**Investigative Report**

**In the Matter of the EEO Complaint of Discrimination of:**

govcdm\_firstname govcdm\_lastname)

)

v. ) govcdm\_name

)

**(VA Secretary Name)**, Secretary )

Department of Veterans Affairs )

810 Vermont Avenue NW )

Washington, DC 20420 )

Respondent )

**Name**

Facility: govcdm\_stationname

firstname lastname

EEO Investigator

Office of Resolution Management, Diversity and Inclusion (ORMDI)

810 Vermont Avenue

Washington, DC 20420

**ORMDI Guidance (all Blue Text). This document provides the structure to be utilized for Investigative Summaries. The document also contains ORMDI guidance regarding each component of the Summary. For ease of reference, hyperlinks are contained to the Sections (hover over the entry and hit “control” and “click”). All ORMDI Guidance should be removed from the final Summary issued.**

**Hyperlinks:**

[I. Introduction](#SectionIIntroduction) [II. Background](#SectionIIBackground) [III. Claims and Basis](#SectionIIIClaimsandBasis)

[III. Investigator’s Note](#SectionIIIInvestigatorsNote) [IV. Document Review](#SectionIVReview) [V. Summary](#SectionV)

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**I.** **Introduction**

**The Equal Employment Opportunity Commission’s Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110) defines policies, procedures, and guidance for EEO complaint processing in the Federal Sector. The EEO-MD-110 states that:**

* **The agency shall develop an impartial and appropriate factual record upon which to make findings on the claims raised by the written complaint. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred.**
* **The role of the investigator is to collect and discover factual information concerning the claims in the complaint under investigation and to prepare an investigative summary.**
* **The investigative summary is a narrative document that succinctly states the issues and delineates the most critical evidence addressing both sides of each issue in the case…**
* **The summary should cite to evidence and the exhibits collected.**
* **The investigator does not make or recommend a finding of discrimination.**
* **The complaint file will include the various documents and information acquired during factfinding under this Directive, indexed and tabbed in accordance with the instructions contained in this Chapter, with pages numbered sequentially.**

**Include this paragraph in Section I:**

Having met all procedural requirements for acceptance, with respect to the issues specified hereafter; this complaint was assigned for investigation on (**Date**). An investigation (**enter type of investigation conducted, such as affidavits and sworn testimony**) was conducted from (**Date**) to (**Date**). This report is submitted for the consideration of the Regional EEO Officer on (**Date**).

**II.** **Background**

**Include this paragraph in Section II:**

firstname lastname, hereafter referred to as the complainant, contacted an EEO Counselor on **govcdm\_datetimeofinitialcontact** stating that (**enter basis here**) were the basis for discrimination resulting in (**enter types of claim(s) here**). Counseling (**and or ADR attempts**) was/were unsuccessful in resolving the complaint and complainant filed a formal complaint on **govcdm\_dateformalcomplaintfiled**. The complaint was accepted for investigation on (**Date**). (**Cite appropriate tabs here with counseling letter, formal compliant and letter of acceptance or any amendments**)

**III.** **Claims and Basis**

**Place the Claims as stated in the Letter of Acceptance or Partial Acceptance in Section III in bold font.**

**Investigator’s Note:**

**In “Investigator’s Note” section identify issues that impacted the investigation if pertinent to explain the EEO Investigator’s actions to subsequent decision makers. For all entries, cite to the location of the document/evidence. Examples include:**

1. **Dismissed claims.**
2. **Addition or removal of bases.**
3. **Amendments (complainant should always be advised to pursue with EEOPM or CM before investigating).**
4. **Attempts to obtain documentation/evidence (list missing documents/evidence).**
5. **Attempts to obtain legible documents/evidence.**
6. **Information pertaining to missing witnesses who are obvious critical witnesses (e.g. alleged harasser, discriminator, or RMO no longer a Federal Employee and refused to cooperate).**
7. **Other issues that will help the adjudicator understand significant issues impacting the investigation.**
8. **If complainant is represented, identify the person in the Investigator’s Note section, and indicate whether they are an attorney (i.e., “Attorney at Law” “Esq.” etc).**
9. **In addition, Investigator Notes can be placed anywhere else in the Summary if useful and pertinent.**

