In reply refer to: 08

September 6, 2022

VIA: **(Delivery Method)** emailaddress3

firstname lastname

address1\_line1 address1\_line2

address1\_city, govcdm\_address1statepicklist address1\_postalcode

**SUBJECT: Notice of Dismissal for “Mixed Case” EEO of** **firstname** **lastname, Case No.** **govcdm\_name, Filed** **govcdm\_dateformalcomplaintfiled against officials of the govcdm\_name in govcdm\_address1\_city, govcdm\_address1statepicklist.**

Dear firstname lastname:

1. On **govcdm\_datetimeofinitialcontact**, your complainant initiated contact with an EEO Counselor. Counseling concluded on **govcdm\_datenoticeofrighttofileissued**, when you and complainant were emailed, (if mailed) via **(Form of Mail Used**), the Notice of Right to File a Discrimination Complaint, which you received on **(Date)** and complainant received on **(Date)**. On (**Date)**, complainant filed a formal complaint of discrimination, VA Form 4939, received in our office on **(date)**.

2. Complainant’s complaint of discrimination raises the following claim**(s)**:

|  |
| --- |
| **Claim(s)** |
| govcdm\_claimtype govcdm\_claimtypeother |

**Whether complainant was discriminated against based on Race when:**

**[describe events and dates].**

3. The formal complaint was filed on **govcdm\_dateformalcomplaintfiled**; however, your client filed a Merit Systems Protection Board (MSPB) appeal with respect to the same claim on **(MSPB Appeal** **Date)**. Where a claim that can be appealed to the MSPB involves an issue of discrimination, a complainant may choose to appeal the claim to the MSPB or file an EEO complaint, **but not both.** In this case, your client’s MSPB appeal was filed first and constitutes an election to have the discrimination claim adjudicated in the MSPB forum. Equal Employment Opportunity Commission (EEOC) regulation 29 C.F.R. §1614.302(c)(2)(i) requires an agency to dismiss an EEO complaint when an MSPB appeal is filed before an EEO complaint on the same matter.

4. Therefore, the agency has **DISMISSED** your client’s complaint, pursuant to the authority contained in **29 C.F.R. §1614.107(a)(4)**. This constitutes the **FINAL AGENCY DECISION** on the discrimination complaint.

5. Your client must bring the allegations of discrimination contained in the dismissal to the attention of the MSPB pursuant to 5 C.F.R. §1201.155. Your client may petition the EEOC to consider the MSPB’s final decision on their discrimination case. To file an MSPB appeal with MSPB go to [www.mspb.gov](http://www.mspb.gov). If you need to mail the appeal, send it to the MSPB address is as follows.

**Regional Director**

**Merit Systems Protection Board**

**Address**

**City, state, zip**

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

6. A dismissal of a mixed case complaint under the authority of 29 C.F.R. §1614.302(c)(2)(i) cannot be appealed to the EEOC except where it is alleged that the above authority has been applied to a non-mixed case matter. A non-mixed case matter would be a claim of discrimination that cannot be appealed to MSPB.

**APPEAL RIGHTS**

This Final Agency Decision may be appealed within 30 calendar days of receipt of this decision. If you decide to appeal this decision to EEOC, you should use EEOC Form 573, a copy of which is enclosed. Your client may file an appeal 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 appeal, complainants can then use the Public Portal’s “My Cases” feature to view their appeal 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, appeals to the EEOC and supporting documents can still be submitted directly to the EEOC/OFO office at the following address.

**Equal Employment Opportunity Commission**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

Or hand delivered to:

**Equal Employment Opportunity Commission**

**Office of Federal Operations**

**Appellate Review Programs**

**131 M Street, NE**

**Fourth Floor, Suite 4NWO2F**

**Washington, DC 20507-0100**

Or sent by fax to: **(202) 663-7022**

A copy of complainant’s appeal to the EEOC must also be sent to the VA Office of General Counsel at the following address:

**Department of Veterans Affairs**

**Office of General Counsel (024)**

**810 Vermont Avenue, NW,**

**Washington, D.C. 20420**

Statements or briefs in support of the appeal must be submitted to the EEOC within 30 calendar days of the filing of the appeal. A copy of any such statement or brief, including any statements made on EEOC’s “Appellant Docketing Statement,” must also be sent to the VA Office of General Counsel at the above address. If an appeal is filed with the EEOC, the appeal, and any subsequently filed statement or brief, must contain a statement certifying the date and method by which copies of these documents were served on the VA Office of General Counsel.

If complainant files an appeal with the Commission beyond the above-noted time limit, s/he should provide the Commission with an explanation as to why the appeal should be accepted despite its untimeliness. If complainant cannot explain why timeliness should be excused, the Commission may dismiss the appeal as untimely.

A copy of complainant’s appeal to the EEOC must also be sent to the District Manager by email or fax or at the following address:

**Department of Veterans Affairs**

**ORMDI**

**govcdm\_name**

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

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

**Fax: (xxx) xxx-xxxx**

**Email: @va.gov**

**RIGHT TO FILE A CIVIL ACTION**

Complainant also has the right to file a civil action in an appropriate United States District Court. A civil action may be filed:

Within 90 days of receipt of this final decision if no appeal to EEOC has been filed;or,

If an appeal is filed with the EEOC, within 90 days after receipt of EEOC’s final decision on his appeal; or,

After 180 days from the date of filing an appeal with the EEOC if there has been no final decision by the EEOC.

If a civil action is filed, complainant must name the **Secretary of Veterans Affairs,** as the defendant.Failure to provide the name and official title of the Secretary of the Department may result in dismissal of the case.

If complainant files a civil action under Title VII (discrimination due to race, color, religion, sex, national origin, or reprisal); or under the Rehabilitation Act of 1973, as amended, (discrimination due to disability), and if s/he does not have, or cannot afford the services of, an attorney, the Court may upon his/her request, appoint an attorney to represent him/her and permit the filing of the action without payment of fees, costs, or other security. The grant or denial of the request is within the sole discretion of the Court. Filing a request for an attorney does not extend the time in which to file a civil action. Both the request and the civil action MUST BE FILED WITHIN NINETY (90) CALENDAR DAYS of the date of receipt of this final agency decision or, if this decision is appealed to the EEOC, within NINETY (90) CALENDAR DAYS of the date of receipt of the EEOC’s final decision on the appeal.

7. If you have any questions concerning the processing of this 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: EEOC Appeal Form

EEOC Form 573

cc: Facility Director, **email**