



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

[REDACTED]  
Buck H.,<sup>1</sup>  
Complainant,

v.

Wilbur L. Ross, Jr.,  
Secretary,  
Department of Commerce  
(Patent and Trademark Office),  
Agency.

Appeal No. 0120182454

Agency No. 18-56-59

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated June 14, 2018, dismissing his 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. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Patent Examiner at an Agency facility in Alexandria, Virginia.

On April 16, 2018, Complainant initiated EEO contact alleging that the Agency discriminated against him on the bases of disability and reprisal for prior protected EEO activity (refusal to enter settlement agreement for a prior complaint) when it removed him from employment effective October 23, 2017.<sup>2</sup> Subsequently, on May 21, 2018, Complainant filed a formal complaint reiterating his allegation of discrimination.

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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> We note that the Agency initially removed Complainant from employment effective October 12, 2017, but later rescinded that date and issued an effective date of October 23, 2017.

In a decision dated June 14, 2018, the Agency dismissed Complainant's complaint pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely EEO Counselor contact. The Agency stated that Complainant initiated EEO contact outside of the 45-day regulatory timeframe, he had a pending EEO complaint that he could have asked to amend, and the Notice of Removal provided information on the EEO process and relevant deadlines.

The instant appeal from Complainant followed. On appeal, Complainant stated that he filed for disability retirement in June 2017 due to stress and a hostile work environment at work, and that he was "mentally incompetent" to initiate EEO contact in a timely manner. In response, the Agency stated that Complainant communicated with it in writing about another complaint during the 45-day timeframe relevant here. The Agency provided letters, dated October 28, 2017 and November 4, 2017, from Complainant.

#### ANALYSIS AND FINDINGS

The record discloses that the alleged discriminatory event occurred on October 23, 2017, but Complainant did not initiate contact with an EEO Counselor until April 16, 2018, which is beyond the forty-five (45) day limitation period.

Regarding the justification for his delay, purportedly attributable to depression, we have consistently held that, in cases involving physical difficulties or mental health issues, an extension is warranted only where a complainant is so incapacitated by his conditions that he is unable to meet the regulatory time limits. See Zelmer v. U.S. Postal Service, EEOC Request No. 05890164 (March 8, 1989); Crear v. U.S. Postal Service, EEOC Request No. 05920700 (October 29, 1992). Here, the evidence is insufficient to establish that Complainant remained incapacitated to the degree that it prevented him from timely EEO Counselor contact. The record shows that Complainant communicated with the Agency regarding a prior complaint during the 45-day statutory timeframe. We find that Complainant has presented no persuasive arguments or evidence warranting an extension of the time limit for initiating EEO Counselor contact.

#### CONCLUSION

Accordingly, we AFFIRM the Agency's final decision dismissing Complainant's complaint.

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).

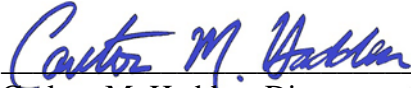
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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:

A handwritten signature in blue ink that reads "Carlton M. Hadden". The signature is written in a cursive style and is positioned above a horizontal line.

Carlton M. Hadden, Director  
Office of Federal Operations

December 13, 2018

Date