



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Velva B.,¹
Complainant,

v.

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

Appeal No. 2023003230

Hearing No. 470-2021-00140X

Agency No. 200H-0539-2019105399

DISMISSAL OF APPEAL

Complainant appeals to the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final order, dated November 22, 2022, concerning her complaint of unlawful employment discrimination. At the time of events giving rise to this complaint, Complainant worked as a VN 1, Telehealth Registered Nurse at the Agency's medical center in Cincinnati, Ohio. On November 10, 2019, Complainant filed her complaint alleging discrimination based on disability and in reprisal for prior EEO activity when from March 2019 to March 2020, and continuing, she was subjected to a hostile work environment involving comments, rumors, delay getting an office key, overtime, a proficiency report, telework request, reassignment, wages, her position categorization, and returning to work after her medical leave.

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.

EEOC Regulation 29 C.F.R. § 1614.402 provides that appeals to the Commission must be filed within 30 calendar days after a complainant receives notice of the Agency's decision.

The Agency's final order specifically included a Certification of Service indicating that for timeliness purposes, it shall be presumed that the parties received the final order within five calendar days after the date it was sent via electronic mail, which was November 22, 2022. Complainant filed the appeal postmarked May 5, 2023, which was beyond the 30-day time limit including the five-day presumption of receipt, described above.

On appeal, Complainant's attorney states that the enclosed Complainant's notice of appeal, dated November 23, 2022, was believed to be filed on November 23, 2022. However, our records do not indicate this notice was filed on November 23, 2022, or any time prior to May 5, 2023. The attorney also indicates that after November 23, 2022, Complainant had several unfortunate events, i.e., a house fire, a serious automobile accident, an injury on the job, and contracted COVID, preventing her from inquiring about the status of the appeal or timely filing an appeal (if it was not filed on November 23, 2022). Other than these bare assertions, Complainant fails to show that she was so physically or emotionally incapacitated as to be unable to file a timely appeal. Based on the foregoing, we find that Complainant fails to submit adequate justification for extending the filing period beyond 30 days.

Accordingly, Complainant's appeal is DISMISSED as untimely pursuant to §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 6, 2025

Date