



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

[REDACTED]
Bret B.,¹
Complainant,

v.

Robert Wilkie,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2019000247

Agency No. 2003-741C-2018101100

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from an Agency decision, dated April 20, 2018, pertaining to his complaint of unlawful employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. The Commission accepts the appeal in accordance with 29 C.F.R. § 1614.405.

BACKGROUND

Complainant was previously employed as a Voucher Examiner at the Agency's Office of Community Care, Claims Adjudication and Reimbursement Division in Madison, Wisconsin.

Believing that he was subjected to discrimination due his disability and parental status, Complainant contacted an EEO Counselor on November 28, 2017. Informal efforts to resolve Complainant's concerns were unsuccessful.

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.

On March 5, 2018, Complainant filed a formal complaint. Complainant claimed that the Agency subjected him to discrimination when:

- A. On September 16, 2016, his request for a reasonable accommodation was denied.²
- B. On November 18, 2016, he was terminated from his probationary position.

On April 20, 2018, the Agency issued the instant final decision. The Agency dismissed the formal complaint for untimely EEO Counselor contact. The Agency found that Complainant's initial EEO contact on November 28, 2017 was many months after the expiration of the forty-five-day time limitation. The Agency also noted that the basis of parental status is not within the Commission's purview, and therefore failed to state a claim. Additionally, Complainant referenced attempts by a mediator to dissuade him from seeking punitive and compensatory damages in his formal complaint. The Agency determined that any concerns regarding mediation also failed to state a claim.

Complainant filed the instant appeal. He did not present any contentions or brief.

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination should be brought to the attention of the Equal Employment Opportunity Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) days of the effective date of the action. The Commission has adopted a "reasonable suspicion" standard (as opposed to a "supportive facts" standard) to determine when the forty-five (45) day limitation period is triggered. See Howard v. Dep't of the Navy, EEOC Request No. 05970852 (Feb. 11, 1999). Thus, the time limitation is not triggered until a complainant reasonably suspects discrimination, but before all the facts that support a charge of discrimination have become apparent.

EEOC regulations provide that the agency or the Commission shall extend the time limits when the individual shows that she was not notified of the time limits and was not otherwise aware of them, that he/she did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence he/she was prevented by circumstances beyond his/her control from contacting the Counselor within the time limits, or for other reasons considered sufficient by the agency or the Commission.

The record reflects that Complainant contacted an EEO Counselor on November 28, 2017, more than one year after the allegedly discriminatory events. He does not assert on appeal that he was

² The record reflects that Complainant *requested* an accommodation on September 26, 2016. It is unclear, however, when the Agency *denied* the request. Given the date of Complainant's subsequent termination, in November 2016, the absence of a precise date for the denial does not have an impact upon our analysis.

unaware of the time limitation for seeking EEO counseling. When asked during counseling why he waited, Complainant explained that he initially contacted the Office of Inspector General (OIG), which referred him to the Office of Special Counsel. According to Complainant, after OSC investigated the matter for several months, he was referred to the EEO process. The Commission has consistently held that neither internal appeals nor the filing of challenges to an agency's adverse action within other processes such as the grievance process do not toll the running of the time limit to contact an EEO counselor. See Hosford v. Department of Veterans Affairs, EEOC Request No. 05890038 (June 9, 1989); Miller v. United States Postal Service, EEOC Request No. 05880835 (February 2, 1989).

CONCLUSION

The Agency's final decision to dismiss the formal complaint was proper and is **AFFIRMED**.

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).

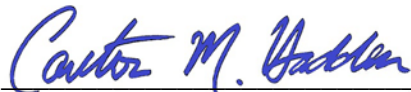
COMPLAINANT’S RIGHT TO FILE A CIVIL ACTION (S0610)

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:



Carlton M. Hadden, Director
Office of Federal Operations

November 28, 2018

Date