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 the EEO Complaint of** **firstname lastname, Case No. govcdm\_name, Date Filed govcdm\_dateformalcomplaintfiled.**

Dearfirstname lastname:

1. This acknowledges receipt of an amendment request **dated**, received in our office on **date**, to your client’s EEO discrimination complaint case referenced above. The request includes an employment matter that is appealable to the Merit Systems Protection Board (MSPB) and therefore 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. Because complainants are not entitled to a hearing before the Commission on mixed case EEO complaints, appealable matters must be processed as a separate mixed case EEO complaint. EEOC’s Management Directive, MD-110, specifically states that because the MSPB does not have jurisdiction to hear non-appealable matters, complaints not containing those matters should be processed by the agency under the 1614 process and **not** mixed with matters that are appealable to the MSPB through amendment, consolidation or held in abeyance.

2. Because claims regarding appealable matters must be processed as a separate mixed case complaint, the mixed matter your client has requested amendment for, (identify mixed matter[[1]](#footnote-1)), is being returned to counseling for processing as a separate mixed case EEO complaint. The assigned counselor will contact your client directly. **(CM’S MUST MAKE SURE TO FOLLOW THROUGH WITH REFERRING BACK TO COUNSELING)**.

3. If there are no other non-mixed matters raised, remove everything that follows until paragraph ten and renumber paragraphs accordingly. Regarding the other non-appealable matters your client has requested to amend to the complaint, 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.

4. The current accepted claim(s), as indicated in the 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 nonselction; a claim of suspension; etc.)

5. On (Date) your client requested the following be amended to the existing complaint:

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

6. (If amendment request is acceptable): The matter(s) raised represent additional evidence to support the existing claim **OR** The matter(s) raised represent a new claim like or related to the original complaint. The complaint is therefore amended as follows:

(Restate all claims/events accepted for investigation with amended claims/events inserted in order of receipt of amendment request)

- If the claim is deemed not “like or related” to the pending complaint, and is not subject to dismissal, paragraph six should be written as follows and omit paragraphs 7, 8, and 9 from this decision.

6. We have determined your client’s amendment request is not like or related to the original complaint and must be returned to counseling for processing as a separate complaint. (Briefly articulate why it is not like or related based on the fact pattern before you; i.e., The management official involved in your original complaint has no involvement with the matter you requested to be amended; The matter(s) do not add to or clarify the initial complaint, nor are they matters that one would reasonably expect to have grown out of the initial complaint; etc.) The date of initial contact for the new complaint will be the date of the amendment request. The assigned counselor will contact your client directly. **(CM’S MUST MAKE SURE TO FOLLOW THROUGH WITH REFERRING BACK TO COUNSELING)**.

- If amendment request is subject to dismissal, paragraph six should be written as:

6. We have determined your client’s amendment request is not like or related to the original complaint and is subject to dismissal. (Briefly articulate why it is not like or related based on the fact pattern before you prior to articulating a valid argument for dismissal that specifically cites supporting evidence and appropriate 1614.107 reason/s). Decision must include the following: There is no immediate right to appeal the dismissed portion of the complaint. Your client will have the right to appeal the partial dismissal once final action is taken by the agency on the remainder of the complaint. If amendment request is dismissed, omit paragraphs 7, 8, and 9.

**DO NOT GIVE APPEAL RIGHTS IF AMENDMENT REQUEST IS DISMISSED**

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

8. 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 your client directly in order to obtain information or evidence you may wish to offer. or if initial complaint has already been assigned for investigation paragraph 8 should read:8. The amended complaint will be assigned to the investigator previously assigned to investigate the original complaint. The investigator will contact your client directly in order to obtain information or evidence you may wish to offer. A copy of the investigative file will be provided upon completion.

9. This paragraph only remains if accepted amendment raises new claims As a result of this notification of an amendment to your client’s complaint, the time frame for completion of the investigation is adjusted. **The agency must complete its investigation** **within the earlier of 180 calendar days after the last amendment to the complaint or 360 calendar days after the filing of the original complaint.** ORMDI will make every good faith effort to complete the investigation within the prescribed period. However, where workload demands make it impossible to complete a timely investigation, we will work with you to seek a mutual agreement to extend the period so that the investigation can be completed before your client seeks an EEOC hearing or a final agency decision (FAD) from OEDCA.Your client’s right to elect an EEOC hearing or an agency FAD remain the same as outlined in the original notice of acceptance. If accepted amendment raises additional evidence to support the existing claim but does not raise a new claim in or of itself, paragraph nine should be written as: 9. All time frames for processing the original complaint remain the same as outlined in previous correspondence.

10. 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).

11. 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

cc:  firstname lastname, emailaddress3

**Facility Director and email**

1. Do not use this template and do not send back for processing as separate mixed case complaint if appealable matter grew out of a proposed action raised in original complaint, or if appealable matter is a “constructive” claim resulting from matters raised in original complaint. [↑](#footnote-ref-1)