



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

[REDACTED]  
Loida J.,<sup>1</sup>  
Complainant,

v.

Christine Wormuth,  
Secretary,  
Department of the Army,  
Agency.

Appeal No. 2022002923

Agency No. ARKNOX21MAR01096

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final action dated April 1, 2022, implementing the decision of an EEOC Administrative Judge to dismiss 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., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

**BACKGROUND**

During the relevant time, Complainant worked for the Agency as a Transition Policy Analyst, GS-13, at Fort Knox, Kentucky.

On May 3, 2021, Complainant filed a formal complaint alleging the Agency subjected her to discrimination based on sex (female) and age (54), as well as unlawful retaliation for prior protected EEO activity, when:

1. On March 4, 2021, she was charged absent without leave (AWOL);
2. On March 9, 2021, she learned that the men in the Transition Assistance Policy

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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.

Branch were given the most significant assignments/titles in a redistribution of tasks outlined by the Agency's Battle Rhythm Plan;

3. On March 22, 2021, she learned that she was no longer included in the Director's weekly email update; and
4. On April 8, 2021, she was subjected to questions about her retirement date and comments about her aging face.

Following an investigation, the Agency provided the Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing.

However, on February 17, 2022, when Complainant did file not an objection, the AJ assigned to the case granted the Agency's February 4, 2022 Motion to Dismiss her complaint on the grounds that Complainant had previously elected to pursue the same claims through the negotiated grievance procedure. The Agency subsequently issued a final order adopting the AJ's dismissal of the complaint.

The instant appeal followed.

#### ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. §1614.301(a) states that when a person is employed by an agency subject to 5 U.S.C. § 7121(d) and is covered by a collective bargaining agreement that permits claims of discrimination to be raised in a negotiated grievance procedure, a person wishing to file a complaint or grievance on a matter of alleged employment discrimination must elect to raise the matter under either part 1614 or the negotiated grievance procedure, but not both. An aggrieved employee who files a grievance with an agency whose negotiated agreement permits the acceptance of grievances which allege discrimination may not thereafter file a complaint on the same matter under this part 1614 irrespective of whether the agency has informed the individual of the need to elect or whether the grievance has raised an issue of discrimination.

The record shows that before filing the instant formal EEO complaint on May 3, 2021, Complainant filed a grievance on March 18, 2021, concerning being charged AWOL, having tasks taken away from her and assigned to men during the Agency's reorganization, being left off a weekly update email, being questioned about her retirement and subjected to comments about her aging face. Moreover, we note that the record contains a copy of the Collective Bargaining Agreement between the Agency and the Union permitting the inclusion of claims of discrimination. The Commission has previously held that a complainant need not actually raise any claims of discrimination in her grievance in order to have elected the union forum. Perkins v. Dept. of Treasury, EEOC Appeal No. 01A20964 (May 6, 2003). Because the matters raised during the grievance cover the same incidents, we agree with the AJ that Complainant first elected the union forum and is therefore barred from filing an EEO complaint later on the same matters.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, we AFFIRM the Agency's final action fully adopting the AJ's Order dismissing the instant complaint in accordance with EEOC Regulation § 1614.107(a)(4).

### 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

October 31, 2022

Date