**IV.** **Review of Documents**

**Identify and describe significant documents/evidence in Section IV. It is not necessary to list all documents/evidence, but critical documents/evidence that will assist adjudicators understand the issues and decisions should be identified. For example:**

1. **Statistical Information:** 
   * **Statistical information about the work environment or similar actions can be identified. For example, “data shows six medical support assistants are assigned to the service, three are over 40 years of age, two are over 30, and the complainant is 56.”**
   * **Historical information about similar actions can be summarized, such as “agency records disclose that RMO 1 made six selection decisions during the two-year period prior to the period at issue: Four were XXX Protected Category, two were XXX Protected Category, and one was XXX Protected Category.”**
2. **Disciplinary Action: Identify pertinent information about disciplinary actions, such as the date of the proposed action, complainant’s response (if any), the decision, and the Human Resources disciplinary action file.**
3. **Vacancy Announcement: Identify the vacancy announcement, complainant’s application, the certificate(s) of eligibles, notes, actions and decisions of the rating/selection panel (if any), the actions/decisions of the selecting official, and the selected candidate’s application (ensure to obtain their protected category information).**
4. **Citation: For all entries, cite to the location of the document/evidence.)**

**V. Summary**

**In Section V, the EEO Investigator should summarize the testimony of the complainant, complainant’s witnesses, RMO(s), RMO witnesses, and SMEs. The summaries should incorporate highly relevant documentary evidence when it is related and supportive of the testimony.**

**Summary**

1. **Order of Testimony: Complainant, complainant’s witness(es), RMO(s), RMO’s witnesses (if any), SME (if pertinent).**
   1. **Combining Participant Information with Testimony:**
      * **Multiple claims/events: For multiple claims/events, the participants can be introduced before summarizing their testimony for each claim/event (example: Claim 1, complainant, witness, RMO, SME).**
      * **Few claims/events: If only a few claims/events were investigated, the participants and their testimony can be combined (example: Complainant, Claim 1, 2, and 3; witness, Claim 1, 2, and 3, RMO, Claim 1, 2, and 3).**
2. **Highlight Participant Names: Bold the name of the participant at the beginning of testimony.**
3. **Protected Category Information: Place protected category(ies) in parentheses next to the participant’s name, example (race-XXX; color-XXX; age-XX, born 19XX). Reprisal, identify the activity described by complainant or the witness. Disability: list the name of the diagnosis. Age: List the year of birth and age at time of accepted claims/events (age – 48, born 19XX).**
4. **Position Information: Place after protected category information.**
5. **Combine Testimony for Similar HWE Non-Discrete Actions: Related non-discrete events can be combined in HWE cases (such as repeated occurrences of similar behavior, like humiliation, exclusion, etc). Follow a logical pattern (usually chronologically).**
6. **Conclusions**: **No Summary should state a conclusion about whether or not discrimination, harassment, or retaliation were factors in the contested actions.** **No Summary should indicate whether any component of a prima facie case was established by any party (for example, that complainant identified “valid” comparators).**

**Claim 1/Claim A. Enter claims/events in bold to provide a visual aid for the reader.**

The witnesses testified to the following:

**Testimony**

1. **Key Points: Do not restate large passages of testimony - key points should be summarized.**
2. **Accuracy: Everything identified should come directly from the participant.**
3. **Citations: Cite testimony to the Section containing the affidavit.**
4. **Complainant’s Testimony: Identify the person(s) complainant identifies as RMO(s) and summarize when/how complainant believes the RMO(s) became aware of complainant’s protected categories.**
5. **Complainant’s Witnesses, RMO’s Witnesses: Identify their protected category information, their duty title, duty location, how long employed, and their organizational relationship to the complainant or RMO. Identify which claims/events the witness is addressing, and why, and provide a summary of their testimony.**
6. **RMO Testimony: Include their supervisory relationship to the complainant. Identify their protected categories, whether they have knowledge of complainant’s protected categories, and when they learned of each.**
7. **SME Testimony: Discuss their role in the contested actions, the process at issue, which policy or regulation governed the action, whether they provided advice to RMOs, whether RMOs followed appropriate policy, etc.**
8. **Comparators: Address comparators with complainant, RMOs, and SMEs (if pertinent).**
9. **Credibility Determinations: Provide information to assist adjudicators with credibility determinations, such as whether testimony is based on personal knowledge or rumor and hearsay, whether the participant has an interest in the outcome of the complaint, etc.**
10. **Follow-Up: Follow-up with Participants when necessary. Email can be used to follow-up on incomplete testimony or missing documents/evidence.**

