In reply refer to: 08

September 28, 2022

VIA: **(Delivery Method)** emailaddress3

firstname lastname

address1\_line1 address1\_line2

address1\_city, govcdm\_address1statepicklist address1\_postalcode

**SUBJECT: Notice of Advisement of Rights in Your Mixed Case EEO Complaint, Case No. govcdm\_name, Filed on govcdm\_dateformalcomplaintfiled**

Dear firstname lastname:

1. The purpose of this letter is to provide you a copy of the investigative file for your mixed case EEO complaint and to advise you of further complaint processing rights. Your EEO complaint is a mixed-case complaint because it involves matters that are appealable to the Merit Systems Protection Board (MSPB). The portion of your complaint that is appealable to the MSPB is (event X of the hostile work environment claim – or claim X, when you were suspended for 20 days; when you were denied a within grade increase; when you were forced to resign/retire; etc.) **You have different rights for the mixed and non-mixed portions of your complaint.**

2. You do not have the right to an EEOC hearing for the mixed portion of your complaint. The **mixed claim portion** of the complaint will be transmitted to the VA Office of Employment Discrimination Complaint Adjudication (OEDCA) following your election on the non-mixed portion of the complaint, which is outlined below in paragraph 5.  OEDCA will issue a Final Agency Decision (FAD) within 45-calendar days of its receipt from this office on the entire complaint if a FAD is requested for the non-mixed portion or on only the mixed portion if an EEOC hearing is elected for the non-mixed claims. The decision will advise you of your right of appeal to the MSPB, your right to request a hearing in connection with your appeal to the MSPB, and of the 30-calendar days time limit within which to file such an appeal.

3. If you have not received a copy of the FAD on your mixed claim within 120-calendar days of the date you filed your formal complaint, you have the right to appeal to the MSPB without waiting further. You may not, however, file an appeal before the 121st day, unless you receive the FAD sooner. Any appeal that you may file should be efiled at [**www.mspb.gov**](http://www.mspb.gov). If you cannot efile, then your appeal should be addressed to:

**Regional Director**

**Merit Systems Protection Board**

**Address**

**City, state, zip**

**Efile:** [www.mspb.gov](http://www.mspb.gov)

4. If you have not received a copy of the FAD on your mixed claim within 120-calendar days of the date you filed your formal complaint and you do not wish to appeal to the MSPB, you also have the right to file a civil action in Federal District Court on the mixed claim. If you file a civil action and you do not have an attorney or are unable to obtain the services of an attorney, the court, in its’ discretion and upon your request, may appoint an attorney to represent you in this matter. The court may also authorize commencement of the civil action without the payment of fees, costs or security. Finally, if you decide to file a civil action, you must name the **Secretary of Veterans Affairs** as the defendant.

5. Regarding the **non-mixed portion** of your complaint, you have the right to request **one** of the following options:

* You may elect an immediate final agency decision from the VA’s Office of Employment Discrimination Complaint Adjudication.

OR

* You may elect a hearing before the U.S. Equal Employment Opportunity Commission[[1]](#footnote-1).

OR

* You may withdraw your complaint which would cease further processing of your complaint.

Please see the attachment titled *Complainant Rights – Post Investigation (Mixed Case)* for specific information regarding your options for the non-mixed portion of your complaint.

6. We have also attached an election form with your processing options which is only applicable to the non-mixed portion of your complaint. You must choose one of these options within **30-calendar days of your receipt of this letter.**

Please note if you elect a hearing before the EEOC, you may file a request for hearing and submit relevant documents through the EEOC’s Public Portal.

To access the Public Portal, go to <https://publicportal.eeoc.gov>. To begin, click on the link: “Filing with EEOC” and answer the questions. After you submit your request for a hearing, complainants can then use the Public Portal’s “My Cases” feature to view their hearing matters in one convenient location. Complainants can also identify and manage their representative contact information in the Portal. Once identified by a complainant, registered representatives can then upload documentation on their client’s behalf.

