



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

[REDACTED]
Charlene S.,¹
Complainant,

v.

Sean Duffy,
Secretary,
Department of Transportation
(Federal Aviation Administration),
Agency.

Appeal No. 2023003348

Agency No. 2020-28681-FAA-04

DISMISSAL OF APPEAL

By Notice of Appeal postmarked May 17, 2023, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the March 1, 2023, final Agency decision (FAD) concerning her 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.

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 a 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). It is undisputed that the FAD was received at Complainant's email address of record on March 1, 2023. The date of receipt is the date the employee receives the email to her inbox, not the date he or she opens the email. See Jessica E. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120181534 (June 29, 2018) (upholding dismissal where complainant alleged that she did not open the email containing the Notice of Right to File until after the applicable time period

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.

for filing a formal complaint). A review of the FAD reveals that the Agency properly advised Complainant that she had thirty (30) calendar days after receipt of its final decision to file her appeal with the Commission. Therefore, in order to be considered timely, Complainant had to file her appeal no later than March 31, 2023. Complainant did not file her appeal until May 17, 2023, 47 days after the deadline for timely filing.

On appeal, Complainant does not dispute that her appeal is untimely but argues that her untimeliness should be excused because she was "out of the office due to her disability since late 2022, only providing administrative support and checking in with her supervisor from December 20 to December 30, 2022, January 9, 2023, January 18, 2023, and February 9, 2023." Essentially, Complainant argues that she was on extended leave and unable to check her email during the relevant timeframe.

Although Complainant was on disability leave, the record is devoid of evidence that she was incapacitated and unable to check her email. To the contrary, the record establishes that Complainant checked her work email on several days, before and after the Agency sent the FAD on March 1, 2023. Agency Brief in Opposition to Appeal, Ex. 2.; Cf. Joi J. v. U.S. Postal Serv., EEOC Appeal No. 2022000712 (Oct. 10, 2023) (complainant's anxiety and depression so severe that she could not get out of bed or do anything else provided adequate justification to waive untimely filing of the appeal); Roxana Y. v. Dep't of Veterans Affairs, EEOC Request No. 2021004837 (Mar. 13, 2023) (finding no clear error in not dismissing complainant's appeal as untimely filed where complainant was on approved FMLA leave for three months and was disoriented and heavily medicated while on FMLA leave). In sum, Complainant has not established that she was so incapacitated as to be unable to check her work email during the relevant timeframe to warrant a waiver of the timeliness requirements.

We also find that Complainant's leave status without evidence of incapacitation does not support a waiver for failing to meet the timeliness requirements. See Coleman H. v. Dep't. of the Interior, EEOC Appeal No. 0120182625 (Oct. 29, 2019) (Complainant who was on sick leave for three months failed to show that she was so physically or emotionally incapacitated as to be unable to file a timely appeal). Complainant does not dispute that the Agency sent the FAD to her correct email address of record and does not dispute that she checked her email before and after March 1, 2023.

CONCLUSION

Complainant has not offered adequate justification for an extension of the applicable time limit for filing her appeal and accordingly, her 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)

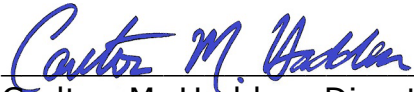
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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

February 27, 2025

Date