



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

[REDACTED]
Edgardo D.,¹
Complainant,

v.

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

Appeal No. 2022003195

Agency No. 200I-509-2022-145220

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated April 28, 2022, dismissing her 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., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. The Commission accepts the appeal in accordance with 29 C.F.R. § 1614.405.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Secretary at the Agency's Medical Center in Augusta, Georgia.

Believing that she was subjected to unlawful discrimination, Complainant contacted an EEO Counselor on March 31, 2022. On April 19, 2022, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of race (Native American), color ("Dark"), sex (female), religion, age, and reprisal for prior protected EEO activity. Complainant set forth numerous claims, involving various time periods, in an eight-page attachment to her formal complaint.

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.

The Agency, in its final decision, framed the claims as follows:

- (1) From on or about February 1, 2018 to April 19, 2022, management has non-selected/non-referred Complainant for numerous positions.²
- (2) From on or about July 1, 2020 to July 30, 2020, the Chief of Health Administrative Services (Chief) “interrogated” Complainant regarding Teams meeting accepted on the Chief’s behalf.
- (3) From on or about September 1, 2020 to September 30, 2020, the Chief denied Complainant’s request to work in an “healthy environment” free of mold; and directed her to report to her assigned work area.
- (4) On October 1, 2020, the Chief “banished” Complainant from the Uptown Division and moved her to the Downtown Division.
- (5) From on or about January 1, 2021 to March 31, 2021, management denied Complainant’s request to be upgraded to a Secretary (GS-7) position.
- (6) From on or about February 1, 2021 to February 28, 2021, the Chief denied Complainant “scheduling training.”
- (7) On or about March 1, 2021, to March 31, 2021, management “wrote up” Complainant.
- (8) On or about March 10, 2021, management required/directed Complainant to attend “Religious Reasonable Accommodation training.”
- (9) From April 13, 2021 to February 27, 2022, the Associate Director referred to Complainant as “dark pigmented skin.”
- (10) From April 13, 2021 to February 27, 2022, co-workers and management subjected Complainant to the following “racial slurs” of “dirty Indian”; “Savage”; and “Pocahontas.”
- (11) From April 13, 2021, to February 27, 2022, management denied Complainant’s religious culture, beliefs, customs and rituals by refusing to allow her to practice her “beliefs in respecting and honoring her medicine bundles” in the workplace.

² The Agency noted that in her formal complaint Complainant alleged she applied to a total of 77 positions, between February 1, 2018, and April 19, 2022.

- (12) On February 1, 2022, the Chief subjected Complainant to “hostile and angry tantrums” by stating “Portland messed it up”; and informing Complainant’s immediate supervisor “there are too many inconsistencies.”
- (13) From February 28, 2022 to April 19, 2022, management denied Complainant an “opportunity for upgrade/promotion to GS-7.”
- (14) From April 4, 2022 to April 19, 2022, management reassigned Complainant’s “job duties.”
- (15) On April 11, 2022 Complainant applied for the position of Secretary (GS-7) for the Chief of Staff.

The Agency issued a decision dismissing many of the non-selection claims housed in claim (1) for untimely EEO Counselor contact, and other claims for not being like or related to the claims in which Complainant received EEO counseling pursuant to 29 C.F.R. § 1614.107(a)(2). The Agency dismissed the remaining claims for failure to state a claim, pursuant to 29 C.F.R. § 1614.107(a)(1).

