



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

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]

Casie S.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2023003516

Agency No. 200I-673A-2023-149665

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated May 1, 2023, 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. 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 Nurse Educator at the Agency's James A. Haley Veterans' Hospital in Florida.

On March 31, 2023, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of race (not specified), age, and reprisal, when:

1. From July 2021 to present management undermined Complainant's efforts to educate registered nurses.
2. From September 26, 2022 to November 1, 2022, management placed Complainant on a detail.

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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.

3. On October 31, 2022, management subjected Complainant to a fact-finding investigation.
4. On February 14, 2023, management placed Complainant on a detail.
5. On March 23, 2023, management subjected Complainant to a fact-finding investigation.

The Agency dismissed the complaint pursuant to 29 C.F.R. § 1614. 107(a)(7) for failure to cooperate. In so doing, the Agency found that Complainant received a Notice of Right to File a Discrimination Complaint (Notice) on March 16, 2023, advising her that she had 15 days to submit a signed formal complaint. The Agency indicated that it received a formal complaint on March 31, 2023, which was within the 15-day time requirement, but it was not signed.

On appeal, Complainant through her attorney, argues that she complied with the Notice. Complainant's attorney stated that he entered his electronic signature on the formal complaint as "/s/James Solomon" and wrote "3/31/2023" as the date. He stated that on April 3, 2023, he received an email from the Office of Resolution Management, Diversity, and Inclusion (ORMDI) stating that the complaint was unsigned. He assumed that ORMDI meant that "/s/James Solomon" was not an authentic signature or that ORMDI was not aware that attorneys could sign on behalf of their clients, so he replied that it was his electronic signature and that attorneys were allowed to sign on behalf of their clients. He said he received a reply email, from ORMDI announcing that signatures typed with /s/ were not acceptable, and a wet signature or electronic signature with a date stamp was required. Complainant's attorney said that he complied by printing out the complaint and drawing an arrow to the electronic signature and writing, "my valid signature," and by signing his wet signature next to the electronic signature and mailing the signed copy. He stated that he mailed the signed copy on April 3, 2023, and that ORMDI claims that it did not receive it.

The Agency submitted a brief arguing that its dismissal should be affirmed because ORMDI provided Complainant with a written Notice to provide relevant information to proceed with his complaint within 15 days, and he failed to do so. The Agency noted that Complainant's attorney gave legal arguments on why signatures typed with /s/ were valid, but the Agency stated his arguments were flawed. And the Agency disputed his allegation that on April 3, 2023, he mailed a complaint with a wet signature. The Agency stated that it never received the copy with the wet signature, and that there was not a "shred of proof" that it was delivered.

### ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614. 107(a)(7) provides that the agency shall dismiss a claim where the agency has provided the complainant with a written request to provide relevant information, and the complainant fails to respond to the request within 15 days of its receipt or the complainant's response does not address the agency's request, provided that the request included a notice of the proposed dismissal. Instead of dismissing for failure to cooperate, the complaint may be adjudicated if sufficient information for that purpose is available.

An agency's decision to invoke the provisions of 29 C.F.R. § 1614. 107(a)(7) should be made by the agency only when there is a clear record of delay or contumacious conduct by the complainant. Connolly v. Papachristid Shipping Ltd., et al., 504 F.2d 917 (5th Cir. 1974). This is because implicit in the scheme of attempted control of the evil of discrimination by administrative and judicial machinery is a degree of cooperation by the complaining party. Jordan v. United States, 522 F.2d 1128 (8th Cir. 1975). Accordingly, the obligation to informally and expeditiously resolve complaints is imposed on both parties. Further, the Commission has held that, as a general rule, an agency should not cancel a complaint when it has sufficient information on which to base an adjudication. See George Ross v. United States Postal Service, EEOC Request No. 05900693 (August 17, 1990); Pamela A. Brinson v. United States Postal Service, EEOC Request No. 05900193 (April 12, 1990). It is only in cases where the complainant has engaged in delay or contumacious conduct and the record is insufficient to permit adjudication that the Commission has allowed a complaint to be cancelled for failure to prosecute (cooperate). See Arturoc Raz v. United States Postal Service, EEOC Request No. 05890177 (June 14, 1989).

Although the parties disagree on whether “/s/James Solomon” is a valid signature, we find that Complainant’s attorney has not engaged in contumacious conduct, or delay. It is undisputed that Complainant’s attorney wrote “/s/James Solomon,” as his signature on her formal complaint, and that he filed it within the 15-day time requirement. Filing the complaint within the time requirement did not amount to a delay. And Complainant’s attorney did not engage in contumacious conduct because when ORMDI emailed him on April 3, 2023, to inform him that the formal complaint was unsigned, he replied that had he wrote “/s/James Solomon,” on the formal complaint as his electronic signature and that attorneys were allowed to sign on behalf of their clients. He explained that his intent was to assure ORMDI that it was his authentic signature, and that attorneys could sign on behalf of their clients. The Agency did not cite any other issues apart from the signature issue, and the record has sufficient information to permit adjudication. Therefore, we find that the Agency's decision dismissing the complaint for failure to cooperate was improper.

### CONCLUSION

Accordingly, the Agency's decision to dismiss Complainant’s complaint for failure to cooperate was improper and is REVERSED. The complaint is REMANDED to the Agency for further processing in accordance with this decision and applicable regulations.

ORDER (E0618)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108. 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.

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).

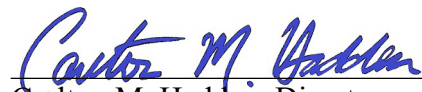
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

October 31, 2023  
Date