



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Harriet M.,<sup>1</sup>  
Complainant,

v.

Louis DeJoy,  
Postmaster General,  
United States Postal Service  
(Field Areas and Regions),  
Agency.

Appeal No. 2022004903

Agency No. 1C-131-0165-22

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated September 6, 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.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Supervisor of Distribution Operations, E-17, at the Agency's Network Distribution Center (NDC) in Springfield, Massachusetts.

On August 15, 2022, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of race (Vietnamese/Black), color (Black), sex (female), and age when:

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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.

1. Complainant's manager mentioned Complainant's medical diagnosis and the status of her Office of Workers' Compensation Programs (OWCP) claim during a shift meeting.
2. Complainant's manager stated that he did not care what Complainant was doing while out injured because she was not getting paid.
3. Complainant's request for the District Contact information was not provided.

The Agency dismissed the complaint in its entirety for failure to state a claim, pursuant to 29 C.F.R. § 1614.107(a)(1), reasoning that Complainant was not aggrieved; the circumstances complained of were neither sufficiently severe nor pervasive to create a discriminatorily hostile or abusive working environment; and Complainant had made a generalized grievance. Additionally, the Agency dismissed claim 1 for lodging a collateral attack against another proceeding, pursuant to 29 C.F.R. § 1614.107(a)(1).

The instant appeal followed.

### ANALYSIS AND FINDINGS

An agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that she has been discriminated against by that agency because of race, color, religion, sex, national origin, age, or disabling condition. 29 C.F.R. §§ 1614.103, .106(a). The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994). The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that an agency shall dismiss a complaint that fails to state a claim.

In Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993), the Supreme Court reaffirmed the holding of Meritor Sav. Bank v. Vinson, 477 U.S. 57, 67 (1986), that harassment is actionable if it is sufficiently severe or pervasive to alter the conditions of the complainant's employment. Thus, not all claims of harassment are actionable. As noted by the Supreme Court in Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998): "'simple teasing,' . . . offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the 'terms and conditions of employment'" (internal citations omitted).

#### *Claim 1*

In Complainant's formal complaint, she wrote in that her manager violated her Health Insurance Portability and Accountability Act of 1996 (HIPAA) rights when he stated in a shift meeting her name, medical diagnosis, and workers' compensation status. To the extent Complainant is alleging violations of HIPAA, we find that the Agency properly dismissed this matter for failure to state a claim.

As the Commission has previously determined, matters concerning HIPAA are not within regulations enforced by the Commission. See Grove v. U.S. Postal Serv., EEOC Appeal No. 0120110456 (Jan. 5, 2012); Price v. U.S. Postal Serv., EEOC Appeal No. 0120111033 (Dec. 8, 2011). The Department of Health and Human Services' Office of Civil Rights enforces that HIPAA privacy rule, and the administrative EEO complaint process is the improper forum to raise a HIPAA violation. Lee v. U.S. Postal Serv., EEOC Request No. 0520110481 (Nov. 4, 2011).

However, a fair reading of the record shows that Complainant is also alleging a violation of the Rehabilitation Act for improper disclosure of her medical information. Section 102(d) of the Americans with Disabilities Act, and by extension Section 501(g) of the Rehabilitation Act, specifically prohibits the disclosure of medical information, except in certain limited situations. See Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC Notice No. 915.002 (Oct. 17, 2002) (describing the limited exceptions to the medical confidentiality requirements); Titus v. Dep't of Homeland Sec., EEOC Appeal No. 0120102384 (Apr. 17, 2013). See also Winford M. v. Dep't of Veterans Affs., EEOC Appeal No. 2022000340 (Feb. 7, 2022) (finding the improper disclosure of a complainant's medical information to be "a per se violation of the Rehabilitation Act, and no showing of harm beyond the violation [is] necessary . . . to state a claim[.]" (quoting Valle v. U.S. Postal Serv., EEOC Request No. 05960585 (Sept. 5, 1997))).

Therefore, we find that, in claim 1, Complainant's allegation of a violation of the Rehabilitation Act for improper disclosure of medical information sets forth an actionable claim.

### *Claims 2 and 3*

In claims 2 and 3, Complainant alleged that her manager stated that he did not care what Complainant was doing while out injured because she was not getting paid and that Complainant's request for the District Contact information was not provided. Assuming these claims occurred as alleged, we find neither claim constitutes a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Furthermore, even assumed to be true and considered together, we do not find these isolated incidents are sufficiently severe or pervasive to set forth an actionable claim of discriminatory harassment. Complainant maintains on appeal that, due to her manager's actions, she suffered unnecessary pain and suffering due to not being able to be treated; financial hardships due to having no income for months; and mental and emotional stress.<sup>2</sup>

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<sup>2</sup> The Commission has generally held that complaints involving other administrative proceedings, including those involving OWCP and its related processes, do not state a claim within the meaning of its regulations. See Fred B. v. U.S. Postal Serv., EEOC Appeal No. 2021004937 (Jan. 6, 2022) (citing Hogan v. Dep't of the Army, EEOC Request No. 05940407 (Sept. 29, 1994)).

However, although Complainant claims to have suffered damages as a result of the incidents at issue, the Commission has held that allegations that fail to state a claim cannot be converted into a viable claim merely because the complainant requests compensatory damages as a remedy. Ulanoff v. United States Postal Service, EEOC Request No. 05950396 (January 26, 1996); Shrader v. Department of Agriculture, EEOC Appeal No. 01961499 (November 3, 1997).

Therefore, we find that the Agency properly dismissed claims 2 and 3 for failure to state a claim upon which relief can be granted, pursuant to 29 C.F.R. § 1614.107(a)(1).

### CONCLUSION

The Agency's decision to dismiss claims 2 and 3 was proper and is hereby AFFIRMED. The dismissal of claim 1 was improper and is hereby REVERSED. Claim 1 is REMANDED to the Agency in accordance with the Order below.

### ORDER (E0618)

The Agency is ordered to process the remanded claim (defined herein as an alleged violation of the Rehabilitation Act for improper medical disclosure) in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall acknowledge to the Complainant that it has received the remanded claim(s) **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.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, a copy of complainant's request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

### 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 (T0610)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. 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 on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

February 28, 2023

Date