 3, 2021, Assistant Chief, Prosthetics, accused Complainant of being "combative/argumentative" with other employees and being the source of conflict.
9. On November 8, 2021, Chief, Prosthetics, rescinded the no contact order for Prosthetics Representative and did not take any action to prevent Prosthetics Representative from "bullying, harassing, and discriminating" against Complainant.

The Agency dismissed the complaint for failure to state a claim, pursuant to 29 C.F.R. § 1614.107(a)(1). It reasoned that, while Complainant may have felt harassed or offended by Prosthetics Representative's actions and management's response to her concerns, her hostile work environment claim failed the severe or pervasive requirement. Regarding the alleged reprisal, the Agency further found that the complained-of actions would not deter a reasonable person from opposing discrimination or participating in the EEO process.

### CONTENTIONS ON APPEAL

On appeal, Complainant requests that the case be reversed and remanded to the Agency for processing and investigation. Regarding the hostile work environment claim, she submits she has pled claims supporting that the conditions of her employment were altered, and the Agency created an abusive atmosphere. The alleged actions, she maintains, clearly support a frequency and pattern of harassment, from June 2021 up until the month she submitted her formal complaint, that rise to a level of severe and pervasive. Complainant further argues that she has pled allegations that support her claims of retaliation and that, despite her complaining to management about the intimidating, humiliating, and threatening actions of Prosthetics Representative, management failed to adequately investigate or take appropriate corrective action. Finally, she asserts that there is no doubt that she suffered adverse employment action as a result of the Agency's discrimination and retaliation.

The Agency contends that its final agency decision (FAD) is factually and legally correct. It also submits that Complainant has not raised viable arguments on appeal to show that the FAD was not factually and legally correct. It asks the Commission to affirm the FAD.

### ANALYSIS AND FINDINGS

The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that an Agency shall dismiss a complaint that fails to state a claim. An agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that she has been discriminated against by that agency because of race, color, religion, sex, national origin, age, or disabling condition. 29 C.F.R. §§ 1614.103, .106(a). The Commission's federal sector case precedent has long defined 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. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994).

The Agency improperly dismissed the complaint for failure to state a claim. As discussed above, Complainant is alleging that Prosthetics Representative subjected her to a hostile work environment based on her protected classes. Thus, we will review all the alleged incidents collectively. In the instant matter, from June 1 to November 8, Complainant alleges that Prosthetics Representative insulted her, demeaned her abilities, talked negatively to co-workers about her, compared her unflatteringly to his ex-wife, and intimidated her, blamed Complainant for being the source of conflict, and rescinded the no contact order for Prosthetics Representative and did not take further action to prevent his harassing of Complainant. She further alleged that management failed to thoroughly investigate the matter.

When considering the alleged incidents collectively, we find that Complainant has listed a number of events that occurred from June 1 to November 8. Thus, we find that together, these incidents, if proven true, are sufficiently severe or pervasive to state a claim of hostile work environment. See Cobb v. Dep't of the Treasury, EEOC Request No. 05970077 (Mar. 13, 1997).

### CONCLUSION

Therefore, based on our review of the record, we REVERSE the Agency's final decision REMAND the matter 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).

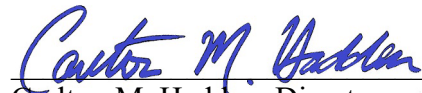
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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

May 16, 2022  
Date