



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

[REDACTED]
Luke R.,¹
Complainant,

v.

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

Appeal No. 2019001914

Agency No. 1F927008518

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated November 8, 2018, dismissing his complaint of unlawful employment discrimination in violation of the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Clerk, PS-06, at the Agency's P&DC facility in Santa Ana, California.

On October 12, 2018, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the basis of age when: (1) from May 18, 2018 to June 17, 2018, he was monitored for work performance; (2) on May 30, 2018, he was informed that his supervisor's spouse made a verbal threat against him; (3) on June 17, 2018, he was told he could not work on DIOSS 76 due to his low productivity; and (4) on July 12, 2018, he was not allowed to take a break while on penalty overtime.

The Agency dismissed the complaint, pursuant to 29 C.F.R. § 1614.107(a)(2), due to the untimely filing of the formal complaint. The instant appeal followed.

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.

ANALYSIS AND FINDINGS

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, which, in turn, requires the filing of a formal complaint within fifteen (15) days of receiving the notice of the right to do so.

The record discloses that Complainant received the notice of right to file a formal complaint on July 19, 2018. The notice indicated that Complainant had to file a formal complaint within fifteen (15) calendar days of its receipt. Complainant filed his formal complaint with the Commission rather than with the Agency.

The issue to be determined is whether mistakenly filing his complaint with the EEOC rather than the Agency constitutes a valid filing. The record establishes that the Agency provided Complainant with the proper Agency address for filing his complaint. The Commission has previously held that when provided with the proper address, filing at the wrong address does not constitute a proper filing. See Pacheco v. United States Postal Service, EEOC Request No. 05930700 (September 10, 1993) (appeal untimely when sent to wrong address despite receipt of proper instructions); Meggitt v. United States Postal Service, EEOC Appeal No. 01A40408 (February 3, 2004) (above principle applied to a formal complaint that was untimely filed). On appeal, Complainant has not offered adequate justification to warrant an extension of the time limit for filing the complaint.

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

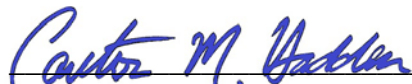
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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

May 2, 2019
Date