



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

[REDACTED]  
Noah W.,<sup>1</sup>  
Complainant,

v.

Debra A. Haaland,  
Secretary,  
Department of the Interior,  
Agency.

Appeal No. 2022003191

Agency No. DOI-OS-22-0146

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated April 22, 2022, dismissing his complaint alleging unlawful employment discrimination in violation of 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 was a contractor with Solutions By Design II, LLC ("SBD") providing the Agency with Information Technology services. The record reflects that Complainant generally worked from home. However, on a quarterly basis, he came to the Agency's federal facility for several hours to update/change passwords.

On March 7, 2022, Complainant filed a formal EEO complaint alleging that the Agency subjected him to discrimination on the bases of disability (asthma) and reprisal for prior protected EEO activity. In its final decision, the Agency determined that Complainant's complaint was comprised of the following claims:

---

<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.

1. On December 8, 2021, the Agency's Enterprise Services Section Chief prohibited Complainant from working in the office without a mask; and
2. On December 10, 2021, [SBD] terminated Complainant.

In its final decision, dated April 22, 2022, the Agency dismissed Complainant's complaint for failure to state a claim. The final decision found that the Agency did not exercise sufficient control over Complainant's position to qualify as a joint employer for EEO purposes. The Agency did acknowledge that it provided Complainant with a laptop and had a relationship with Complainant for approximately five years. However, the Agency further noted that Complainant's first-line supervisor ("S1") was an SBD employee and that S1 dictated which projects Complainant worked on, reviewed his work on a regular basis, and reviewed and approved Complainant's timecard and leave requests.

Regarding the denial of reasonable accommodation and removal claims, the Agency found that "SBD removed Complainant from the Agency's contract after the Agency informed SBD that the Complainant would not comply with the government-wide mask mandate. [The Counselor's Report] suggests that the Agency believed [SBD was responsible for providing a reasonable accommodation to Complainant and that a potential solution would have been to allow an alternate contractor to come into the building to change the passwords. The [Counselor's Report] demonstrates that SBD conducted an investigation and independently determined that Complainant posed a security risk to the Agency's IT systems and removed his access on December 10, 2021. [The Counselor's Report] demonstrated that SBD attempted to find another contract for Complainant to work on but was unsuccessful...The [Counselor's Report] does not support Complainant's assertion that the Agency requested or otherwise required SBD to remove Complainant from the contract and/or terminate Complainant." Final Agency Decision 4-5.

The instant appeal followed.

### ANALYSIS AND FINDINGS

The matter before us is whether the Agency properly dismissed Complainant's complaint for failure to state a claim on the basis that he was not its employee. EEOC Regulation 29 C.F.R. § 1614.103(a) provides that complaints of employment discrimination shall be processed in accordance with Part 1614 of the EEOC regulations. EEOC Regulation 29 C.F.R. §1614.103(c) provides that within the covered departments, agencies, and units, Part 1614 applies to all employees and applicants for employment.

In Serita B. v. Dep't of the Army, EEOC Appeal No. 0120150846 (Nov. 10, 2016), the Commission reaffirmed its longstanding position on "joint employers" and noted that it is found in numerous sources. See, e.g., EEOC Compliance Manual Section 2, "Threshold Issues," Section 2-III(B)(1)(a)(iii)(b) (May 12, 2000) (Compliance Manual); EEOC Enforcement Guidance: Application of EEO Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms (Dec. 3, 1997) (Enforcement Guidance), "Coverage Issues,"

Question 2; Ma v. Dep't of Health and Human Servs., EEOC Appeal Nos. 01962389 & 01962390 (May 29, 1998). We reiterate the analysis set forth in those decisions and guidance documents in this decision.

The term “joint employer” refers to two or more employers that each exercise sufficient control of an individual to qualify as the worker's employer. Compliance Manual, Section 2-III(B)(1)(a)(iii)(b). To determine whether the Agency has the right to exercise sufficient control, EEOC considers factors derived from common law principles of agency. See Enforcement Guidance, “Coverage Issues,” at Question 2. EEOC considers, inter alia, the Agency's right to control when, where, and how the worker performs the job; the right to assign additional projects to the worker; whether the work is performed on Agency premises; whether the Agency provides the tools, material, and equipment to perform the job; the duration of the relationship between the Agency and the worker whether the Agency controls the worker's schedule; and whether the Agency can discharge the worker. EEOC Compliance Manual, Section 2-III(A)(1) (citing Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 323-24 (1992)); EEOC v. Skanska USA Bldg., Inc., 550 F.App'x 253, 256 (6th Cir. 2013) (“Entities are joint employers if they ‘share or co-determine those matters governing essential terms and conditions of employment’”) (quoting Carrier Corp. v. NLRB, 768 F.2d 778, 781 (6th Cir. 1985); see also Ma, EEOC Appeal Nos. 01962389 & 01962390.

The language of the contract between the agency and the staffing firm is not dispositive as to whether a joint-employment situation exists. In determining a worker's status, EEOC looks to what actually occurs in the workplace, even if it contradicts the language in the contract between the staffing firm and the agency. Baker v. Dep't of the Army, EEOC Appeal No. 01A45313 (Mar. 16, 2006) (while contract between staffing firm and agency provided that contract personnel were employees of staffing firm under its administrative supervision and control, agency actually retained supervisory authority over the contract workers).

Given that the instant matter involves a denial of a reasonable accommodation allegation and Complainant's termination, the circumstances surrounding these matters are significant to whether the Agency is a joint employer of Complainant for EEO purposes. The record reflects, as set forth below, that SBD (rather than the Agency) played the significant role in these matters. Specifically, the record reflects that the Agency informed SBD of the reasonable accommodation issue (Complainant's medical condition with respect to the mask mandate), SBD was responsible for disability accommodations pertaining to Complainant, and SBD conducted its own investigation and terminated Complainant rather than addressing the accommodation issue. The EEO Counselor's Report reflects that the counselor interviewed the alleged Agency responsible management official, the Chief, Enterprise Services Section (CES). According to the Counselor's Report, CES asserted that Complainant contacted him via Teams regarding the Agency's mask policy for COVID-19. CES stated that Complainant asserted that he was going to retain an attorney and sue. CES stated that he promptly contacted SBD informing them of Complainant's medical condition and that “they needed to take care of it.” CES stated that a solution would have been for another contractor to come into the building in Complainant's place.

The record further reflects that the EEO Counselor sent questions to SBD regarding the matters at issue. SBD's General Counsel responded to the EEO Counselor's questions via email dated February 9, 2022. Therein, SBD responded that "[the Agency] did not play any role in the decision for SBD to terminate [Complainant's] employment. After [Complainant] no longer had access to the [Agency] system and could not work on that SBD contract, SBD examined other potential employment for [Complainant]. [The Agency] was not involved in that process." SBD also asserted that it controlled all reporting matters with respect to Complainant's employment including "potential disability accommodations."

Based on the foregoing, we find that SBD, rather than the Agency, played the significant role regarding Complainant's reasonable accommodation claim and termination and that the Agency was not a joint employer for EEO purposes.

Accordingly, we AFFIRM the Agency's final decision dismissing Complainant's complaint.

#### 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 (S0610)

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. 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. If you file a request to reconsider and also file a civil action, **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

September 27, 2022

Date