



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

[REDACTED]
Hallie X.,¹
Complainant,

v.

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

Appeal No. 2023000228

Agency No. 4B-150-0030-22

DECISION

On October 10, 2022, Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated October 5, 2022, concerning 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. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission VACATES the Agency's final decision.

ISSUE PRESENTED

The issue presented is whether there is sufficient evidence in the record that Complainant or her attorney received a copy of the report of investigation and notice of the right to request a hearing before an EEOC Administrative Judge (AJ) in accordance with 29 C.F.R. § 1614.108(f).

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 Sales, Services/Distribution Associate at the Agency's Oil City, Pennsylvania Post Office.

On February 17, 2022, Complainant filed a formal complaint, which she subsequently amended, alleging that the Agency subjected her to discrimination on the bases of sex (female), disability (physical), and reprisal for prior protected EEO activity (prior EEO complaints) when:

1. On November 10, 2021, she returned to work, and her work schedule was changed;
2. On December 15, 2021, she was given investigative interviews;
3. On December 15, 2021, and January 24, 2022, she was denied a reasonable accommodation per her medical restrictions during investigative interviews;
4. On January 6, 2022, she was issued a Letter of Warning (LOW);
5. On or around January 7, 2022, she was sent home;
6. On January 28, 2022, she was issued a 7-Day Suspension;
7. On February 5, 2022, she received a response to her accommodation request that did not clearly indicate if it was approved or denied;
8. On March 4, 2022, her request for advanced sick leave was denied;
9. On or around March 4, 2022, a supervisor yelled at her and would not let her leave his office;
10. On March 7, 2022, management discussed her medical conditions on the workroom floor;
11. On January 7, 2022, she was denied a steward;
12. On or about May 2, 2022, management improperly deducted funds that she received via unemployment from the back pay awarded to her through the grievance process;
13. On May 6, 2022, her reasonable accommodations were rescinded, and she has not been accommodated since that date;
14. On May 23, 2022, a supervisor approached her on the workroom floor in front of other employees and stated that she was on the "deems desired" list.

The Agency dismissed allegations (11) and (12) pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim as collateral attacks on another forum's proceedings.

At the conclusion of the investigation into the accepted claims, the Agency provided Complainant with a copy of the investigative file and notice of her right before an EEOC AJ. When Complainant did not request a hearing in accordance with the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The Agency's final decision concluded that Complainant did not establish that she was subjected to discrimination as alleged.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant states that she received the Agency's final decision by mail on October 8, 2022. Complainant asserts that she noticed that the final decision indicated that, on July 19, 2022, she had been sent a copy of the report of investigation and notice of the right to request a hearing and that the Agency issued the final decision after Complainant did not request a hearing or a final Agency decision. Complainant argues that she never received a copy of the investigative record or notice of the right to request a hearing. Complainant requests a hearing before an EEOC AJ.²

The Agency did not timely submit a statement or brief in response to Complainant's appeal.³

² Complainant also requests that an attorney be appointed for her. EEOC regulations do not provide for the Commission to appoint an attorney to represent Complainant during the administrative process. See Fletcher E. v. U.S. Postal Serv., EEOC Appeal No. 0120170720 (July 6, 2017). If Complainant files a civil action, she may request that the United States District Court appoint an attorney to represent her. For more information, we direct Complainant to the "Statement of Rights" below.

³ Complainant challenges the timeliness of the Agency's brief, which included several attached exhibits. The Commission's regulations provide that "any statement or brief in opposition to an appeal must be submitted to the Commission . . . within 30 days of receipt of the statement or brief supporting the appeal, or, if no statement or brief supporting the appeal is filed, within 60 days of receipt of the appeal." 29 C.F.R. § 1614.403(f). Complainant filed a statement concurrently with her appeal on October 10, 2022. According to the Commission's records, multiple Agency representatives downloaded Complainant's statement on October 28, 2022. The Agency did not file its brief opposing the appeal until December 21, 2022, although the Agency's brief

STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency'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, 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

EEOC regulation 29 C.F.R. § 1614.108(f) provides, in relevant part, that the agency shall provide complainant with a copy of the investigative file and shall notify complainant that, within 30 days of receipt of the investigative file, complainant has the right to request a hearing before an EEOC AJ or may request an immediate final decision from the agency. When a complainant is represented by an attorney, time frames for receipt of materials shall be computed from the time of receipt by the attorney. 29 C.F.R. § 1614.605(e).