In its decision, the Agency first dismissed all “matters dating back to February 1, 2018 through March 30, 2020” for untimely counselor contact, noting that the alleged events occurred two years before her date of initial contact. According to the Agency, the matters set forth in (1) through (12), which happened between March 31, 2020 and February 27, 2022, transpired prior to the oldest event that was counseled and did not add to or clarify the original complaint. Alternatively, claims (1) through (8) were also dismissed on the ground that they were previously raised in a complaint identified as Agency Case No. 200I-509-2021102852). Regarding the alleged non-selections from February 28, 2022 to April 19, 2022, the Agency could not address them without additional information. The Agency requested that Complainant provide the relevant vacancy numbers and dates of non-selection, within fifteen calendar days. Lastly, the Agency found that claims (13), (14) and (15) failed to state a claim. Specifically, the Agency reasoned that in claims (13), Complainant did not identify a specific job opportunity or job announcement. The “ebb and flow of work assignments”, claim (14), the Agency stated are “not considered a discriminatory practice.” Lastly, no selection had yet been made in claim (15).

Complainant filed the instant appeal from the Agency’s dismissal of her complaint. Complainant essentially asserts that for many years, she has been repeatedly denied advancement and subjected to demeaning behavior because of her protected bases. The Agency asks that we affirm its final decision.

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination should be brought to the attention of the Equal Employment Opportunity Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) days of the effective date of the action.

In her formal complaint, Complainant stated that during her time at the Agency, “I’ve been called a savage, Pocahontas and the Associate Director continues to label me *dark pigmented skin* which is the same as calling me dirty Indian.” She noted that, “on 4/11/22 I applied for Secretary (GS-7) for the Chief of Staff located in the Executive Office. I have applied for this secretarial position several times, was interviewed and never considered because the incumbent reports directly to the Associate Director, but due to my EEO activity I’d never be considered for the position.” As Complainant stated and then emphasized in her appeal statement, “I file a complaint because I don’t like to be bullied, harassed, targeted, discriminated against, retaliated against and mistreated” and “I believe I deserve an equal opportunity for advancement within the VA.”

We find that a fair reading of Complainant’s complaint reflects that, because of her protected bases, including reprisal, she has been denied advancement at the Agency. While the Agency has identified numerous claims comprising Complainant’s complaint, instead of treating these events as incidents in a hostile workplace claim, the Agency viewed them individually and dismissed them on separate dismissal grounds. Thus, we find that the Agency acted improperly by treating matters raised in Complainant’s complaint in a piecemeal manner. See Meaney v. Department of the Treasury, EEOC Request No. 05940169 (November 3, 1994) (an agency should not ignore the “pattern aspect” of a complainant’s claim and define the issues in a piecemeal manner where an analogous theme unites the matter complained of). Consequently, when claims (1)-(15) are viewed in the context of Complainant’s broader claim of harassment, they state a claim and the Agency’s dismissal was improper.

Further, the Supreme Court has held that a complainant alleging a hostile work environment will not be time barred if all acts constituting the claim are part of the same unlawful practice and at least one act falls within the filing period. See Nat’l R.R. Passenger Corp. v. Morgan, 536 U.S. 101 (June 10, 2002). See also Brown v. Dept. of the Army, EEOC Request No 05970558 (Sept. 15, 2000) (the Commission determined that Complainant had demonstrated a continuing violation and that the agency had erroneously dismissed complainant’s complaint in a piecemeal method under theories of untimeliness and failure to state a claim). Here, Complainant has alleged a claim of ongoing harassment based on a series of events that occurred from February 1, 2018 to April 19, 2022. The record reflects that Complainant contacted the EEO Counselor on March 31, 2022, well within the 45-day time limit. We find that Complainant’s EEO Counselor Contact was timely in this matter. As such, we find that the Agency’s dismissal for untimely EEO Counselor Contact was inappropriate.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency's decision and REMAND the complaint for further processing in accordance with this decision and the Order below.

ORDER (E0618)

The Agency is ordered to process **Complainant's overall complaint of hostile workplace discrimination based upon race (Native American), sex (female), religion, color (Dark), age, and reprisal**, in accordance with 29 C.F.R. § 1614.108 et seq. 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.

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).

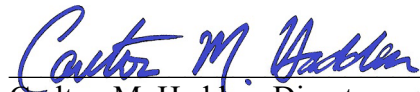
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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 28, 2022

Date