



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

[REDACTED]  
Madalene A.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2019002220

Agency No. 2003-0598-2018-106085

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated January 17, 2019, dismissing a formal 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.

**BACKGROUND**

During the period at issue, Complainant worked for the Agency as a Nursing Assistant, GS-5 in Little Rock, Arkansas.

On September 4, 2018, Complainant initiated contact with an EEO Counselor. Informal efforts to resolve her concerns were unsuccessful.

On December 7, 2018, Complainant filed the instant formal complaint. Complainant claimed that the Agency subjected her to discrimination based on race (Black) when:

1. on January 8, 2018 she was detailed to the Agency's Sterile Processing Service pending the outcome of an administrative fact-finding investigation; and

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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.

2. on January 8, 2018, she was denied differential pay and precluded from receiving weekend pay.

In its final decision, the Agency dismissed the instant matter in its entirety for untimely EEO Counselor contact, in accordance with EEOC Regulation 29 C.F.R. § 1614.107(a)(2). Specifically, the Agency found that Complainant's contact of an EEO Counselor on September 4, 2018, regarding events occurring in January 2018, was beyond the applicable time limitations established by EEOC regulations.

This appeal followed.

### 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 record discloses that the latest alleged discriminatory event occurred on January 8, 2018, but Complainant did not initiate contact with an EEO Counselor until September 4, 2018, which is well beyond the forty-five (45) day limitation period.

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

The Agency correctly determined that Complainant's EEO Counselor contact concerning the instant matter was beyond the 45-day limitation period. Further the Agency stated Complainant was or should have been familiar with the 45-day limitation period. In support of its assertions, the Agency submitted a copy of Complainant's training records indicating that Complainant completed training entitled "EEO Complaint Processing/Diversity" in November 2015, which provides relevant information regarding EEO complaint processing time frames, including the 45-day time limitation for timely seeking EEO counseling.

On appeal, Complainant has presented no persuasive arguments or evidence warranting an extension of the time limit for initiating EEO Counselor contact. We are not persuaded by Complainant's statement on appeal that "[f]iling an EEO complaint was the farthest thing on [her] mind", and that "...all the training I received[d] about EEO was not on my mind," because she "went into a depression and stopped talking to friends, co-workers and [her] family members."

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 her conditions that she is unable to meet the regulatory time limits. See Zelmer v. U.S. Postal Serv., EEOC Request No. 05890164 (Mar. 8, 1989); Crear v. v. U.S. Postal Serv., EEOC Request No. 05920700 (Oct.29, 1992). Here, the evidence is insufficient to establish that Complainant was incapacitated to the degree that prevented her from timely EEO Counselor contact.

### CONCLUSION

The Agency's final decision dismissing the formal complaint is **AFFIRMED** for the reasons discussed above.

### 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).

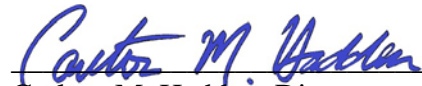
COMPLAINANT’S RIGHT TO FILE A CIVIL ACTION (S0610)

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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

April 17, 2019

Date