



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

[REDACTED]
Christopher H.,¹
Complainant,

v.

Robert Wilkie,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2019002914

Agency No. 200I-0626-2019102036

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated March 19, 2019, dismissing his 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

BACKGROUND

During the period at issue, Complainant worked for the Agency as a Strategic Planner, GS-12, in Murfreesboro, Tennessee.

On March 7, 2019, Complainant filed a formal EEO complaint. Complainant claimed that the Agency subjected him to discrimination based on sex, disability, and age when, in a series of events occurring between December 2018 and March 2019, Complainant was subjected to a hostile work environment. In support of this claim, Complainant made the following allegations:

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.

1. On December 19, 2018, his supervisor, the Deputy Director (hereinafter referred to as DD), spoke to Complainant in a sarcastic tone regarding a weekly planning meeting. Complainant further alleges that DD asked a co-worker to leave the meeting then “lit into” him, continuing to speak harshly to Complainant regarding his responsibilities.
2. On January 18, 2019, DD told Complainant she would not endorse him or allow him to apply for the Agency’s Healthcare Leadership Program.
3. On January 25, 2019, DD told Complainant that he had better look up the process for the Strategic Planning and Advisory Board Charter.
4. On February 6, 2019, during a weekly planning meeting with other employees, DD went into a rage directed at Complainant stating, “next time [he] had better stay with the team.”
5. On February 8, 2019, DD loudly told Complainant to put a telephone down, in the presence of others in the room.
6. On February 12, 2019, during Complainant’s scheduled 90-day review, DD allowed a co-worker to sit in and take notes. Complainant further alleges that during the review, DD told him he had 90-days to start doing his job.
7. On February 13, 2019, DD told Complainant that the Agency’s Director would not approve Complainant’s request to report to another Agency official because Complainant “did not like the Deputy Director.” Complainant alleges also that DD advised Complainant that if he did not like DD’s decisions, he should look for another job.
8. On February 15, 2019, DD along with another employee, brought to Complainant a stack of 16 memos Complainant had prepared, tossed them on Complainant’s desk and said, “you placed a comma beside my name and before the mail code that doesn’t belong, so fix this.”
9. On February 26, 2019, DD along with another co-worker, told Complainant that he “had better get [the] engineering suspense finished – no exceptions...” Complainant further alleges that DD then slammed the door and walked away.
10. On March 4, 2019, DD went into Complainant’s shared office and began a conversation with his co-worker, but never acknowledged Complainant even after Complainant said, “good morning.”

On March 19, 2019, the Agency issued a final decision dismissing the formal complaint for failure to state a viable claim. This appeal followed.

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.107(a)(1) provides that an agency shall dismiss a complaint that fails to state a claim under 29 C.F.R § 1614.103 or § 1614.106(a). In Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993), the Supreme Court reaffirmed the holding of Meritor Savings 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.

However, a formal complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that a complainant cannot prove a set of facts in support of the claim which would entitle him or her to relief. All of the alleged harassing incidents and remarks must be considered together in the light most favorable to a complainant in order to determine whether they are sufficient to state a claim. See Cobb v. Dep't of the Treasury, EEOC Request No. 05970077 (Mar. 13, 1997); Miller v. Dep't of the Treasury, EEOC Request No. 05A10333, (Aug. 15, 2002).

Here, a fair reading of the record shows that Complainant has alleged that his supervisor has subjected him to discriminatory harassment concerning a series of events from December 2018 through March 2019. Specifically, Complainant contends that his supervisor spoke harshly to him in the presence of other co-workers, went into fits of rage while speaking to Complainant about job related matters, harassed and belittled him in the presence of his co-workers, chastised Complainant and his work product and ignored him. Complainant alleges that these incidents created a hostile work environment for which Complainant attempted to seek relief through the Agency's Office of Accountability and Whistleblower Protection. By alleging a pattern of harassment, Complainant has stated a cognizable claim under the EEOC regulations. See Cervantes v. USPS, EEOC Request No. 05930303 (November 12, 1993), and his complaint should not have been dismissed.

CONCLUSION

The Agency's final decision dismissing the formal complaint is REVERSED. The formal complaint is REMANDED to the Agency for further processing in accordance with the ORDER below.

ORDER (E0618)

The Agency is ordered to process the remanded claims 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.

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 (K0618)

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.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which 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 to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in 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). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your 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)

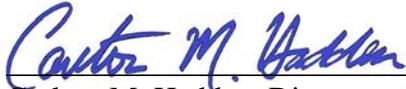
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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:



Carlton M. Hadden, Director
Office of Federal Operations

August 27, 2019

Date