



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Chauncey M.,¹
Complainant,

v.

Michelle King,
Acting Commissioner,
Social Security Administration,
Agency.

Appeal No. 20-2400-4561

Agency No. SF-24-0503-SSA

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated June 25, 2024, dismissing the complaint of unlawful employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the reasons presented below, we AFFIRM the Agency's final decision dismissing Complainant's complaint.

ISSUES PRESENTED

Whether the Agency properly dismissed Complainant's formal complaint pursuant to 29 C.F.R. § 1614.107(a)(4) for raising the same claim as previously raised in a negotiated grievance procedure that permits allegations of discrimination.

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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Customer Service Representative at the Agency's R9 San Francisco Field Office facility in San Francisco, California.

Complainant was issued a written counseling for being late to work on March 6, 2024 and the counseling was uploaded to Complainant's electronic personnel folder. Complainant felt this was unfair and discriminatory because the tardiness was in part due to Complainant's physical disabilities. Complainant subsequently filed a grievance on March 11, 2024 regarding the March 6, 2024 written counseling. The Agency denied Complainant's grievance on April 2, 2024 in a Step 1 decision. On April 11, 2024, Complainant contacted an EEO counselor and alleged discrimination based on physical disability when on March 6, 2024 Complainant received a written counseling memorandum for being late for duty.

On June 10, 2024, Complainant filed a formal complaint alleging that the Agency subjected Complainant to discrimination on the basis of disability (physical) when on March 6, 2024, management issued Complainant a written counseling for being late and uploaded it to Complainant's electronic personnel folder.

The Agency dismissed the claim pursuant to 29 C.F.R. § 1614.107(a)(4) finding that Complainant had already raised this matter under a negotiated grievance procedure that permitted allegations of discrimination.

CONTENTIONS ON APPEAL

Beyond submitting a medical record to support his claim of disability, Complainant did not file a brief or statement in support of his appeal.

The Agency contends on appeal that it properly dismissed the complaint because the applicable collective bargaining agreement permits employees to file grievances that allege discrimination but requires that an employee elect between the negotiated grievance process and the EEO process. Since Complainant initially pursued the negotiated grievance process, the Agency argues it correctly dismissed Complainant's EEO complaint on the same matter. The Agency went on to address the merits of Complainant's EEO complaint.

STANDARD OF REVIEW

The Agency's decision to dismiss a complaint is subject to de novo review by the Commission, which requires the Commission to examine the record without regard to the factual and legal determinations of the previous decision maker and issue its decision based on the Commission's own assessment of the record and its interpretation of the law. 29 C.F.R. § 1614.405(a). The Commission should construe the complaint in the light most favorable to the complainant and take the complaint's allegations as true. See Cobb v. Department of the Treasury, EEOC Request No. 05970077 (March 13, 1997). Thus, all reasonable inferences that may be drawn from the complaint's allegations must be made in favor of the complainant.

ANALYSIS

EEOC Regulation 29 C.F.R. § 1614.301 requires that where a person is employed by an agency subject to 5 U.S.C. § 7121(d), and is covered by a collective bargaining agreement that permits allegations of discrimination to be raised in the negotiated grievance procedure, an election must be made to proceed under either the negotiated grievance procedure or the EEO complaint procedure but not both. An aggrieved employee who files a grievance in writing with an agency, whose negotiated agreement permits the inclusion of allegations of discrimination, may not thereafter file an EEO complaint on the same matter, irrespective of whether the agency has informed the individual of the need to elect, or whether the grievance actually raised allegations of discrimination. *Id.* The Commission's regulation at 29 C.F.R. § 1614.107(a)(4) provides for dismissal where the complainant has raised the matter in a negotiated grievance procedure that permits allegations of discrimination and § 1614.301 indicates that the complainant has elected to pursue the non-EEO process.

Here, the record reflects that the relevant collective bargaining agreement states that "employees may file grievances alleging unlawful discrimination as defined by Title VII." The collective bargaining agreement also provides that "[a]n employee has the option of filing a grievance under the negotiated grievance procedure (Article 24) or a formal complaint under the agency EEO complaint procedure, but not both."

Complainant filed a grievance regarding the issuance of a March 6, 2024 written counseling, pursuant to a collective bargaining agreement that permits claims of discrimination to be raised in the grievance process or the EEO complaint process, but not both.

Complainant did not contact an EEO counselor or pursue the EEO process until after receiving a Step 1 decision through the negotiated grievance process. Complainant therefore elected to pursue the claims in the grievance process first and therefore, the Agency properly dismissed the formal complaint pursuant to 29 C.F.R. §1614.107(a)(4).²

CONCLUSION

The Agency's final decision to dismiss the formal complaint for the reason discussed above is AFFIRMED.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0124.1)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that 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 for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration**. A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within 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).

² Because we find the Agency properly dismissed the complaint on procedural grounds, we decline to address their arguments regarding the merits of the complaint.

Complainant should submit their request for reconsideration, and any statement or brief in support of their request, via the EEOC Public Portal, which can be found at

<https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit their request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files their request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the 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(f).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0124)

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 their 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

February 3, 2025

Date