



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

[REDACTED]  
Karan F.,<sup>1</sup>  
Complainant,

v.

Louis DeJoy,  
Postmaster General,  
United States Postal Service  
(Field Areas and Regions),  
Agency.

Appeal No. 2022004889

Hearing No. 510-2021-00385X

Agency No. 4B-006-0072-20

DECISION

On September 6, 2022, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's August 24, 2022, final order concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of 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.

ISSUE PRESENTED

Whether the Agency's final order properly dismissed Complainant's discrimination complaint for failure to state a claim.

BACKGROUND

During the relevant time, Complainant worked for the Agency as a City Letter Carrier, Level 2, at the Vega Baja Post Office in Vega Baja, Puerto Rico.

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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.

Since 2017, Complainant has applied for internal job transfers using the Postal Service's "e-reassign" system. Applications expire after one year unless extended by Complainant. Employees have 90 days prior to the expiration date to extend any application. Complainant submitted a request to extend one application in 2019. Her last application expired on June 1, 2020. There is no indication that she attempted to submit a new request.

On March 29, 2021, Complainant filed a formal complaint alleging that the Agency discriminated against her on the bases of disability (physical), age (DOB: June 1969), and in reprisal for prior protected EEO activity when:

on June 2, 2020, Complainant was unable to use the e-reassign system to apply for a transfer.

After an investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing. The Agency submitted a Motion to Dismiss for Failure to State a Claim (Motion to Dismiss) on July 26, 2022. Complainant did not respond to the Motion to Dismiss. The Agency argued that Complainant failed to establish how she was aggrieved when she let her requests for transfers to expire and failed to allege what transfer she was denied due to her lack of access to the e-reassign system.

On August 15, 2022, the AJ assigned to the case granted the Agency's July 26, 2022 Motion to Dismiss. The AJ found Complainant failed to establish a claim for relief. Moreover, the AJ found that while other dismissal grounds were not raised in the Motion to Dismiss, the AJ nevertheless determined that Complainant's EEO Counselor contact was untimely. The AJ noted Complainant failed to respond to the Agency's motion or explain why her complaint was untimely. For these reasons, the AJ found dismissal was appropriate.

The Agency subsequently issued a final order adopting the AJ's dismissal for failure to state a claim.

The instant appeal followed.

#### CONTENTIONS ON APPEAL

Neither party submitted a brief on appeal.

#### STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.109(b), the AJ's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard

of review “requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker,” and that EEOC “review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law”).

### ANALYSIS

Administrative judges may dismiss complaints pursuant to 29 C.F.R. § 1614.107, on their own initiative, after notice to the parties, or upon an agency's motion to dismiss a complaint. See 29 C.F.R. § 1614.109(b). Here, the AJ found the formal complaint fails to state a claim under the EEOC regulations because Complainant failed to show that she suffered harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. See Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (April 21, 1994).

Complainant’s transfer request expired on June 1, 2020. The AJ noted Complainant’s inability to access her request on June 2, 2020, was because the request had expired. In this regard, the AJ found it was Complainant’s technical failings, not any protected EEO activity, that caused her transfer request to expire. We agree with the AJ and find that Complainant did not demonstrate that the Agency's actions rendered her aggrieved.

The AJ also dismissed the formal complaint for untimely EEO Counselor contact. EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination should 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 days of the effective date of the action. An AJ is permitted to dismiss claims that were not timely raised with an EEO Counselor. See 29 C.F.R. § 1614.109(b); 29 C.F.R. § 1614.107(a)(2). The AJ noted Complainant admitted the alleged discriminatory action occurred on June 2, 2020, but that she did not initiate EEO processing until August 3, 2020, sixty-two days later. Complainant failed to provide an explanation for the delay in raising her claim. Accordingly, we find the AJ also properly found Complainant failed to timely file her complaint.

### CONCLUSION

Accordingly, the Agency's final order dismissing the formal complaint, for the reasons 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).

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:



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Carlton M. Hadden, Director  
Office of Federal Operations

June 25, 2024

Date