



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

[REDACTED]
Cher C.,¹
Complainant,

v.

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

Appeal No. 2022001809

Agency No. 2004-0460-2021104948

DECISION

Complainant filed an appeal² with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated December 14, 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Registered Nurse (Clinical Assessor) at the Agency's Wilmington Medical Center in Ellesmere, Delaware.

On September 4, 2020, Complainant and the Agency settled two pending equal employment opportunity complaints (Agency Case Nos. 2004-0460-201900041 and 2004-0460-2020104638). The agreement provided Complainant with placement in a Support Housing Staff Nurse position, as well as compensatory damages, attorney's fees, restoration of sick leave, among other things. The settlement agreement resolved all claims, complaints, and/or grievances with the Agency, including the two specified EEO complaints.

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.

² While the Agency contends that Complainant's appeal is untimely, based on the date of receipt of the decision by Complainant's attorney, it does not provide sufficient proof of receipt to support its assertion.

Subsequently, on December 30, 2020, Complainant alleged the Agency was in breach of the agreement. The Agency issued a final decision regarding the breach allegations on February 26, 2021. Another final decision regarding the settlement agreement was issued on June 15, 2021.

On November 9, 2021, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the basis of reprisal for prior protected EEO when: on August 24, 2021, the Agency violated her settlement agreement by placing her in the position of Clinical Assessor instead of the position of Housing and Urban Development Veterans Affairs Support Housing Staff Nurse pursuant to the agreement.

The Agency issued a decision, dated December 14, 2021, dismissing Complainant's claim that the settlement agreement was violated for failure to state a claim. The Agency reasoned that the matter was a collateral attack and the alleged breach should have been raised with the VA's Office of Resolution Management, Office of Policy and Compliance as set forth in the agreement.

On appeal, Complainant denies her complaint is a collateral attack on any process. She further asserts that she never filed an EEOC claim. Complainant explains that she did not know the job that she was placed in was under social work because she is a Registered Nurse with experience.

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.504(a) provides that where a complainant believes that an agency has failed to comply with the terms of a settlement agreement, the complainant shall notify the agency EEO Director, in writing, of the alleged breach within 30 calendar days of when the complainant knew or should have known of the alleged noncompliance. Further, 29 C.F.R. § 1614.504(b) provides that the agency shall resolve the matter and respond to the complainant in writing, and, if the agency fails to respond or if the complainant is not satisfied with its response, the complainant may file an appeal with this Commission 35 days after the date he served the agency with breach allegations.

The instant record reflects that Complainant attempted to actively pursue her breach claim. Utilizing a formal EEO complaint form, Complainant alleged that, while the September 4, 2020 agreement provided for her placement in a "position of HUD VASH staff nurse assigned to Kent and Sussex Counties based at the Dover Community-Based Outpatient Clinic" she was not assigned to the proper job. As noted above, the Agency dismissed the complaint for failure to state a claim. We find, however, that upon receipt of such complaint, the Agency should have referred the breach allegation to the Deputy Assistant Secretary for Resolution Management (ORM) for processing, as specified in the settlement agreement, rather than dismissing the matter. See Morris v. U.S. Postal Serv., EEOC Request No. 01A02835 (April 3, 2002) (finding that complainant's contact with the EEO District Manager was sufficient notice to the agency).

CONCLUSION

Accordingly, we find that the Agency improperly processed complainant's breach allegations. The Agency's decision dismissing the claim is VACATED and the matter is REMANDED to the Agency for further processing, as set forth in the Order below.

ORDER

Within thirty (30) calendar days of the date this decision is issued, the Agency shall refer Complainant's breach of settlement claim to the Deputy Assistant Secretary for Resolution Management (ORM) for processing, which is the official designated in the settlement agreement. The breach claim must be processed in accordance with 29 C.F.R. § 1614.504, to include the issuance of a final determination if a resolution cannot be reached.

Copies of the Agency's notification to Complainant that it is transmitting her breach claim to the Deputy Assistant Secretary for Resolution Management for processing, the memorandum transmitting Complainant's breach claim and supporting documentation to the Deputy Assistant Secretary for Resolution Management, and the Agency's final determination, if any, must also 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. 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

July 6, 2022
Date