



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

[REDACTED]
Garrett M.,¹
Complainant,

v.

Gina M. Raimondo,
Secretary,
Department of Commerce
(Bureau of the Census),
Agency.

Appeal No. 2023000380

Hearing No. 530-2021-00440X

Agency No. 63-2020-00731-D

DISMISSAL OF APPEAL

On October 12, 2022, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the August 22, 2022 final order concerning his EEO 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., 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.

On August 25, 2020, Complainant filed a formal complaint alleging the Agency subjected him to discrimination and harassment based on age (63), disability, and in reprisal for prior protected activity when:

1. Complainant was subjected to harassment when:
 - a. From January 23–27, 2020, Area Census Office (ACO) Manager (Person A) denied Complainant's request to change his schedule by 30 minutes even though other employees were allowed to do so;
 - b. On January 27, 2020, Person A threatened to terminate Complainant;
 - c. On an unspecified date, Person A berated, ridiculed, and accused Complainant of

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.

- “pushing work off” in front of his coworkers and subordinate staff;
- d. On February 4, 2020, Person A changed Complainant’s work schedule again from 8:00 a.m.–4:30 p.m. to 10:30 a.m.–7:00 p.m.;
 - e. On February 27, 2020, Person A screamed at Complainant for informing Area Manager (Person B) of Person A’s work schedule and for using the “reply all” feature to an email about the ACO’s parking policy;
 - f. On April 7, 2020, Person B called Complainant and spoke down to Complainant and then hung up on him;
 - g. Around April 13, 2020, Person A unfairly implicated Complainant regarding the status of a request even though Complainant had communicated issues about completing the task;
 - h. On April 27, 2020, Person B questioned Complainant about his delayed response to an email and threatened him of additional administrative actions;
 - i. On May 15, 2020, Person A falsely alleged that a cell phone was missing while under Complainant’s purview;
 - j. On May 26, 2020, Person A called Complainant and screamed at him while falsely accusing him of authorizing overtime for a clerk;
 - k. From May 2020–present, Person A yelled at Complainant in front of his coworkers, threatened him of termination, questioned his competence, and defamed him;
 - l. On August 3, 2020, Person A reported Complainant as unavailable although he was working from home;
 - m. On May 26, 2020, a vacancy announcement was posted for Complainant’s position;
 - n. On August 1 & 4, 2020, Person A changed Complainant’s work schedule from reporting to the office once-a-week on Friday to reporting every weekday; and
 - o. Around July 20–27, 2020, Person A assigned a less-experienced clerk to Complainant’s team while reassigning a more experienced clerk to a different shift to sabotage Complainant.
2. On May 26, 2020, Person A counseled Complainant regarding issues that were false or exaggerated to put Complainant in a bad light to upper management.
 3. From May to present day, Complainant was denied overtime by Person A, unlike other managers.
 4. On August 4, 2020, Complainant was forced to take sick leave after working from home with approval.
 5. Around August 1–7, 2020, Person A failed to provide Complainant with a reasonable accommodation.

Following an investigation, Complainant requested a hearing on his complaint before an EEOC Administrative Judge (AJ). On August 17, 2022, the AJ issued a decision without a hearing in favor of the Agency. On August 22, 2022, the Agency issued a final order fully implementing the AJ's decision finding Complainant failed to establish he was subjected to discrimination or harassment as alleged.

EEOC Regulation 29 C.F.R. §1614.402(a) provides that appeals to the Commission must be filed within 30 calendar days after receipt of the Agency's decision. The record reveals the final order was sent to Complainant via his email address of record on August 22, 2022. A review of the final order reveals that the Agency properly advised Complainant that he had 30 calendar days after receipt of its final decision to file an appeal with the Commission. Complainant's appeal was filed on October 12, 2022, which is beyond the filing period. Complainant acknowledges that his appeal was untimely filed and argues that he had "excusable neglect" for missing the deadline and claims he was late due to his medical condition and subsequent surgery.

We find Complainant's contention that his medical condition prevented him from timely filing his appeal to be unpersuasive. When a complainant claims that a physical condition prevents him from meeting a particular filing deadline, we have held that in order to justify an untimely filing, a complainant must be so incapacitated by the condition as to render him physically unable to make a timely filing. See Complainant v. U.S. Postal Service, EEOC Request No. 05890164 (March 8, 1989). Nothing in the statements provided by Complainant supports a finding that he was so incapacitated throughout the applicable period as to prevent him from timely filing his appeal. We note he did not provide any medical documentation to support that he was incapacitated during the relevant time. Complainant has not offered adequate justification for an extension of the applicable time limit for filing his appeal.

CONCLUSION

Accordingly, Complainant's appeal is DISMISSED. See 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:



Carlton M. Hadden, Director
Office of Federal Operations

January 23, 2024

Date