



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

[REDACTED]
Alexandria P,¹
Complainant,

v.

Frank Kendall,
Secretary,
Department of the Air Force,
(United States Space Force)

and

Ryan D. McCarthy,
Secretary,
Department of the Army,
Agencies.

Appeal No. 2022001614

Agency No. 511L2100687

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated January 7, 2022, 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.

BACKGROUND

During the period at issue, Complainant worked as an Advanced Extremely High Frequency (AEHF) System SATCOM Planner, Grade GS-12, in the Regional SATCOM Support Center – East (RSSC East) at MacDill Air Force Base, Florida.

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.

Complainant worked on a shift with employees who, like her, were also assigned to the United States Space Force (USSF). The USSF is the nation's eighth armed service that is led by the Secretary of the Air Force. Complainant's shift was also staffed by other civilian employees who were assigned to the Department of the Army. These included Senior SATCOM Planner, Grade GS-13 (Caucasian American/white, male) and a Wideband Planner, Grade NH-3, (Caucasian American/white, male). Complainant identified the manager for the Protected SATCOM Program, known as Space Delta 8, who was also a civilian USSF employee, as her supervisor. Complainant has identified the Senior Planner's supervisor as the manager for Narrow Band SATCOM Program as a civilian employee of the Department of the Army. One of the witnesses to the events at issue was one of Complainant's SATCOM coworkers.

On December 8, 2021, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of her race (African American) and sex (female) when:

- a. Beginning on August 26, 2019, and continuing to the present, Senior Planner, made unwelcome sexist comments in Complainant's presence such as, "There were some cock sucking whores in that movie."
- b. Beginning in August 2019, and continuing to the present, Senior Planner made unwelcomed racist comments in Complainant's presence such as, "All the hospital beds are taken up by COVID-19 patients. Don't nobody care about hurt feelings," in response to Wideband Planner's sarcastic comment regarding systemic racism being a health crisis for African Americans.
- c. On January 7, 2021, Senior Planner, while discussing the January 6, 2021, Capitol riots, stated to a group of employees, "The South shall rise again and I am ready for it," in front of Complainant. Complainant was the only African American employee on shift during the conversation and the comments made her feel intimidated and unsafe.
- d. On or about January 7, 2021, Senior Planner, while discussing the January 6, 2021, Capitol riots, stated to a group of employees, "The states should secede, that's the only way things will be right," in the presence of Complainant. Complainant was the only African American employee on shift during the conversation and the comments made her feel intimidated and unsafe.
- e. On or about January 7, 2021, Wideband Planner while discussing the January 6, 2021, Capitol riots, responded to a SATCOM co-worker's comment that what happened during the Capitol riots were "messed up," by stating, "Why? It's no worse than what the protesters did all summer (referencing the 2020 George Floyd protests)," in front of Complainant was the only African American employee on shift during the conversation and the comments made her feel intimidated and unsafe.

- f. On or about January 8, 2021, both the Delta 8 Program Manager (Complainant's supervisor) and the Narrow Band Program Manager (Senior Planner's Supervisor), failed to address Complainant's objections to the comments made on January 7, 2021.

On January 7, 2022, the Agency issued a final decision dismissing the complaint pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim. Specifically, the Agency decided that Complainant's overall RSSC East organization and the responsible management officials who allegedly discriminated against Complainant were civilian employees under control of the Army, as opposed to the Air Force or USSF. The Agency stated that although the RSSC East's personnel and mission would eventually transferred to USSF at an uncertain future date, the RSSC East remained under the Army during the period when Complainant's discrimination allegations arose.

The instant appeal followed. On appeal, Complainant argues that her supervisor, who she had named as a responsible management official was assigned to USSF which fell under the Air Force during the relevant time period. Complainant argues that the Air Force's USSF should have addressed and investigated her Complaints instead of dismissing them by attributing them to the Army.

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 states a justiciable claim that she has been subjected to employment discrimination because of her sex or because of retaliation for EEO-protected activity. Upon review, we find 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).

We determine that potential liability for the alleged discrimination must be determined by examining acts and decisions by both Air Force (USSF) managers and Army managers. We observed that Complainant was an USSF employee, as was her supervisor who she has said did not take corrective action when she reported the Senior Planner's inappropriate comments. Complainant also named Senior Planner's supervisor as a responsible management official for declining to discipline Senior Planner. Here, where two agencies bear joint responsibility over the alleged discrimination, both the Army and Air Force USSF must jointly process this EEO complaint. Based on a fair reading of the record, the situation in the present case is similar to 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). See also 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).

Accordingly, we find that the Agency improperly dismissed Complainant's formal EEO complaint under 29 C.F.R. § 1614.107(a)(1) because Complainant has stated a claim against both Agencies.

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is REVERSED. The formal complaint is hereby REMANDED for continued joint processing by both the Air Force and the Army in accordance with this decision and the ORDER below.

ORDER

In accordance with the decision above, both Agencies referenced below are ORDERED to take the following actions:

The Department of the Air Force (USSF) is ORDERED to contact the Department of the Army and commence jointly process the instant EEO complaint in accordance with 29 C.F. R. § 1614.108 et seq. The Department of the Air Force shall complete the initial contact with the Department of the Army and send an acknowledgement letter to Complainant about the commencement of the joint processing of this case within thirty (30) calendar days of the date this decision becomes final.

The two agencies (Air Force and Army) shall issue to Complaint a copy of the jointly processed investigative report and shall notify Complainant of her appropriate rights within one hundred-fifty (150) calendar days of the date of the issuance of this decision, unless the matter is otherwise resolved before that time. If Complainant requests a final decision without a hearing, the two agencies shall issue a joint final decision within sixty (60) calendar days of the date of receipt of Complainant's request.

A copy of a joint letter of acknowledgement to Complainant informing her that her complaint is being jointly processed by the Department of the Air Force (USSF) and the Department of the Army, and a copy of the notice that transmits the investigative file and notice of rights, 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](https://publicportal.eeoc.gov/Portal/Login.aspx), 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

June 30, 2022

Date