



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

[REDACTED]
Travis H.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service,
Agency.

Appeal No. 2023004327

Agency No. 4B-070-0300-23

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 6, 2023, dismissing his 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. For the reasons below, the Commission AFFIRMS the Agency's final decision dismissing Complainant's complaint.

ISSUES PRESENTED

Whether the Agency properly dismissed Complainant's complaint of harassment based on sex² (gender identity: transgender male) for untimely EEO Counselor contact and for failure to state a claim.

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 In Bostock v. Clayton Cty., the Supreme Court held that discrimination based on sexual orientation or transgender status is prohibited under Title VII. 590 U.S. 644, 140 S. Ct. 1731 (2020); see also Macy v. Dep't of Justice, EEOC Appeal No. 0120120821 (April 20, 2012) (an allegation of

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a T6 Carrier at the Agency's Carrier Annex facility in Trenton, New Jersey. On June 26, 2023, Complainant filed a formal complaint alleging that the Agency subjected him to harassment based on sex (gender identity: transgender male) when:

1. On April 1, 2023, and prior dates not specified, Complainant was informed that coworkers had questioned his use of the men's room, did not use his preferred pronouns, someone had yelled out "tranny" on the workroom floor, and instead of reacting immediately, management investigated and pursued policy guidance from upper management; and
2. On May 11, 2023, June 13, 2023, and other dates not specified, the union did not properly represent Complainant, told management to give Complainant an investigative interview for poor work performance, and did not properly process Complainant's grievances.

The Agency dismissed Claim 1 for untimely EEO Counselor contact pursuant to 29 C.F.R. § 1614.107(a)(2). The Agency dismissed Claim 2 for failure to state claim due to lodging a collateral attack on the proceedings of another forum pursuant to 29 C.F.R. § 1614.107(a)(1).

Complainant filed the instant appeal.

CONTENTIONS ON APPEAL

Complainant contends the Agency subjected him to an unsafe work environment due to coworker's discomfort with his use of the male restroom. He contends that management and union representatives failed to inform him of these concerns, enforce inclusive policies, or protect his rights, resulting in distress and harm to his mental health and job performance. The Agency contends Complainant failed to offer any viable grounds to support reversing the Agency's decision.

discrimination based on gender identity, change of sex, and/or transgender status states a claim of sex discrimination under Title VII because discrimination on this basis is inherently sex-based).

STANDARD OF REVIEW

The Agency's decision to dismiss a complaint is subject to de novo review by the Commission, which requires the Commission to examine the record without regard to the factual and legal determinations of the previous decision maker and issue its decision based on the Commission's own assessment of the record and its interpretation of the law. 29 C.F.R. §1614.405(a). The Commission should construe the complaint in the light most favorable to the complainant and take the complaint's allegations as true. See Cobb v. Department of the Treasury, EEOC Request No. 05970077 (March 13, 1997). Thus, all reasonable inferences that may be drawn from the complaint's allegations must be made in favor of the complainant.

ANALYSIS

EEOC Regulation 29 C.F.R. § 1614.107(a)(2) states that the Agency shall dismiss a complaint for failure to comply with the applicable time limits. EEOC Regulation 29 C.F.R. § 1614.105(a)(1) provides, that complaints of discrimination must be brought to the attention of an EEO Counselor within 45 days of the date of the matter alleged to be discriminatory or within forty-five days of the effective date of the personnel action. Time limits are subject to waiver, estoppel, or equitable tolling. 29 C.F.R. § 1614.604(c). Wanda S. v. U.S. Postal Serv., EEOC Appeal No. 2024001798 (July 11, 2024).

Here, the record shows that Complainant contacted the EEO Counselor on May 23, 2023, alleging the Agency subjected him to discrimination on April 1, 2023, and dates prior to that. Complainant has not offered any reason sufficient to warrant waiving the time limit. Therefore, dismissal of Claim 1 was proper pursuant to 29 C.F.R. § 1614.107(a)(2).

The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides that an agency shall dismiss a complaint that fails to state a claim. An agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that they have been discriminated against by that agency because of race, color, religion, sex, national origin, age or disability. 29 C.F.R. §§ 1614.103, 1614.106(a). The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994).

Regarding Complainant's claim that the Union failed to properly represent him, the Commission has held that an employee cannot use the EEO complaint process to lodge a collateral attack on another proceeding. See Valery G. v. U.S. Postal Serv., EEOC Appeal No. 2021004137 (Dec. 19, 2022); Hunt v. U.S. Postal Serv., EEOC Appeal No. 01A00320 (April 19, 2000). Accordingly, the Agency properly dismissed this claim pursuant to 29 C.F.R. § 1614.107(a)(1).

CONCLUSION

The Agency's final decision dismissing the complaint is AFFIRMED.

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 5, 2025

Date