



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

[REDACTED]
Shaniqua S.,¹
Complainant,

v.

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

Appeal No. 2019005726

Agency No. 4E-980-0120-17

Hearing No. 550-2018-00280X

DECISION

On July 27, 2019, Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's June 27, 2019 final action concerning an equal employment opportunity (EEO) complaint claiming 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

BACKGROUND

On August 25, 2017, Complainant, a former City Carrier at the Agency's Tacoma Central Carrier facility in Tacoma, Washington, initiated EEO counselor contact. Informal efforts to resolve her concerns were unsuccessful.

On October 16, 2017, Complainant filed a formal EEO complaint alleging the Agency subjected her to discrimination based on sex (female), disability, age, and in reprisal for prior EEO activity when, on August 10, 2017, she was separated from the Postal 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.

After an investigation, Complainant was provided a copy of the investigative file, and requested a hearing before an EEOC Administrative Judge (AJ). Thereafter, the AJ issued a document entitled “Order Dismissing Complaint” dated June 24, 2019, dismissing the complaint for untimely EEO counselor contact, pursuant to 29 C.F.R. § 1614.107(a)(2).

Specifically, the AJ noted that despite Complainant’s claim that she was separated from Agency employment in August 2017, Complainant received a letter notifying her on December 14, 2016, that she was being removed from Agency employment due to being Absent Without Leave for well over one month. Complainant did not initiate EEO counselor contact until August 25, 2017, which the AJ found was more than forty-five days after the alleged discriminatory event occurred.

The Agency issued its final action adopting the AJ’s decision.

The instant appeal followed.

ANALYSIS AND FINDINGS

The Commission’s regulations allow an AJ to dismiss complaints pursuant to the grounds set forth in 29 C.F.R. § 1614.107. 29 C.F.R. § 1614.109(b). 29 C.F.R. § 1614.107(a)(2) provides, in relevant part, that a complaint may be dismissed that fails to comply with the applicable time limits contained in § 1614.105. In turn, 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination 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.

Here, the record contains documentation that establishes that Complainant’s separation from employment was effective as of July 18, 2017. Investigative Report, Exhibit 1, Employee History Detailed View, Notification of Personnel Action.² It is further undisputed the Complainant initiated EEO counselor contact on her separation on August 25, 2017, 38 calendar days later and within the 45-day limitation period.

Accordingly, we conclude that the AJ erred in dismissing the complaint for untimely EEO counselor contact. While it may be true that Complainant first learned in December 2016 that the Agency intended to terminate her employment, the record is clear that the termination did not become *effective* until July 18, 2017. 29 C.F.R. § 1614.105(a)(1) makes it clear that the 45-day limitation period for personnel actions such as this starts running from the “effective date of the action.”

² It further appears this notification was “processed” on August 10, 2017.

Therefore, for the reasons stated above, we REVERSE the Agency's final order adopting the AJ's dismissal and REMAND the complaint for further processing pursuant to the following Order.

ORDER

Within fifteen (15) calendar days of the date this decision is issued, the Agency shall submit to the Hearings Unit of the EEOC's Seattle Field Office a renewed request for a hearing, along with a copy of the complete complaint file and this appellate decision. The Agency shall provide written notification to the Compliance Officer at the address set forth below that the complaint file has been transmitted to the Hearings Unit. Thereafter, the Administrative Judge shall issue a decision on the complaint in accordance with 29 C.F.R. § 1614.109 and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The 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, the 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 the 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.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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 (R0610)

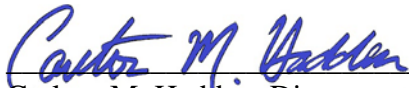
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this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



Carlton M. Hadden, Director
Office of Federal Operations

November 6, 2019
Date