



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

[REDACTED]
Keri C.,¹
Complainant,

v.

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

Appeal No. 2019002318

Agency No. 4E-980-0018-18

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated November 15, 2018, 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 as a Sales, Service and Distribution Associate at the Agency's Post Office in Tieton, Washington. Complainant filed a formal complaint alleging that the Agency subjected her to retaliation for prior protected EEO activity.

On November 15, 2018, the Agency issued a final decision. The Agency dismissed Complainant's formal complaint on the grounds it was untimely filed. The Agency reasoned that Complainant receive the Notice of Right to File a Formal Complaint (Notice) on March 6, 2018, but sent it to the Commission's Office of Federal Operations (OFO) rather than to the Agency (U.S. Postal Service). The Agency stated that it did not receive Complainant's formal complaint until October 2018, outside of the applicable time period.

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.

The instant appeal followed. Complainant does not submit a brief or statement in support of her appeal.

ANALYSIS AND FINDINGS

The Agency properly dismissed Complainant's formal complaint on the grounds it was untimely filed. 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 notice of the right to do so.

The record reflects that Complainant received the Notice on March 6, 2018. The Agency's final interview letter dated February 26, 2018, properly indicated that failure to file the formal complaint within 15 days of receipt of the Notice could result in the dismissal of the formal complaint. In addition, the final interview letter properly set forth that the formal complaint should be filed with the Agency (U.S. Postal Service). The Notice, PS Form 2579-A, also informed Complainant of the applicable deadline and the proper address to file her formal complaint with the Agency. The record reflects, however, that Complainant filed the formal complaint with OFO rather than the Agency, despite being provided with the proper address to file her formal complaint. See Heald v. U.S. Postal Serv., EEOC Appeal No. 0120092529 (Sept. 17, 2009) (affirming agency's dismissal for untimely filing of a formal complaint when complainant improperly filed his formal complaint with the Commission rather than the Agency). 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. U.S. Postal Serv., EEOC Appeal No. 05930700 (Sept. 10, 1993). OFO forwarded Complainant's formal complaint to the Agency in March 2018. Based on the foregoing, we find that Complainant's complaint was untimely filed.

We AFFIRM the Agency's final decision dismissing the formal 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)

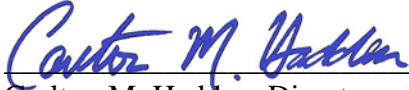
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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

April 26, 2019

Date