



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

[REDACTED]
Idell M.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Appeal No. 2023004679

Agency No. 4E-956-0068-23

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 18, 2023, dismissing 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier at the Agency's California 2/San Leandro Post Office facility in San Leandro, California.

On June 27, 2023, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of race (Native American), religion (Not Specified), color (Black), and disability (Not Specified) when: On January 25, 2023 management controverted her on-the-job injury claim with the Department of Labor (DOL) Office of Workers Compensation Programs (OWCP) resulting in her claim being denied.

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.

The Agency dismissed this claim pursuant to 29 C.F.R. § 1614.107(a)(2) for untimely EEO counselor contact. In the alternative, the Agency dismissed the claim pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim as a collateral attack on the proceedings of another forum, specifically OWCP. Complainant filed the instant appeal.

On appeal, Complainant contends she was subjected to several incidents of discrimination, but she did not report them because she was intimidated by her supervisor and worried she would get fired if she reported them. She also contends she was told by the EEO Specialist who interviewed her that her claim was timely. Complainant further states she never saw the EEO bulletin/poster at the San Leandro Post Office. She states she is in pain all the time and the damage to her body from the injury is permanent.

The Agency did not file a brief on appeal.

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. §1614.105(a)(1) provides that an aggrieved person must initiate contact with an EEO Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) days of the effective date of the action. EEOC Regulation 29 C.F.R. § 1614.107(a)(2) provides for the dismissal of complaints where the complainant did not initiate contact with an EEO Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action.

Here, Complainant alleges discrimination occurring on January 25, 2023 when her supervisor submitted a challenge letter. Thus, in order for her EEO counselor contact to be timely, she needed to contact an EEO counselor on or before March 13, 2023.² The record reflects Complainant did not contact an EEO counselor until almost two weeks later on March 26, 2023. (Complaint File, p. 23). Complainant contends she was not aware of her time limit and that the Agency told her she had made timely contact.

However, even if her contact had been timely, we find the Agency still correctly dismissed her complaint for failure to state a claim over which the Commission has authority to grant relief. The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, 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 he or she has been discriminated against by that agency because of race, color, religion, sex, national origin, age or disabling condition. 29 C.F.R. §§ 1614.103, .106(a).

² Forty-five days from January 25, 2023 is Saturday, March 11, 2023. However, pursuant to 29 C.F.R. § 1614.604(g), if the last day of the time period falls on a Saturday, Sunday or Federal holiday, the period shall be extended to include the next business day.

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).

Here, Complainant alleges actions taken by management officials with respect to the processing of her worker's compensation claims, which are handled by the Department of Labor's OWCP, were discriminatory. The Commission has held that an employee cannot use the EEO complaint process to lodge a collateral attack on another adjudicatory proceeding. See Wills v. Dep't of Defense, EEOC Request No. 05970596 (Jul. 30, 1998). A claim that can be characterized as a collateral attack, by definition, involves a challenge to another forum's proceeding. See Lingad v. United States Postal Serv., EEOC Request No. 05930106 (Jun. 23, 1994). An agency opposition to an OWCP claim does not affect a term, condition, or privilege of employment so as to render a person aggrieved under the employment discrimination statutes enforced by the EEO complaint process. Myesha F. v. U.S. Postal Serv., EEOC Appeal No. 2023001440 (Feb. 22, 2023), citing Hall v. Dept. of the Treasury, EEOC Appeal No. 01945595 (February 23, 1995). As noted by the Agency, Commission has held that an agency has the right to controvert any OWCP claims which it believes to be questionable, as long as the agency is not motivated by prohibited discriminatory reasons. Schulenburg v. U.S. Postal Serv., EEOC Appeal No. 01983891 (Jan. 10, 2000); Gaskins v. U.S. Postal Serv., EEOC Appeal No. 01882945 (Jan. 31, 1989). Thus, the proper forum for Complainant to have raised her concerns is within the OWCP adjudicatory process and not through the administrative EEO complaint process. See e.g., Pirozzi v. Department of the Navy, EEOC Request No. 05970146 (Oct. 23, 1998); Abiuso v. U.S. Postal Serv., EEOC Appeal No. 0120100241 (Oct. 5, 2010). Therefore, the Agency properly dismissed the complaint for failure to state a claim.

To the extent Complainant raises new issues on appeal (i.e., supervisor inquiring about her medical providers and treatment, supervisor and coworkers speaking another language around Complainant to talk about her), these claims were not previously raised by Complainant and are not currently before the Commission. Complainant is advised that if she wants to pursue any additional claims, she should contact an EEO Counselor.

CONCLUSION

For the foregoing reasons, we AFFIRM the Agency's dismissal of the formal complaint.

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).

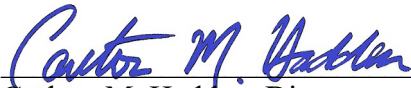
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0124)

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

January 23, 2024

Date