



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

[REDACTED]
Jermaine I,¹
Complainant,

v.

Douglas A. Collins,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2023001261

Agency No. 200P-0593-2020101674

DISMISSAL OF APPEAL

By Notice of Appeal postmarked September 22, 2022, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the January 25, 2021 Agency final decision concerning his EEO 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.

Appeals to the Commission must be filed within 30 calendar days after Complainant receives notice of the Agency's final action, pursuant to 29 C.F.R. §1614.402(a). If Complainant does not file an appeal within the time limits, the appeal shall be dismissed as untimely. See 29 C.F.R. §1614.403(c).

Here, the Agency contends that the instant appeal was untimely filed. According to the Agency, Complainant received the final decision on January 25, 2021. A review of the final decision reveals that the Agency properly advised Complainant that he had thirty (30) calendar days after receipt of its final decision to file his appeal with the Commission.

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.

Therefore, in order to be considered timely, Complainant had to file his appeal no later than February 24, 2021. The record indicates that Complainant filed his appeal on September 22, 2022. The final decision further advised that “[i]f the Complainant files an appeal with the Commission beyond the above-noted time limit, the Complainant should provide the Commission with an explanation as to why the appeal should be accepted despite its untimeliness. If the Complainant cannot explain why timeliness should be excused, the Commission may dismiss the appeal as untimely”.

On appeal Complainant's attorney provides an affidavit detailing her actions and those of her subordinates concerning filing Complainant's appeal. Complainant's attorney avers in paragraph 4 of her affidavit that on June 7, 2021 she gave an identified employee in her office Complainant's motion for appeal to be mailed to the EEOC Office of Federal Operations². However, in paragraph 9 of the affidavit Complainant's attorney states that Complainant's appeal was mailed on May 6, 2021. Still another date of filing is found in Commission records which indicate that Complainant's appeal was post marked on September 22, 2022 and docketed by the Commission on September 28, 2022. We further note that neither Complainant nor his attorney dispute that he received the Agency's final decision on January 25, 2021. Moreover, other than the affidavit testimony submitted on appeal, which contains conflicting dates, both of which were outside the 30 day time limitation for filing, Complainant has failed to provide the Commission with any evidence that his appeal was timely filed. Complainant has not offered adequate justification for an extension of the applicable time limit for filing his appeal.

CONCLUSION

Accordingly, Complainant's September 22, 2022 appeal is hereby DISMISSED. See 29 C.F.R. § 1614.403(c).

² We note here that in her affidavit, Complainant's attorney incorrectly refers to the Commission's "Office of Federal Management" which does not exist, rather than Commission's Office of Federal Operations.

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

February 26, 2025

Date