If you do not want to use the Public Portal, requests for a hearing before the EEOC and supporting documents can still be submitted directly to the EEOC office at the following address AND also providing a copy of the request to the agency at the address above. Your form must be received or postmarked by the 30th day. Please check the box next to the option you wish to exercise, sign, date and return the form to:

**Director**

**U.S. Equal Employment Opportunity Commission**

**address**

**Fax Number: XXX-xxxxx**

Efile: <https://publicportal.eeoc.gov>

7. If you fail to request an EEOC hearing for the non-mixed portion of your complaint within the specified timeframe, your complaint will be transmitted to OEDCA for a FAD without a hearing.

8. The 30-calendar days time limit for requesting a hearing on the non-mixed portion of your complaint is non-discretionary and we are without authority to extend it, even if you agree to discuss settlement with a facility official. Consequently, if you desire a hearing you must request it before the expiration of the 30-calendar days time limit.

9. If you have any questions about your rights, please contact firstname lastname ORMDI Case Manager at address1\_telephone1, internalemailaddress before expiration of the 30-calendar days time limit. **You are *strongly encouraged* to use email to submit your correspondence (and/or documents) to ORMDI.**

Sincerely,

firstname lastname

District Manager

Enclosures: Investigative File

MSPB Appeal Form

Complainant Rights – Post Investigation (Mixed Case)

Hearing Request Form

Post Investigation Election Form (Mixed Case)

cc:  **Facility Director and email**

**COMPLAINANT RIGHTS – POST INVESTIGATION (MIXED CASE)**

Your EEO complaint is a mixed-case complaint because it involves matters that are appealable to the Merit Systems Protection Board (MSPB). You have different rights for the mixed and non-mixed portions of your complaint. Your rights for the **non-mixed portion** of your complaint are as follows:

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| --- |
| **Option #1 Requesting a Hearing** |

Please note if you elect a hearing before the EEOC, you may file a request for hearing and submit relevant documents through the EEOC’s Public Portal.

To access the Public Portal, go to <https://publicportal.eeoc.gov>. To begin, click on the link: “Filing with EEOC” and answer the questions. After you submit your request for a hearing, complainants can then use the Public Portal’s “My Cases” feature to view their hearing matters in one convenient location. Complainants can also identify and manage their representative contact information in the Portal. Once identified by a complainant, registered representatives can then upload documentation on their client’s behalf.

If a complainant does not want to use the Public Portal, requests for a hearing before the EEOC and supporting documents can still be submitted directly to the EEOC office at the following address and provide a copy of the request to the agency at the address above. Your request for an EEOC hearing should be mailed or sent via facsimile as follows:

|  |  |
| --- | --- |
| To request that EEOC appoint an administrative judge to hear your complaint, complete the enclosed “Hearing Request Form” and send it to: | You **must** also send a **copy** of your EEOC hearing request to this office. ***Failure to provide a copy of the request to the agency may result in forfeiture of the right to a hearing.*** |
| U.S. Equal Employment Opportunity Commission  **Address**  **City, State, Zip**  Fax Number: (xxx) xxx-xxxx  (Please check for address)  <https://publicportal.eeoc.gov> | Department of Veterans Affairs  Office of Resolution Management, Diversity & Inclusion 08X  **govcdm\_name**  **govcdm\_address1\_line1 govcdm\_address1\_line2**  **govcdm\_address1\_city, govcdm\_address1statepicklist govcdm\_address1\_postalcode**  Fax Number: (xxx) xxx-xxxx  **You are *strongly encouraged* to use email to submit your correspondence to ORMDI at Email: @va.gov** |

You are required to certify to the EEOC administrative judge that you sent a copy of the request for a hearing to the Office of Resolution Management at the above address.

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| **Option #2 Requesting a Final Agency Decision** |

You may elect to request an immediate final agency decision (FAD) on the merits of your complaint from the VA’s Office of Employment Discrimination Complaint Adjudication (OEDCA).

|  |
| --- |
| To request a FAD, complete the enclosed “Post Investigation Election Form” and send it to: |
| Department of Veterans Affairs  Office of Resolution Management, Diversity & Inclusion 08  **govcdm\_name**  **govcdm\_address1\_line1 govcdm\_address1\_line2**  **govcdm\_address1\_city, govcdm\_address1statepicklist govcdm\_address1\_postalcode**  Fax Number: (xxx) xxx-xxxx  **You are *strongly encouraged* to use email to submit your correspondence to ORMDI at Email: @va.gov** |

