



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 77960
Washington, DC 20013

[REDACTED]
Natalya B.,¹
Complainant,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service,
Agency.

Appeal No. 0120170400

Agency No. 1J603004816

DECISION

Complainant filed an appeal with this Commission from the Agency's decision (FAD) dated October 6, 2016, dismissing her complaint of unlawful 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. Upon review, the Commission finds that Complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim.

At the time of events giving rise to this complaint, Complainant worked as a Mail Handler at the Agency's facility in Bedford Park, Illinois. On September 15, 2016, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of her race (Hispanic) and sex (female) when, since suffering a workplace injury on March 11, 2016, she only received partial continuation of pay (COP) through the Office of Workers' Compensation Programs (OWCP).

The FAD dismissed Complainant's complaint for failure to state a claim, finding that Complainant was attempting to use the EEO complaint process to lodge a collateral attack on OWCP proceedings. On appeal, Complainant alleges that her inability to receive COP is the result of discriminatory action taken against her on the basis of her race and sex.

The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that an agency shall dismiss a complaint that fails to state a claim. An agency shall accept a complaint

¹ 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.

from any aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that agency because of race, color, religion, sex, national origin, or disabling condition. 29. C.F.R. §§ 1614.103, .106(a). The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Complainant v. Dep't of the Air Force, EEOC Request No. 05931049 (April 21, 1994).

Here, Complainant alleges that the Agency discriminated against her when her managers allegedly mishandled her OWCP case seeking COP for her on the job injury. The Agency contends that Complainant's complaint is a collateral attack on the OWCP process and should not be considered in the EEO complaint process. The Commission has held that an employee cannot use the EEO to lodge a collateral attack on another proceeding. See Complainant v. Dep't of Defense, EEOC Request No. 05970596 (July 30, 1998); Complainant v. U.S. Postal Serv., EEOC Request No. 05940585 (September 22, 1994); Complainant v. U.S. Postal Serv., EEOC Request No. 05930106 (June 25, 1993). Ultimately, Complainant's concerns involve a dispute over receipt of payment that must be raised with OWCP at the Department of Labor. The EEO complaint process is not the proper forum for Complainant to address her concerns with the OWCP process. The Commission agrees with the Agency decision to dismiss the complaint for failure to state a claim.

Because the Commission agrees with the FAD dismissal on the basis of collateral attack, we decline to consider the alternative basis for dismissal discussed in the FAD.

CONCLUSION

Accordingly, the Agency's dismissal of the complaint is AFFIRMED.

STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0416)

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 or **within twenty (20) calendar days** of receipt of another party's timely request for reconsideration. 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. The requests 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 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:



Carlton M. Hadden, Director
Office of Federal Operations

February 23, 2017
Date