**Pretext:** **Pretext. Complainant’s Pretext argument for discrete events should follow the RMO’s response.**

1. **The pretext opportunity must be provided to the complainant and the opportunity must be clearly identified and labeled as the “Pretext Statement” in the Affidavit/Declaration and Investigative Summary.**
2. **Rebuttal can be provided at two points during the investigation:**
   1. **Initial Questioning (verbal or written interrogatory). The first opportunity is when the complainant is initially questioned.** 
      1. **This method is only feasible if the employer’s reasons for the contested actions are known at the time of the questioning. It is useful in cases where complainant was formally advised of the reasons for the contested action prior to the EEO complaint (discipline, termination, performance appraisal, etc).**
      2. **If offered during initial questioning, following are potential questions:**
         1. **Are you aware of the RMO’s reasons for their decision/action? If so, what is your understanding of the reasons? When and how did you become aware?**
         2. **Do you believe the RMO’s reasons for their actions are false and are a cover or mask for discrimination? Why or why not?**
      3. **Follow-up After RMO Testimony: If offered during initial questioning the EEO Investigator must be careful to ensure no new (unrebutted) reasons were articulated by RMOs during their testimony. If new (unrebutted) reasons are produced in testimony, the EEO Investigator must subsequently provide complainant with the opportunity to rebut the additional reasons.**
   2. **After RMO Questioning: The second point Rebuttal can be offered is after receipt of RMO’s statements. There are two methods for providing the employer’s articulated reasons to the complainant for Rebuttal:**
      1. **Preferred Method: Provide statements in their entirety to the complainant. Statements should be sent under cover of the Privacy Act (5i. Processing Document – Privacy Act Cover Sheet PDF) with strict instructions to the complainant that the statements are confidential and complainant is are responsible for ensuring all information is protected pursuant to the Privacy Act. Statements should also be sent via encrypted email, via the use of a VA-approved secure file sharing program, via facsimile machine (with recipient standing by), or via U.S.P.S. Return Receipt/Tracking.**
      2. **Alternative Method: Summarize testimony for the complainant; however, this exposes the EEO Investigator to potential accusations of providing biased or inaccurate summaries.**

**Subsequent Claims/Events: ENTER each subsequent claim/event in bold and describe testimony and evidence as noted above.**

**Written Questions:**

1. **Use PIPD to guide investigation. Construct questions after reviewing EEOCR, Procedural Review, Notice of Acceptance/Dismissal, and all other evidence submitted with complaint file.**
2. **Ensure questions address all components of pertinent Model of Analysis in Appendix J, EEO-MD-110.**
3. **Refer to Section XVIII, Tips and Reminders, ORMDI Guide to Investigating Employment Discrimination Complaints.**
4. **Questions should be:**
   1. **Clear: (plain language without acronyms or EEO terms of art).**
   2. **Error Free: Free from typographical errors.**
   3. **Not Leading: Open and not leading.**
   4. **Unambiguous: Ask separate questions for each item of information, do not ask “multiple choice” or complex questions.**
   5. **Judgment Free: Questions should be free from appearance that EEO Investigator reached legal conclusion about the allegation. Questions should not suggest EEO Investigator has a specific bias.**
   6. **Thorough: Questions should incorporate all accepted claims/events, bases, and controlling theories.**
   7. **Precise: Questions should be tailored to specific witnesses (based on their role in the investigation).**
   8. **Do No Harm: Provide witnesses sufficient information to elicit useful testimony; however, do not provide information that they do not need know and could cause unnecessary damage or turmoil to the work place.**

