



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

a/k/a

Emmanuel L.,¹
Complainant,

v.

Michael R. Pompeo,
Secretary,
Department of State,
Agency.

Appeal No. 2019002505

Agency No. DOS-0418-18

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated January 22, 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Realty Specialist, GS-14, at the Agency's Asset Management Division, in Arlington, Virginia.

On July 31, 2018, Complainant initiated EEO counseling. On September 5, 2018, Complainant filed a formal complaint, which, as amended, alleged that the Agency subjected him to a hostile work environment on the basis of reprisal for prior protected EEO activity under Title VII, when:

1. on July 23, 2018, July 24, 2018, July 27, 2018, and July 31, 2018, when he was asked about his pending EEO complaint;
2. on August 6, 2018, he was accused of being AWOL;

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.

3. on August 6, 2018, he was told he could not work during non-work hours;
4. on August 31, 2018 and September 28, 2018, Complainant's work assignments were reduced;
5. on October 9, 2018, Complainant was issued a Letter of Reprimand; and
6. on an ongoing basis, Complainant was subjected to a hostile work environment characterized by, but not limited to, disparaging comments, false accusations regarding his work and threats.

The pertinent record shows that, at the time of the incidents at issue, Complainant had prior complaints that remained pending. The prior complaints involved the managers named in his current complaint, who knew about Complainant's prior EEO complaints.

In the instant complaint (DOS-0418-18), he claims that, on July 23, 2018 and July 24, 2018, his supervisor accused him of not following office procedure and protocols. From July 24, 2018 through July 27, 2018, his supervisor asked him about the status of his EEO complaint and stated, "[y]ou know you're not going to get anything," Complainant claims that his supervisor mocked him and told Complainant, "[y]ou know the State Department is getting tougher on these things and they're telling us to fight this stuff all the time." On July 27, 2018, Complainant spoke to the Human Resources Specialist and asked him to speak with the supervisor "to make this stop." On July 31, 2018, Complainant was accused of "making serial changes to a real estate contract." On August 6, 2018, the Human Resources Specialist told Complainant that he had been asked to mention to Complainant that Complainant was not to work during non-office hours.

According to the EEO Counselor's report, Complainant sought counseling on July 31, 2018, regarding the following complaint allegations:

According to the aggrieved, on July 24, 2018, through July 31, 2018, his direct supervisor, [named] asked him about the status of his EEO complaints, #DOC-0026-16, and DOS-0164-17. He also stated that [his supervisor] added, "You know you're not going to get anything." He even mocked his complaint over the Singapore issue by reading the email over it to his face. He further would ask him such questions as "What's going on with your complaint?" "You know the State Department is getting tougher on these things and they're telling us to fight this stuff all the time." "What's your goal? What do you want out of this? What do you think is going to happen?" and other such comments made in a derogatory tone. According to the aggrieved, he did not bring up his EEO complaint in these conversations. He spoke to Human Resources Specialist [named] about the

conversations. He spoke to Human Resources Specialist, [named] about this on July 27, 2018. H asked [the HR specialist] to speak with [his supervisor] to make this stop."

On August 22, 2018, the Agency issued Complainant a Notice of Right to File a formal complaint. The Notice of Right to File only referenced two dates and the incidents that occurred on July 27, 2018 and July 31, 2018, when his supervisor asked Complainant about his current EEO complaints and his managers told him that he was not performing adequately.

On August 31, 2018, Complainant claimed that he was again retaliated against when he was removed from working on the Lisbon housing purchase project. He filed his formal complaint on September 5, 2018. On October 9, 2018, Complainant was issued a Letter of Reprimand. On November 2, 2018, Complainant amended this complaint to add his additional claims regarding the incidents that occurred after July 31, 2018.

On January 22, 2019, the Agency issued a final decision dismissing the entire complaint. The Agency determined that Complainant did not discuss his allegations with an EEO Counselor to attempt to informally resolve the matter.

This appeal followed.

ANALYSIS AND FINDINGS

The Commission regulations, at 29 C.F.R. § 1614.107(a)(2) states that an agency shall dismiss an entire complaint that raises a matter that has not been brought to the attention of a Counselor and is not like or related to a matter that has been brought to the attention of a Counselor.

Here, we find that Complainant did bring his claims to the attention of a Counselor. This factual finding is supported by the record which includes the counseling report that references the claims that Complainant raised with the counselor. Further, we find that the claims, as amended, were like and related to the claims that were initially brought to the attention of the counselor.

Upon review, we find that Complainant's complaint was improperly dismissed pursuant to 29 C.F.R. § 1614.107(a)(2), for failure to discuss the matters with an EEO Counselor.

CONCLUSION

Accordingly, we REVERSE the Agency's final decision dismissing Complainant's complaint. We REMAND the complaint to the Agency for further processing in accordance with this decision and the Order below.

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 CFR § 1614.503(f) for enforcement by that agency.

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 tends 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 CML ACTION (R0610)

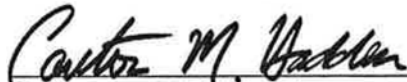
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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 (20815)

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 19, 2019

Date

CERTIFICATE OF MAILING


For timeliness purposes, the Commission will presume that this decision was received within five (5) calendar days after it was mailed. I certify that this decision was mailed to the following recipients on the date below:

Sterling L. De Ramus, Esq.
The Law Firm of John P. Mahoney, Esq.
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1300 Pennsylvania Avenue,
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Washington, DC 20004

Gregory B. Smith, Director
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Department of State
2201 C St., NW Rm. 7428
Washington, DC 20520-7310

September 19, 2019

Date


Compliance and Control Division