



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

████████████████████
Mathilda S.,¹
Complainant,

v.

Nancy A. Berryhill,
Acting Commissioner,
Social Security Administration,
Agency.

Appeal No. 2019003005

Agency No. ATL181075SSA

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated February 1, 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 Claims Specialist, GS-11, in Anniston, Alabama.

On September 21, 2018, Complainant initiated EEO Counselor contact. Informal efforts to resolve her concerns were unsuccessful.

On December 13, 2018, the EEO Counselor issued the Notice of Right to File an Individual Complaint of Discrimination (Notice). The Notice was sent to Complainant's address of record through the United Parcel Service (tracking number 1Z6Y144924371659). The Notice informed Complainant that she had fifteen days from the date of receipt of the Notice in which to timely file a formal complaint.

On December 18, 2018, the Notice was delivered to Complainant, who acknowledged receipt of the letter through the United Parcel Service.

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.

On January 3, 2019, Complainant filed a formal complaint. Complainant's formal complaint was postmarked January 3, 2019.

On February 1, 2019, the Agency issued a final decision. The Agency determined that Complainant received the Notice on December 18, 2018, and had fifteen days to timely file her formal complaint. The Agency determined that the January 3, 2019 postmarked formal complaint was therefore one day late. The Agency also determined that Complainant failed to provide any persuasive arguments for the delay. The Agency dismissed the formal complaint on the grounds that it was not timely filed, pursuant to 29 C.F.R. § 1614.106(b).

The instant appeal followed. On appeal, Complainant acknowledges that she received the package on December 18, 2018. Complainant stated that she should have opened the letter sooner, but was depressed and stressed by the ordeal relating to the complaint process. She also noted that the holiday season made matters more difficult. Complainant asserts that the short delay should not bar her from continuing the pursuit of the EEO complaint process.

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.106(b) requires the filing of a complaint 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. An agency shall dismiss a complaint or a portion of a complaint that fails to comply with the 15-day time limit contained in 29 C.F.R. § 1614.107(a)(2), unless the agency extends the time limits in accordance with 29 C.F.R. § 1614.604(c). Under 29 C.F.R. § 1614.604(c), this time limit is subject to waiver, estoppel, and equitable tolling.

The record indicates that Complainant received the Notice on December 18, 2018. A review of the UPS Tracking details indicates that the letter (tracking number 1Z6Y144924371659) was delivered to, and received by, Complainant on December 18, 2018. Complainant also acknowledged receiving the letter on December 18, 2018. The Notice indicated that Complainant had to file a formal complaint within 15 calendar days of its receipt. Complainant, however, did not file a formal complaint until January 3, 2019, beyond the 15-day limitation period. Complainant acknowledged the delay but asserted that she should be given a reprieve considering the harassment left her depressed and stressed.

When confronting untimeliness issues, the Commission has consistently held that in cases involving physical or mental health difficulties, an extension is warranted only where an individual is so incapacitated by their condition that he or she is unable to meet the regulatory time limits. See May v. Department of Transportation, EEOC Request No. 0120091792 (June 18, 2010) (the complainant cared for ill sister and worked an augmented work shift; the Commission found that the complainant was not so physically and mentally incapacitated that an excuse of his 16-day delay would be warranted).

The Commission has set a very high standard for a complainant to prove that a mental or physical incapacity prevented her from filing a timely complaint. Complainant's evidence here does not suffice to meet that standard. Bourgeois v. United States Postal Serv., EEOC Appeal No. 01A45636 (December 8, 2004) (Commission found the complainant's argument that the time limit should be tolled because she was on "stress leave" insufficient).

In this case, Complainant has failed to provide sufficiently persuasive evidence that she was so physically and/or mentally incapacitated that she was rendered unable to meet the deadline for filing a timely formal complaint.

Accordingly, the Agency's final decision to dismiss the formal complaint on the grounds that it was untimely filed 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 24, 2019

Date