



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

[REDACTED]
Lashawna L.,
Complainant,

v.

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

Appeal No. 0120182747 & 2019001341

Agency No. 4B-110-0073-18

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) on August 1, 2018. Subsequently, Complainant filed a second appeal on November 9, 2018, with the Commission from the Agency's decision dated October 5, 2018, dismissing her 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Sales Service Distribution Associate at the Agency's Tremont Station facility in Bronx, New York. The record indicated that Complainant had engaged in a prior EEO complaint which was resolved by a settlement agreement on December 1, 2017, regarding her claim that the Agency failed to provide her with a reasonable accommodation.

It appears by April 2018, Complainant contacted the Agency's EEO office indicating that since the settlement agreement, the Agency continues to deny her reasonable accommodation in violation of the Rehabilitation Act. Complainant indicated that the Agency failed to respond to her informal contact alleging discrimination. On July 1, 2018, the Agency's EEO Counselor mailed Complainant a Notice of Right to File her formal complaint (Notice).

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.

Complainant received the Notice on July 17, 2018. Complainant was confused by the Notice. First, the Notice was addressed to a different person, not Complainant. Second, having engaged in prior EEO complaints, her initial informal contact was not addressed by the EEO office and she had not been contacted by an EEO Counselor. Due to Complainant's doubts that the document was in fact intended for her, she attempted to contact the EEO Counselor and the Agency's EEO office. Complainant stated that she made several attempts to get in contact with the Agency to obtain clarification. She stated that the Agency officials failed to respond.

When the Agency failed to respond to her calls, on August 1, 2018, Complainant faxed this Commission's Office of Federal Operations documents in hopes of obtaining a response. In her fax, she included a copy of her formal complaint alleging that the Agency subjected her to discrimination on the bases of disability and reprisal for prior protected EEO activity under Section 501 of the Rehabilitation Act of 1973, when management denied her reasonable accommodation and overtime. In addition, Complainant included copies of her prior Settlement Agreement. The Office of Federal Operations docketed the fax as an appeal, namely EEOC Appeal No. 0120182747.

By letter dated September 18, 2018, the Agency was made aware of the appeal. As such, the Agency determined that Complainant filed her formal complaint with the Agency on October 4, 2018.

Subsequently, the Agency dismissed the formal complaint by final decision dated October 5, 2018, pursuant to 29 C.F.R. § 1614.107(a)(2), for failure to file her formal complaint in a timely manner. The Agency noted that Complainant received the Notice of right to file on July 17, 2018. Despite the information provided in the Notice instructing Complainant to file her formal complaint with the Agency within 15 calendar days, Complainant faxed her formal complaint the Commission on August 1, 2018. The Agency did not receive the formal complaint until October 4, 2018, well beyond the 15-day limit.

Complainant filed her appeal with the Commission, which was docketed as EEOC Appeal No. 2019001341. On appeal, she indicted that she had tried to speak with the EEO Counselor seeking clarification based on the fact that she never met with the EEO Counselor regarding her new claim of discrimination and that the Agency included the wrong name on the letter. As such, Complainant asked that the Commission reverse the Agency's final decision and remand the matter for further investigation.

ANALYSIS AND FINDINGS

As an initial matter, we note that the two appeals pending before the Commission should be consolidated as they involve the same sequence of events pertaining to Complainant's formal complaint identified as Agency No. 4B-110-0073-18.

The regulation set forth at 29 C.F.R. § 1614.107(a)(2) states, in pertinent part, that an agency shall dismiss a complaint which fails to comply with the applicable time limits contained in 29

C.F.R. § 1614.106, unless the agency extends the time limits in accordance with § 1614.604(c), which provides that the filing limitation period is subject to waiver, estoppel, and equitable tolling. Under 29 C.F.R. § 1614.106(b) a written complaint must be filed with an appropriate agency official within 15 calendar days after the date of receipt of the notice of the right to file a formal complaint.

Upon review of the record, we find that the record establishes Complainant received the Notice of right to file on July 17, 2018. However, Complainant was confused as she had never spoken to an Agency's EEO Counselor prior to receiving the Notice. The confusion was further compounded by the fact that the Notice was not addressed to Complainant. Complainant tried to contact the Agency's EEO office and the EEO Counselor. Despite her efforts to contact the EEO officials, the Agency never responded to Complainant's inquiries. As the Agency failed to respond, Complainant sought out additional assistance from the Commission by fax on August 1, 2018. We note that Complainant's fax was submitted to the Commission within the 15-day time limit. The Agency determined that Complainant's filing date was October 4, 2018, when it received the complaint from the Commission.

The Commission has previously held that an agency may not dismiss a complaint based on a complainant's untimeliness, if that untimeliness is caused by the Agency's action in misleading or misinforming the complainant. See Wilkinson v. U.S. Postal Serv., EEOC Request No. 05950205 (Mar. 26, 1996). See also Elijah v. Dep't of the Army, EEOC Request No. 05950632 (Mar. 29, 1996) (if agency officials misled complainant into waiting to initiate EEO counseling, agency must extend time limit for contacting EEO Counselor). Based on our review of the record, we find that Complainant has provided sufficient justification for the waiver of the time limit because it was the Agency's actions which cause confusion. Further, the confusion created by the Agency was heightened by its failure to respond to Complainant's inquiries. As such, we conclude that the Agency's dismissal pursuant to 29 C.F.R. § 1614.107(a)(2) was not appropriate.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency's final decision and REMAND the matter for further processing in accordance with the ORDER below.

ORDER (E0618)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision

without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, a copy of complainant's request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0618)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

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 (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. 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. **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

March 5, 2019

Date