**Guidelines for Style and Format**

1. **All text should be Arial, font size 12. Place ONE space between the end of one sentence and the beginning of the next sentence.**
2. **Do NOT center or left justify text in the Summary. Text should be fully aligned (block alignment).**
3. **Use standard punctuation, e.g., put periods after Mr., Ms., Dr., etc.**
4. **Use standard civilian date format: March 28, 2022. Do not use 3/28/221 or 28 March 2022.**
5. **Numbers:**
   1. **Use words for the beginning of sentences, e.g., “Ten of the employees. . .;” and for exact numbers ten and below, e.g., “Of these ten, eight are . . .”**
   2. **Use figures for exact numbers above ten, e.g., “Of those 12, eight are …;” and for percentages, e.g., “Of those, 40% are.”**
6. **Spell out ALL acronyms the first time used.**
7. **Contractions should be avoided, e.g., use “does not” instead of “doesn’t.”**
8. **Avoid using legal terminology and case citations in the Summary.**
9. **It is permissible to use “Complainant,” “the Complainant,” “complainant,” or “the complainant” – just be consistent throughout the Summary.**
10. **When bullets are used, be consistent with the format of their presentation, e.g., use the same spacing format between bullets throughout the Summary, and align bullets uniformly.**

**Investigative File and Index**

1. **See documents titled “4b. Investigator Documents – Table of Contents” and “4c. Investigator Documents – Table of Contents Supplemental Investigations” for specific guidance about constructing Indexes.**
2. **Investigators should orient the pages of the electronic file (PDF) so that each page displays properly on the screen. This should be done before page numbers are entered on the electronic file.**
3. **Any page numbers entered into or on the final Investigative File should start at “1”, so that the page number shown in the PDF ribbon is the same as the number on the numbered page.**

**Legal Sufficiency**

* **Review functional evaluation guides to ensure investigation is legally sufficient:**
  + **EEO-MD-110, Appendix J, Models of Analysis.**
  + **ORMDI Investigation Evaluation Form (CATS/E2 Investigator Letters).**
  + **ORMDI Theory Checklists (ORMDI Sharepoint, Investigators Document Library, Theory Checklists).**

**Editing/Proofreading**

* **Review for content, organization, coherency, grammar, and spelling.**
* **Read out loud or use the “read aloud” function in Word (Review Tab) or Adobe (View, Read Out Loud).**
* **Read the material BACKWARDS.**
* **Let the material sit for a while before proofreading.**
* **Print and examine each line using a ruler.**
* **Have someone else proof your work (remember the information is confidential and covered by the Privacy Act).**

**Sanitizing. Sanitization should comply with “ORM Handbook 5977.1, Section 3. Privacy”, which stipulates that all “VA employees involved in the processing of EEO complaints are required to follow appropriate privacy regulations and practices to protect any personally identifiable information (PII) encountered in the EEO process.”**

**Transmitting Documents: Documents shared with any participant, such as affidavits, MUST be transmitted to ensure the information is protected pursuant to the Privacy Act of 1974 (5. U.S.C. § 552a) and VA policies (See** [**www.oprm.va.gov**](https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.oprm.va.gov%2F&data=04%7C01%7C%7C1c50438e4d9d450c2fd908d9b9976534%7Ce95f1b23abaf45ee821db7ab251ab3bf%7C0%7C0%7C637744882144645502%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=dBltx9qR5s5tarfd5lTx3vOwq3UQDTCSbzD5NbdwJfo%3D&reserved=0)**). Documents should be sent via encrypted email, via U.S.P.S. (using tracking and return receipt), via facsimile machine (when the recipient is standing by), or via a VA approved electronic file sharing system. Documents must be sent under the Privacy Act Notice (5i. Processing Document – Privacy Act Cover Sheet PDF; or 5j. Processing Document – Privacy Act Cover Sheet). Information or documents sent to a non-government email MUST be sent password protected, with the password sent separately.**

**Insert this sentence in the final summary:** The information in this report was obtained from witness testimonies, affidavits and documentation provided by the complainant and /or the Agency.

*Signature of EEO* *Investigator*  The date report submitted

firstname lastname Date

EEO Investigator

Office of Resolution Management, Diversity and Inclusion