



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

[REDACTED]
Ross R.,¹
Complainant,

v.

Carlos Del Toro,
Secretary,
Department of the Navy,
Agency.

Appeal No. 2023001584

Agency No. 19-40080-04411

DISMISSAL OF APPEAL

By Notice of Appeal submitted on January 19, 2023, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's December 16, 2022 final decision regarding Complainant's entitlement to compensatory damages and attorney's fees 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.

The record discloses, and it is undisputed, that the Agency transmitted a copy of its final decision to Complainant and his attorney via the Department of Defense Secure Access File Exchange (DoD SAFE) on December 16, 2022, and the decision was picked up by Complainant's attorney on December 16, 2022. This pick-up date is evidenced in the automatic notification emails sent from the DoD SAFE to the Agency, a copy of which is in the record. The record also reflects that the email address used by Complainant's attorney to pick up the file is the same email address that Complainant's attorney used to correspond with the Agency in this matter.

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.

A review of the Agency's 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. Since Complainant was represented by an attorney, the 30-day timeframe began once Complainant's attorney received the Agency's final decision. 29 C.F.R. § 1614.402(b). The 30th day from December 16, 2022, was Sunday, January 15, 2023, and Monday, January 16, 2023 was a federal holiday. Therefore, in order to be considered timely, Complainant had to file his appeal no later than Tuesday, January 17, 2023. Id. § 1614.604(g). Complainant filed his appeal two days later, on January 19, 2023. Complainant has not offered adequate justification for an extension of the applicable time limit for filing his appeal and we can discern none in the record.

CONCLUSION

Accordingly, Complainant's January 19, 2023 appeal is hereby 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

February 13, 2025

Date