



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

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Maxwell M.,<sup>1</sup>  
Complainant,

v.

Denis R. McDonough,  
Secretary,  
Department of Veterans Affairs,  
Agency.

Appeal No. 2023000227

Agency No. 2003-0635-2020100683

DISMISSAL

Complainant appeals to the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated May 20, 2021, dismissing his 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. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. At the time of events giving rise to this complaint, Complainant worked as a Medical Records Lead Clerk at the VA Medical Center in Oklahoma City, Oklahoma. On February 4, 2020, Complainant filed a complaint alleging that the Agency subjected him to discrimination on the bases of race (Black) and age (over 40) when:

1. In November 2018 and on December 7, 2018, Complainant's second-line supervisor (S2) placed Complainant in a choke hold and told him, "I hate you;"
2. On January 11, 2019, Complainant's first-line supervisor (S1), S2, and Complainant's fourth-line supervisor (S4) moved Complainant to a small cubical with a smaller desk located in an environment with a leaking sewer pipe, and S2 removed Complainant's printer and placed it on S2's desk;
3. On March 5, 2019, S1 removed Complainant's access to "Release of Information;"
4. On March 22 and 25, 2019, S2 berated Complainant by saying, "This is your mess, all the other clerks are keeping up," "Clean up this mess," and "Hurry up I have somewhere to go;"

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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.

5. On March 26, 2019, S1 required Complainant to send an email to S1 and S2 before leaving the department outside of his breaks and lunch;
6. On May 14, 2019, S1 filed a police report against Complainant for stealing a five-drawer filing cabinet;
7. On June 12, 2019, S1 charged Complainant 15 minutes Absence Without Leave; and
8. On October 16, 2019, S1 removed Complainant from employment with the Agency.

EEOC Regulation 29 C.F.R. § 1614.402 provides that appeals to the Commission must be filed within 30 calendar days after complainants receive notice of the Agency's decision. The regulation further provides that a document shall be deemed timely if it is received or postmarked before the expiration of the applicable filing period, or, in the absence of a legible postmark, if it is received by mail within five days of the expiration of the applicable filing period. 29 C.F.R. § 1614.604(b).

The record reveals that the Agency decision was delivered to Complainant's e-mail address on May 20, 2021. A review of the Agency decision reveals that the Agency properly advised Complainant that he had 30 calendar days after receipt of its final decision to file his appeal with the Commission. Complainant's appeal is dated October 8, 2022, which is well beyond the 30-day time limit set by regulations. On appeal, Complainant submits a brief that is beyond the 30-day time limit set by 29 C.F.R. § 1614.403(d) and will not be considered. Complainant has submitted no evidence to justify waiving the time limit for filing the appeal.

### CONCLUSION

Accordingly, the appeal is DISMISSED as untimely filed pursuant to 29 C.F.R. §1614.403(c).

### 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)

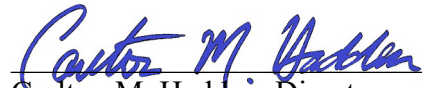
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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

January 31, 2024  
Date