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

[redacted]
Renaldo V.,[1]
Complainant,

v.

Marco Rubio,
Secretary,
Department of State,
Agency.

Appeal No. 2026002375

Hearing No. 570-2025-00545X

Agency No. DOS-0173-24

DECISION

On May 9, 2026, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's April 9, 2026, final order concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission VACATES the Agency's final order and REMANDS the matter.

At the time of events giving rise to this complaint, Complainant worked as an Operations Transition Coordinator/Contractor for ESPIRE, a subcontractor of Alutiiq Essential Services for the Agency's Bureau of Overseas Building

[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.

Operations at the embassy in Mexico City, Mexico, and subsequently in Tegucigalpa, Honduras.

On an unspecified date in May 2024, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of age (71) and reprisal for prior protected EEO activity under the Age Discrimination in Employment Act of 1967 when:

1. On February 12, 2024, Complainant's duty station was transferred to another location against his will;
2. On February 27, 2024, Complainant was subjected to a retaliatory Letter of Concern sent to his employer, ESPIRE, because he opposed his duty station transfer; and
3. On August 15, 2024, Complainant's position was terminated.

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

The Agency submitted a motion to dismiss for failure to state a claim, on the grounds that Complainant was not a federal employee but a contractor, and Complainant filed an opposing motion. The AJ assigned to the case denied the Agency's motion to dismiss, finding that the Agency was a joint employer for purposes of this complaint. In that same decision, the AJ further determined *sua sponte* that the complaint did not warrant a hearing and issued a decision without a hearing (summary judgment) on April 7, 2026, concluding "Accordingly, I GRANT the Agency's Motion for decision without a hearing." The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

On appeal, Complainant contends that the AJ erred in issuing summary judgment, on the grounds that the Agency did not file a motion for summary judgement, and further, the AJ did not provide the required notice to permit a response before issuing summary judgment.

In rendering this appellate decision, we must scrutinize the AJ's legal *and* factual conclusions, and the Agency's final order adopting them, de novo.

See 29 C.F.R. § 1614.405(a) (stating that a "decision on an appeal from an Agency's final action shall be based on a de novo review . . ."); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (Aug. 5, 2015) (providing that an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed de novo). This essentially means that we should look at this case with fresh eyes. In other words, we are free to accept (if accurate) or reject (if erroneous) the AJ's, and Agency's, factual conclusions and legal analysis – including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. See id. at Chapter 9, § VI.A. (explaining that the de novo standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that EEOC "review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law"). We determine whether the AJ appropriately issued the decision without a hearing.

The Commission's regulations allow an AJ to issue a decision without a hearing upon finding that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). EEOC's decision without a hearing regulation follows the summary judgment procedure from federal court. Fed. R. Civ. P. 56. The U.S. Supreme Court held summary judgment is appropriate where a judge determines no genuine issue of material fact exists under the legal and evidentiary standards. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a summary judgment motion, the judge is to determine whether there are genuine issues for trial, as opposed to weighing the evidence. Id. at 249. At the summary judgment stage, the judge must believe the non-moving party's evidence and must draw justifiable inferences in the non-moving party's favor. Id. at 255. A "genuine issue of fact" is one that a reasonable judge could find in favor for the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A "material" fact has the potential to affect the outcome of a case.

An AJ may issue a decision without a hearing only after determining that the record has been adequately developed. See Petty v. Dep't of Def., EEOC Appeal No. 01A24206 (July 11, 2003).

However, an AJ should not rule in favor of one party without holding a hearing unless the AJ ensures that the party opposing the ruling is given: (1) ample notice of the proposal to issue a decision without a hearing, (2) a comprehensive statement of the allegedly undisputed material facts, (3) the opportunity to respond to such a statement, and (4) the chance to engage in discovery before responding, if necessary. Id. Further, EEOC Regulation 29 C.F.R. § 1614.109(g)(3) provides that if the AJ determines upon her own initiative that some or all facts are not in genuine dispute, she may, after giving notice to the parties and providing them an opportunity to respond in writing within 15 calendar days, issue a decision without holding a hearing.

The record supports a finding that the AJ *sua sponte* issued the decision without a hearing in favor of the Agency without providing the parties with adequate notice, as required by 29 C.F.R. § 1614.109(g)(3) and the Commission in Petty. Upon review of the record, the Commission could not find any notice by the AJ of a *sua sponte* proposal to issue a decision without a hearing or a comprehensive statement issued to the parties of the purported undisputed material facts. Additionally, we agree with Complainant that the Agency's motion sought dismissal of the complaint on the grounds Complainant was a contractor, not a decision without a hearing. As such, it appears Complainant was not provided with an opportunity to file a written response opposing the AJ's proposal to issue a decision without a hearing. We therefore determine that the AJ erred in issuing a decision without a hearing without affording Complainant the procedural safeguards required by 29 C.F.R. § 1614.109(g)(3) and Commission precedent. See Gurley v. Dep't of Transportation, EEOC Appeal No. 0120093479 (Mar. 8, 2010).

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we VACATE the AJ's decision without a hearing and the Agency's final order implementing that decision's finding of no discrimination. This case is REMANDED for further proceedings in accordance with the ORDER below.

ORDER

Within thirty (30) calendar days of the date this decision becomes final, the agency shall resubmit Complainant's request for a hearing, a copy of this decision, and a

copy of the complaint file to the Hearings Unit of the EEOC's Washington Field Office. The Agency shall provide written notification to the Compliance Officer at the address set forth below that the complaint file has been transmitted to the Hearings Unit. Thereafter, the AJ shall process the complaint in accordance with 29 C.F.R. § 1614.109, and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

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 (M1125)

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 Sector (OFS) **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 their request for reconsideration, and any statement or brief in support of their request, via the EEOC Public Portal, which can be found at https://publicportal.eeoc.gov/Portal/Login.aspx. Alternatively, Complainant can submit their request and arguments to the Director, Office of Federal Sector, 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 OFS 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 their 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(f).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0124)

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 their 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:

*T. Gimbrere*_____

T. Gimbrere, Acting Director
Office of Federal Sector

September 23, 2026

Date