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| --- |
| **ADR** |

In addition to the above, you have the right to elect to participate in the Agency’s Alternative Dispute Resolution (ADR) Program for both the mixed and non-mixed portions of your complaint.  An election of ADR does not toll or waive the time requirements for electing a hearing or FAD on the non-mixed portion of your complaint. Therefore, you must make an election of one of the two options outlined above within the 30-calendar days time limit, even if you request to participate in ADR.

|  |
| --- |
| **Requesting ADR** |

If you elect to participate in the ADR Program, you must submit a written request for ADR within **ten (10) calendar days of your receipt of this letter**.  The request for ADR must be sent via email to the ADR Program Office as follows:

**Department of Veterans Affairs**

**ADR Program Office (08)**

**810 Vermont Ave, NW**

**Washington, DC 20420**

**Email Address: WorkplaceADR@va.gov**

**Hearing Request Form**

**EEOC Hearings Unit**

Efile: [https://publicportal.eeoc.gov](https://publicportal.eeoc.gov/)

**U.S. Equal Employment Opportunity Commission**

**EEOC Office**

**Address**

**City, State, Zip**

Dear Sir/Madam:

I am requesting the appointment of an EEOC Administrative Judge pursuant to 29 C.F.R. § 1614.108(h).  I hereby certify that either more than 180 days have passed from the date I filed my complaint; or I have received a notice from the agency that I have 30 days to elect a hearing or a final agency decision.

My name: **firstname lastname**

**address1\_line1 address1\_line2**

**address1\_city, govcdm\_address1statepicklist address1\_postalcode**

**emailaddress3**

**address1\_telephone3**

Representative: **firstname lastname**

**address1\_line1 address1\_line2**

**address1\_city, govcdm\_address1statepicklist address1\_postalcode**

**emailaddress3**

**address3\_telephone3**

Agency Case No: **govcdm\_name**

Date Filed: **govcdm\_dateformalcomplaintfiled**

In accordance with 29 C.F.R. § 1614.108(h), I hereby certify that I have sent a copy of this request for a hearing to the following person at the agency:

Case Manager: **firstname lastname**

**govcdm\_name**

**govcdm\_address1\_line1 govcdm\_address1\_line2**

**govcdm\_address1\_city, govcdm\_address1statepicklist govcdm\_address1\_postalcode**

**internalemailaddress**

**You are *strongly encouraged* to use email to submit your correspondence and/or documents to ORMDI.**

Sincerely,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_                                     \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

firstname lastname Date

**Post Investigation Election Form**

firstname lastname  
govcdm\_name

govcdm\_stationname

govcdm\_facilityaddress govcdm\_facilityaddress2

govcdm\_facilitycity, govcdm\_facilitystate govcdm\_facilityzip

As stated on the ***Advisement of Rights Notice***, please indicate your election by checking the box next to **ONE** of the following processing options.

* Request a final agency decision (FAD) from the Office of Employment Discrimination Complaint Adjudication (OEDCA).
* Request a hearing from the Equal Employment Opportunity Commission. **Note: If you select this option, please fill out the attached Hearing Request Form. *Failure to provide a copy of the request to the agency may result in forfeiture of the right to a hearing.***
* By checking this box, I voluntarily withdraw my complaint. I understand that my withdrawal is final, that processing of my complaint will cease, and I am precluded from reinstating these matters in the future. This withdrawal is voluntary, and no one, including agents of the Office of Resolution Management, the Department of Veterans Affairs, nor any other Federal agency, has coerced, intimidated, or threatened me to take this action.

**Please email or fax this form to:**

**Department of Veterans Affairs**

**Office of Resolution Management, Diversity & Inclusion**

**govcdm\_name**

**govcdm\_address1\_line1 govcdm\_address1\_line2**

**govcdm\_address1\_city, govcdm\_address1statepicklist govcdm\_address1\_postalcode**

**Fax: govcdm\_fax**

**Email: @va.gov**

**You are *strongly encouraged* to use email to submit your correspondence and/or documents to ORMDI.**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

firstname lastname Date

1. You **must** send a **copy** of your EEOC hearing request to ORMDI. ***Failure to provide a copy of the request to the agency may result in forfeiture of the right to a hearing.* You are *strongly encouraged* to use email to submit your hearing request to ORMDI.** [↑](#footnote-ref-1)