



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

[REDACTED]
Theresa B.,¹
Complainant,

v.

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

Appeal No. 2019003473

Agency No. 4E-570-0020-19

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated March 29, 2019, dismissing her 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. Upon review, the Commission finds that Complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Mail Carrier at the Agency's Billings Main Post Office in Billings, Montana.

On March 10, 2019, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the basis of reprisal for prior protected EEO activity when:

1. On October 12, 2018 Complainant was approached to sign a Letter of Demand for Indebtedness for Employee in the amount of \$270.72. Subsequently the monies were taken out of Complainant's pay on February 8, 2019; and

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.

2. On January 31, 2018, Complainant was approached to sign a Letter of Demand for Indebtedness for Employee in the amount of \$107.06.

The record indicated that on October 12, 2018, Complainant was approached to sign a Letter of Demand for Indebtedness for Employee in the amount of \$270.72. On December 20, 2018, Complainant received a Notice of Involuntary Administrative Salary Offset Under the Debt Collection Act stating that a payment of \$245.00 would be deducted from Complainant's pay check scheduled for January 11, 2019, pay period 1 (PP1/2019). Subsequently the monies were taken out of Complainant's pay in PP3/2019, on February 8, 2019.

The Agency dismissed the complaint, pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim. The Agency noted that this matter falls within the Debt Collection Act, as such, the Agency noted that the Commission does not have jurisdiction over this dispute. The Agency further found that the instant complaint constituted a collateral attack and that the proper forum for such a claim is through the administrative process of the Debt Collection Act. The Agency dismissed Complainant's complaint. Complainant filed the instant appeal.

ANALYSIS AND FINDINGS

The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that an Agency shall dismiss a complaint that fails to state a claim. An agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that agency because of race, color, religion, sex, national origin, age or disabling condition. 29 C.F.R. §§ 1614.103, .106(a). The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Department of the Air Force, EEOC Request No. 05931049 (April 21, 1994). If Complainant cannot establish that she is aggrieved, the Agency shall dismiss a complaint for failure to state a claim. 29 C.F.R. § 1614.107(a)(1).

An employee cannot use the EEO complaint process to lodge a collateral attack on another proceeding. See Wills v. Department of Def., EEOC Request No. 05970596 (July 30, 1998); Kleinman v. United States Postal Service, EEOC Request No. 05940585 (September 22, 1994); Lingad v. United States Postal Service, EEOC Request No. 05930106 (June 25, 1993). A collateral attack is defined as involving a challenge to another forum's proceeding. See Phyllis G. v. U.S. Postal Service, EEOC Appeal No. 2019003456 (July 19, 2019). The Debt Collection Act, 31 U.S.C. § 3711 et seq., mandates that monetary disputes involving an agency of the United States government and any claimed debtor must be resolved through the provisions of the Debt Collection Act.

Therefore, the proper forum for Complainant to have raised her challenge is under the Debt Collection Act process. The Commission's regulations do not convey it with jurisdiction to decide matters covered by the Debt Collection Act. Baughman v. Department of the Army, EEOC Appeal No. 01900865 (February 26, 1990); Amato v. Department of the Army, EEOC

Request No. 0520070240 (July 18, 2007); Emelda F. v. U.S. Postal Service, EEOC Appeal No. 2019001020 (April 5, 2019). Upon review, we find that the Agency properly dismissed the complaint at hand pursuant to 29 C.F.R. § 1614.107(a)(1).

CONCLUSION

Based on a thorough review of the record, we AFFIRM the Agency's final decision.

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).

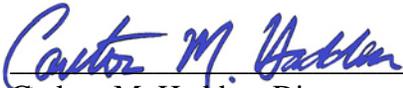
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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

October 22, 2019

Date