



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

[REDACTED]
Roman G.,¹
Complainant,

v.

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

Appeal No. 2019000444

Agency No. 6U-000-0032-18

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated August 23, 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

Complainant was a former employee of the Agency.² On August 14, 2018, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of religion (Pentecostal) and disability.

In its final decision dated August 23, 2018, the Agency determined that Complainant's complaint was comprised of the following claim:

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.

² The record reflects that Complainant resigned from the Agency effective May 1, 2014.

On June 25, 2018, [Complainant] received a letter from [a named headquarters manager] dated June 20, 2018, denying [his] request for reinstatement.

The Agency dismissed Complainant's complaint on the grounds that Complainant previously raised this matter in a prior complaint. The Agency stated "[the] instant complaint ...is the same underlying issue to the claim raised in [his] two previous complaints 6X-000-0023-16 and 6U-000-0028-18 (on June 25, 2018, and ongoing management has denied [his] request for reinstatement...), which is merely a reiteration and extension of the previous complaints. It is noted that on April 17, 2018, in case 6X-000-023-16, [a named EEOC Administrative Judge (AJ)] dismissed [his] complaint on [his] request to withdraw the complaint of discrimination. On July 5, 2018, in case 6U-000-0028-18, [he] withdrew his [discrimination complaint]..."

The instant appeal followed. On appeal, Complainant requests that we reverse the Agency's dismissal of the instant complaint. Regarding his withdrawal of Agency Case No. 6U-000-0028-18, Complainant asserts that this occurred because he wanted to have the EEO forms available by the deadline. Regarding Agency Case No. 6X-000-0023-16, Complainant asserts that the first time he requested reinstatement he was "trying to avoid negativity by simply making a request for it."

ANALYSIS AND FINDINGS

We find that the Agency properly dismissed Complainant's complaint for having raised the same issue previously in the EEO process. The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides that the Agency shall dismiss a complaint that states the same claim that is pending before or has been decided by the agency or Commission.

The record reflects that Complainant previously filed a formal complaint on this matter (Agency denying Complainant reinstatement) in Agency Case No. 6X-000-0023-16, which went before an EEOC AJ. Complainant withdrew his EEO complaint for Agency Case No. 6X-000-0023-16 via email and on April 17, 2018, an EEOC AJ issued an Order of Dismissal on the instant matter based on Complainant's withdrawal.

The record further reflects that Complainant previously raised this matter in informal counseling in Agency Case No. 6U-000-0028-18. The record contains a withdrawal form for Agency Case No. 6U-000-0028-18 signed by Complainant on July 5, 2018. The withdrawal form provides, in pertinent part, that "I fully understand by withdrawing the complaint or allegation, I am waiving my rights to any further appeal of this complaint or allegation through the EEO process. I further stipulate that my withdrawal did not result from harassment, threat, coercion, intimidation, promise, or inducement." We have found that once a complainant has withdrawn an informal complaint (i.e. by not filing a formal complaint) absent a showing of coercion, Complainant may not reactivate the EEO process by filing a later formal complaint on the same issue. See Allen v. Dep't of Defense, EEOC Request No. 05940168 (May 25, 1995). Complainant has not made such a showing in the instant matter.

We find the instant complaint is a reiteration of the above referenced EEO matters (i.e. another denial regarding Complainant's request for reinstatement). Based on the foregoing, we find that Complainant's complaint is properly dismissed.

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).

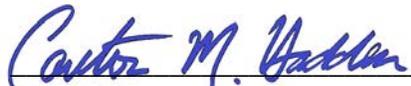
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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:



Carlton M. Hadden, Director
Office of Federal Operations

December 11, 2018

Date