According to the record, on July 19, 2022, the Agency mailed a copy of the investigative file and notice of the right to request a hearing to Complainant and her representative, who was an attorney.

stated that Complainant filed the latest brief in support of her appeal on November 23, 2022. We note that our regulations do not permit the submission of multiple statements or briefs. See 29 C.F.R. § 1614.403(d); see also Dinah L. v. Dep’t of Homeland Sec., EEOC Appeal No. 2019002109 (Sept. 22, 2020). Accordingly, Complainant’s additional submission did not extend the deadline for the Agency to file its brief. We find that the Agency has not articulated sufficient justification for filing its brief more than 30 calendar days of receipt of Complainant’s October 10, 2022, statement and decline to consider the Agency’s brief or the attached exhibits. Moreover, even if we exercised our discretion and considered the untimely filed brief, it would be insufficient to demonstrate receipt of the notice of the right to request a hearing by Complainant’s attorney.

Case File at 80-82. The record contains USPS tracking numbers for the mailings to Complainant and to her attorney, but the record does not contain any USPS tracking information, signed delivery confirmation, or other evidence showing that Complainant's attorney (or Complainant) received the investigative file and notice of the right to request a hearing. Id.

On appeal, Complainant asserts that she never received the mailing and was therefore denied the opportunity to request a hearing. In Ericson v. Dep't of the Army, EEOC Request No. 05920623 (Jan. 14, 1993), the Commission stated that, "the agency has the burden of providing evidence and/or proof to support its final decisions." See also Gens v. Department of Def., EEOC Request No. 05910837 (Jan. 31, 1992). Here, the record does not contain any evidence showing that Complainant's attorney received the notice of the right to request a hearing mailed by the Agency on July 19, 2022.

As such, we find no evidence that Complainant's attorney received the report of investigation and notice of the right to request a hearing. In the interest of fairness and preservation of EEO rights and because of the lack of persuasive evidence establishing that Complainant's attorney received notice of the right to request a hearing, we find that the final decision in this matter should be vacated and that the complaint should be remanded to an EEOC AJ. See Darell J. v. U.S. Postal Serv., EEOC Appeal No. 2023002287 (July 12, 2023); Maxima R. v. Dep't of Veterans Affs., EEOC Appeal No. 0120171171 (Nov. 9, 2018); Gaye A. v. Dep't of Agric., EEOC Appeal No. 0120161205 (May 23, 2018).

The Commission notes that the claims in the instant complaint are similar to those at issue in another appellate decision where we reversed summary judgment and remanded four of Complainant's consolidated EEO complaints (Agency Nos. 4C-150-0050-19, 4C-150-0034-20, 4C-150-0091-20, and 4B-150-0039-21) for a hearing. Hallie X. v. U.S. Postal Serv., EEOC Appeal No. 2024001339 (Aug. 22, 2024). Therefore, we will order the Agency to notify the AJ assigned to Complainant's four consolidated complaints of the remand of the instant complaint. Upon remand, we advise the AJ to consider whether it would be appropriate to jointly process all five EEO complaints pursuant to 29 C.F.R. § 1614.606.

CONCLUSION

Accordingly, the Commission VACATES the Agency's final decision and REMANDS the matter to the Agency for further processing in accordance with this decision and the ORDER below.

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 Philadelphia District Office a request for a hearing on this complaint on behalf of Complainant, the complete complaint file, and a copy of this appellate decision. Within **fifteen (15) calendar days** of the date this decision is issued, the Agency shall notify the AJ who is presently assigned to Complainant's prior complaints (Agency Nos. 4C-150-0050-19, 4C-150-0034-20, 4C-150-0091-20, and 4B-150-0039-21) of the remand of the instant complaint and request that the AJ consider consolidating the complaints for joint processing in accordance with 29 C.F.R. § 1614.606. 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. Within **five (5) calendar days** of the date of assignment of the hearing number, the Agency shall provide written notification to the Compliance Officer. Thereafter, the Administrative Judge shall issue a decision in accordance with 29 C.F.R. § 1614.109 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 (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 (R0124)

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 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. **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

January 21, 2025
Date