DO NOT USE THIS LETTER IF AMENDMENT IS FOR ONLY A NEW MIXED MATTER THAT WILL BE PROCESSED AS SEPARATE MIXED CASE COMPLAINT – **USE AMENDMENT FOR SEPARATE MIXED CASE letter instead**

In reply refer to: 08

August 30, 2022

VIA: **(Delivery Method)** emailaddress3

firstname lastname

address1\_line1 address1\_line2

address1\_city, govcdm\_address1statepicklist address1\_postalcode

**SUBJECT: Notice of Amendment of Mixed Case Complaint No. govcdm\_name, Filed on govcdm\_dateformalcomplaintfiled**

Dear firstname lastname:

1. This acknowledges receipt of an amendment request **dated**, and received in our office on **date**, to your EEO discrimination complaint case referenced above. The request includes an employment matter that is appealable to the Merit Systems Protection Board (MSPB)[[1]](#footnote-1) and therefore now constitutes a “mixed case complaint.” A mixed case complaint is a complaint of employment discrimination filed with a federal agency based on a protected basis that raises a claim related to or stemming from an action that may be appealed to the MSPB. EEOC mixed case regulations provide specific procedures and separate time periods for processing EEO complaints that contain matters appealable to the MSPB.

2. EEO regulations permit a complainant to amend a complaint at any time before the conclusion of the investigation by adding claims that are “like or related” to those raised in the original complaint. The regulations provide that new evidence be reviewed to determine whether it:

a) Provides additional evidence to support the existing claim, but does not raise a new claim in or of itself;

b) Raises a new claim that is “like or related” to the claim raised in the pending complaint; **or**

c) Raises a new claim that is not “like or related” to the claim raised in the pending complaint.

A new claim or additional evidence is considered like or related to the initial complaint if it adds to or clarifies it or could reasonably be expected to have grown out of the initial complaint.

3. The current accepted claim(s), as indicated in your Notice of Acceptance letter dated (insert date), is(are) (briefly summarize claims accepted in original complaint; i.e., one of hostile work environment consisting of x number of events; three separate claims of nonselection; a claim of suspension; etc.)(**NOTE: in order to amend a non-mixed to a mixed the non-mixed case MUST have a proposed action – otherwise is it returned to counseling and processed separately)**

4. On (Date) you requested the following be amended to the existing complaint:

*(Frame claims and/or events for amendment to include dates of occurrence)*

5. The matter(s) you have raised represent additional evidence to support the existing claim **OR** The matter(s) you have raised represent a new claim like or related to the original complaint. Your complaint is therefore amended as follows:

(Restate all claims/events accepted for investigation with amended claims/events inserted so that everything is framed in chronological order)

- If amendment request for mixed matter is subject to dismissal, use regular amendment letter as original complaint will remain “unmixed.”

6. If you believe that the amended claim(s) is/are improperly formulated, incomplete, or incorrect, a written statement outlining your disagreement may be submitted. If a written statement is submitted, it will be included as part of the official record in the complaint file.

7. The amended complaint will be assigned to an impartial investigator under the supervision of the Office of Resolution Management, Diversity & Inclusion (ORMDI). The investigator will contact you directly in order to obtain information or evidence you may wish to offer. You will be provided a copy of the investigative file upon completion. **or if initial complaint has already been assigned for investigation:** The amended complaint will be assigned to the investigator previously assigned to investigate the original complaint. The investigator will contact you directly in order to obtain information or evidence you may wish to offer. You will be provided a copy of the investigative file upon completion.

8. Your post investigation rights remain the same for the non-mixed portion of the complaint, however, the mixed portion of the complaint is subject to different regulatory processing requirements. You will be provided a copy of the investigative file upon completion and will be advised, in writing, that the file will be transmitted to the Office of Employment Discrimination Complaint Adjudication (OEDCA) for a Final Agency Decision (FAD) on the mixed matter. The FAD will be issued within 45 calendar days of your receipt of the investigative file. OEDCA will advise you of its decision and the right to appeal the FAD, within **30 calendar days** of receipt, to the U.S. Merit Systems Protection Board (MSPB).

9. If a FAD on the mixed portion of the complaint is not received within 120 calendar days of the date of amendment request of the mixed matter, you have the right to file an appeal with the MSPB without waiting further or your client may file a civil action, but not both. You may not file an appeal before the 121st day, unless a FAD on the complaint is received sooner. To file an appeal with MSPB, you must complete the enclosed “MSPB Appeal Form” or efile at [www.mspb.gov/appeals](http://www.mspb.gov/appeals), or you can send it to:

**Regional Director**

**Merit Systems Protection Board**

**Address**

**City, state, zip**

**Telephone: number; Fax: number**

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

10. If you file a civil action, the **Secretary of Veterans Affairs,** must be namedas the defendant.Failure to provide the name and official title of the Secretary of the Department may result in dismissal of the case.

11. The EEOC encourages the use of Alternative Dispute Resolution (ADR) to resolve EEO complaints at the lowest possible level. Agencies and complainants can realize many advantages from using ADR. ADR offers the parties the opportunity for an early, informal resolution of disputes in a mutually satisfactory fashion. If you are interested in using mediation to address the issues raised in the complaint, please contact the ORMDI Case Manager listed below or the ADR Director at [workplaceadr@va.gov](mailto:workplaceadr@va.gov).

12. If you have any questions concerning the processing of your complaint, please contact firstname lastname, ORMDI Case Manager at address1\_telephone1, internalemailaddress. **You are *strongly encouraged* to use email to submit your correspondence and/or documents to ORMDI.**

Sincerely,

firstname lastname

District Manager

Enclosure: MSPB Appeal Form

cc: **Facility Director and email**

1. (identify mixed matter here; i.e., 15-day suspension; forced resignation, etc.); NOTE: an amendment that makes this matter mixed must have the investigation and FAD completed within 120 days of the amendment request. [↑](#footnote-ref-1)