



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Washington, DC 20507**

[REDACTED]  
Lindsey T.,<sup>1</sup>  
Complainant,

v.

Janet Dhillon,  
Chair,  
Equal Employment Opportunity Commission,<sup>2</sup>  
Agency.

Appeal No. 0120162544

Agency No. 2013-0031

**DISMISSAL OF APPEAL**

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's May 19, 2016, final decision concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission DISMISSES the appeal as untimely filed.

**ISSUES PRESENTED**

The issue presented is whether Complainant has provided sufficient justification for extension of the 30-day time period to file an appeal.

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<sup>1</sup> This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

<sup>2</sup> In the present matter, the Equal Employment Opportunity Commission is both the respondent agency and the adjudicatory authority. The Commission's adjudicatory function is housed in an office that is separate and independent from those offices charged with in-house processing and resolution of discrimination complaints. For the purposes of this decision, the term "Commission" or "EEOC" is used when referring to the adjudicatory authority, and the term "Agency" is used when referring to the respondent party to this action.

### BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Mediator in the Agency's Miami, Florida District Office. On May 20, 2013, Complainant initiated contact with an EEO Counselor. On July 22, 2013, Complainant filed an EEO complaint alleging that the Agency discriminated against him and subjected him to a hostile work environment on the bases of sex (male), religion (Jewish), disability (unspecified), age (63), and reprisal for prior protected EEO activity when:

1. On or about August 8, 2012, and continuing, Complainant was denied retirement counseling;
2. On or about June 6, 2013, the Office of the Chief Human Capital Officer (OCHCO) failed to abide by the Family and Medical Leave Act (FMLA) and Office of Workers' Compensation Programs (OWCP) procedures, thereby jeopardizing Complainant's employment;
3. On or about August 2011 and ongoing, OCHCO security intentionally recorded Complainant's telephone conversations, set up surveillance, and possibly invaded Complainant's medical privacy;
4. On or about January 2012 to November 2012 and ongoing, OCHCO and security directed full control and deactivation of Complainant's computer;
5. In or around August or September 2012, Complainant was invited to participate in the Employee Assistance Program (EAP);
6. In or around June through September 2012, OCHCO breached confidentiality and volunteered private personal information without permission; and
7. Between January 6, 2012, and March 14, 2013, OCHCO delayed the restoration of Complainant's "use or lose" leave and refused to answer questions surrounding federal leave entitlement, thereby forcing Complainant to withdraw his request for resignation.

The Agency dismissed allegations 5 through 7 pursuant to 29 C.F.R. § 1614.107(a)(2) for untimely EEO Counselor contact but informed Complainant that they would be considered as background evidence in support of his timely hostile work environment claim. At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). Therein, the Agency decision concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

### CONTENTIONS ON APPEAL

Complainant filed his appeal of the Agency's May 19, 2016, decision on July 25, 2016. On appeal, Complainant requests an extension for the time to file his appeal "[d]ue to safety concerns for

myself and family, surveillance.” According to Complainant, the federal government has spent “millions of dollars” on the surveillance of his computer and telephone. Complainant asks that the Commission “[k]indly view this appeal in the same manner you would judge incapacitation of an individual who has documented evidence attesting to this incapacitation.” Complainant presents no evidence on appeal to support his claim of incapacitation. Complainant also raises issues with the Agency’s processing of his EEO complaint and with the Agency’s final decision.

In response to Complainant’s appeal, the Agency contends that the Commission should dismiss Complainant’s appeal as untimely filed. The Agency argues that Complainant has failed to offer adequate justification for the untimely filing of the appeal. According to the Agency, Complainant has failed to produce evidence of or clarify his “safety concerns” or the “surveillance” that prevented the timely filing of his appeal. The Agency also maintains that Complainant failed to establish that his alleged incapacity prevented him from timely filing his appeal. In the alternative, the Agency requests that its final decision be affirmed.

### ANALYSIS AND FINDINGS

By regulation, a complainant's appeal must be filed within 30 days of receipt of an agency's final decision. 29 C.F.R. § 1614.402(a). Complainant filed his appeal with the Commission on July 25, 2016. On appeal, Complainant requests that the time-limit for filing an appeal be extended because of his safety concerns and asks that the Commission regard him as incapacitated. We find that Complainant’s request for an extension of the time-limit for filing an appeal constitutes an admission against interest that he did not timely file his appeal. See Thomas v. U.S. Postal Serv., EEOC Appeal No. 0120113759 (July 25, 2013) (complainant’s statement that she did not have an opportunity to follow her supervisor’s instructions constituted an admission against interest that the charge that complainant had not followed instructions was true). Accordingly, we consider whether Complainant has adequately justified his request for an extension due to incapacity.

Upon review, we note that, in support of his request for an extension, Complainant has not provided any evidence to support his statements regarding “safety concerns.” Moreover, Complainant relies on general, broad assertions about his living situation over a long, unspecified period of time, but has not provided any evidence, such as medical documentation, to support his contention that he was so incapacitated throughout the applicable period that he was unable to timely file his appeal. We have held that to justify an untimely filing, a complainant must be so incapacitated as to render him physically unable to make a timely filing. See Zelmer v. U.S. Postal Serv., EEOC Request No. 05890164 (March 8, 1989). The same is true regarding claims of incapacity related to psychiatric or psychological conditions. See Crear v. U.S. Postal Serv., EEOC Request No. 05920700 (October 29, 1992). A claim of incapacitation must be supported by medical evidence of incapacity during the filing window. See Emelda F. v. Dep’t of Navy, EEOC Appeal No. 0120171441 (Aug. 15, 2017) (complainant’s own statement that she was depressed and that her arthritis flared up, without more, was insufficient to establish incapacity preventing timely filing). In this case, Complainant has not provided any specific evidence that supports a finding that he was so incapacitated during the 30-day period for filing an appeal that he was

prevented from timely filing it. Therefore, we find that Complainant has not offered adequate justification for an extension of the applicable time limit for filing his appeal.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we DISMISS Complainant's appeal pursuant to 29 C.F.R. § 1614.403(c).

### STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the Agency.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

COMPLAINANT’S RIGHT TO FILE A CIVIL ACTION (S0610)

You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. “Agency” or “department” means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant’s Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:

/s/ Bernadette B. Wilson  
Bernadette B. Wilson  
Acting Executive Officer  
Executive Secretariat

November 27, 2019  
Date