



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

████████████████████
Angeles C.,¹
Complainant,

v.

Merrick B. Garland,
Attorney General,
Department of Justice
(Federal Bureau of Prisons),
Agency.

Appeal No. 2023001525

Hearing No. 440-2023-00008X

Agency No. BOP-2022-000295

DECISION

On January 17, 2023, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) 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.

At the time of events giving rise to this complaint, Complainant worked as a GS-0101-9 Specialty Treatment Specialist at the Agency's United States Penitentiary Thomson facility in Thomson, Illinois.

On January 27, 2022, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of race (African-American), sex (female; pregnancy), color (Black), disability (physical), and reprisal for prior protected EEO activity when:²

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.

² Complainant also alleged discrimination based on parental status, but the EEOC does not have jurisdiction over claims of discrimination based on parental status. See Ward B. v. Dep't of Homeland Sec., EEOC Appeal No. 2019004740 (Feb. 20, 2020).

From December 7, 2021, through January 20, 2022, she was subjected to harassment when management denied her temporary job modification (TJM), forced her to take advanced sick leave, denied her request to use paid weather and safety leave, and required her to provide a doctor's note on the status of her pregnancy each month, while two non-Black female staff members were being offered paid weather and safety leave.

At the conclusion of the investigation into the accepted claims, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an EEOC Administrative Judge (AJ). Complainant requested a hearing. Complainant subsequently withdrew her hearing request. On November 15, 2022, the AJ assigned to the case issued an Order of Dismissal and directed the Agency to issue a final decision pursuant to 29 C.F.R. § 1614.110(b) within 60 days of receiving the Order of Dismissal.

On appeal, Complainant contends that the Agency failed to comply with the AJ's order to issue a final decision. In its February 1, 2023, brief opposing Complainant's appeal, the Agency argues that Complainant's appeal is premature and should be dismissed because the Agency had not yet issued its final decision.

In response to a request for information from the Commission, the Agency confirmed that, as of January 23, 2024, it had not yet issued a final decision, citing a backlog.

We must dismiss Complainant's appeal as premature because there is no decision before the Commission for consideration. Nonetheless, given the amount of time that is passed, we are ordering the Agency to issue its final decision. Complainant may file a new appeal when the Agency issues a final decision in this case.

Based on the above, we dismiss Appeal No. 2023001525, without prejudice, as premature. We REMAND the matter to the Agency for further action in accordance with the ORDER below.

ORDER

Within thirty (30) calendar days of the date this decision is issued, the Agency shall issue a final decision on the merits of Complainant's EEO complaint with appeal rights to the Commission's Office of Federal Operations pursuant to 29 C.F.R. § 1614.110(b).

The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The report shall include supporting documentation verifying that the corrective action has been implemented.

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 24, 2024
Date