



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

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Lionel J.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2019002925

Agency No. 1B-112-0001-19

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated December 4, 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., and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

BACKGROUND

During the period at issue, Complainant worked as a Tractor Trailer Operator, PS-8, at the Agency's Vehicle Maintenance Facility in the Processing and Distribution Center in Brooklyn, New York.

On September 20, 2001 and September 21, 2001, Complainant volunteered for special duty delivering supplies for a response effort following the September 11, 2001 (9/11) terrorist attacks. Complainant stated he has since been diagnosed with an unspecified illness attributed to the terrorist attack on the World Trade Center. As a result, Complainant began applying for the World Trade Center Health Program at Mt. Sinai Hospital and the World Trade Center Victim Compensation Fund.

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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.

Beginning on March 16, 2018, through the human resources office, Complainant requested that Agency management complete a third-party verification form necessary to confirm Complainant's presence at the World Trade Center site during the aftermath of the 9/11 terrorist attacks. On numerous occasions, Complainant inquired about his requests. On one occasion, staff in the human resource office denied having received his request, so Complainant sent another request. Later, Complainant received assurances that the form had been completed and provided to the World Trade Center victims' programs. Those programs denied having received them from the Agency. At another point, human resources staff provided dates for when Complainant would receive a response, but management did not contact Complainant on those dates. In late July 2018, Complainant was told that the human resources managers would be unavailable indefinitely until further notice.

On October 16, 2018, Complainant initiated contact with an EEOC Counselor. Complainant and the Agency were unable to achieve a resolution informally.

On November 13, 2018, Complainant filed the instant formal complaint alleging that the Agency subjected him to discrimination based on disability and in reprisal for EEO-protected, prior activities when, between March 16, 2018, and July 28, 2018, Complainant requested completion of a third-party verification form by human resources management for the Agency, but those managers were non-responsive to his requests.

On December 4, 2018, the Agency issued a final decision. The Agency dismissed the formal complaint for failure to timely initiate EEO Counselor contact.

The instant appeal followed.

### ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. §1614.105(a) requires the aggrieved person to initiate contact with an EEO Counselor within forty-five (45) calendar days of the discriminatory event, of the effective date of a discriminatory personnel action, or of the date that the aggrieved person reasonably should have known of the event or personnel action at issue. This Commission adopted a "reasonable suspicion" standard (as opposed to a "supportive facts" standard) to determine when the 45-day limitation period was triggered. See Ball v. U.S. Postal Serv., EEOC Request No. 05880247 (July 6, 1989); see also Howard v. Dep't of the Navy, EEOC Request No. 05970852 (Feb. 11, 1999). Thus, the limitation period is not triggered until the aggrieved person should have reasonably suspected discrimination, but before all the facts that would have supported a charge of discrimination had become apparent.

A fair reading of the instant record reflects that it was reasonable for Complainant to have expected some sort of response to his inquiries even after he last contacted the Agency human resources office on July 28, 2018. We note that the latest message from the human resources office invited the interpretation that Complainant might receive future contact about management assistance to validate his hazardous duty for purposes of the World Trade Center victims' programs.

Here, it was the Agency's burden to prove untimeliness but, as discussed above, it failed to do so. See Guy v. Dep't of Energy, EEOC Request No. 05930703 (Jan. 4, 1994) citing Williams v. Dep't of Def., EEOC Request No. 05920506 (Aug. 25, 1992). Given the circumstances of this case, we do not find that the 45-day limitation period commenced with the July 28, 2018 contact referenced above, as Complainant could have reasonably maintained the expectation of a response beyond that date. Therefore, we find that the Agency's dismissal for untimely EEO Counselor contact was improper under 29 C.F.R. §1614.107(a)(2).

### CONCLUSION

We **REVERSE** the Agency's final decision dismissing the formal complaint and we **REMAND** this matter to the Agency for further processing in accordance with the **ORDER** below.

### ORDER (E1016)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall acknowledge to 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 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.

A copy of the Agency's letter of acknowledgment to Complainant and a copy of the notice that transmits the investigative file and notice of rights must be sent to the Compliance Officer as referenced below.

### IMPLEMENTATION OF THE COMMISSION'S DECISION (K0617)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report **within thirty (30) calendar days** of the completion of all ordered corrective action. The report shall be in the digital format required by the Commission, and submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to Complainant. If the Agency does not comply with the Commission's order, Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). 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, 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 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 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)

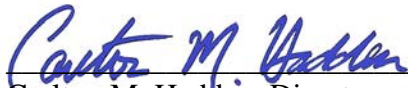
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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:

A handwritten signature in blue ink that reads "Carlton M. Hadden". The signature is written in a cursive style and is positioned above a horizontal line.

Carlton M. Hadden, Director  
Office of Federal Operations

May 29, 2019  
Date