



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

[REDACTED]
Crista H.,¹
Complainant,

v.

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

Appeal No. 2023004796

Hearing No. 480-2022-00450X

Agency No. 4E-913-0014-22

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 26, 2023, which adopted an EEOC Administrative Judge's decision dismissing her complaint alleging 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Mail Processing Clerk at the Agency's Post Office in Simi Valley, California.

On February 14, 2022, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on color² (Brown), as well as unlawful retaliation, when on October 3, 2021, Complainant became aware that management did not post vacant positions in the correct

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 Complainant added color as a new basis during counseling.

order deliberately so that it could award certain positions to other employees which would result in Complainant being awarded a less desirable position.

On March 7, 2022, the Agency accepted the complaint for investigation. At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). Complainant requested a hearing.

On July 10, 2023, the AJ dismissed the complaint, pursuant to 29 C.F.R. § 1614.107(a)(2), due to the untimely filing of the formal complaint. Shortly thereafter, the Agency issued a final order adopting the AJ's decision.

Complainant appealed.

ANALYSIS AND FINDINGS

The regulation set forth 29 C.F.R. § 1614.107(a)(2) states, in pertinent part, that an Agency shall dismiss a complaint which fails to comply with the applicable time limits contained in 29 C.F.R. § 1614.106, which, in turn, requires the filing of a formal complaint within 15 days of receiving notice of the right to do so.

Unless stated otherwise, EEOC's time limits are in calendar days. 29 C.F.R. § 1614.604(a). To be deemed timely filed, a document must be received or postmarked before the time limit expires. 29 C.F.R. § 1614.604(b). Time limits are subject to waiver, estoppel or equitable tolling. 29 C.F.R. § 1614.604(c). Time limits start the first day after notice and include weekends or holidays. However, if the last day falls on a weekend or holiday, then the time limit extends to the next business day. 29 C.F.R. § 1614.604(d).

The record shows that on January 25, 2022, the EEO Counselor sent Complainant a Notice of Right to File an Individual Complaint (Notice), notifying her that she had 15 calendar days from the date of receipt to file a formal complaint. The Notice was sent to Complainant by U.S. mail with a tracking receipt that shows the Notice was delivered to Complainant's address of record on January 29, 2022, and signed for at 11:59 a.m. Accordingly, the complaint in this case was required to be filed 15 calendar days from January 29, 2022, in order to be timely. However, because the 15th day fell on Sunday, February 13, 2022, the time limit was extended to February 14, 2022. It is undisputed that Complainant filed her formal complaint by U.S. mail in an envelope postmarked February 14, 2022. As such, it appears that she filed her complaint in a timely manner and the dismissal on timeliness grounds was in error.

CONCLUSION

Accordingly, the Agency's final order affirming the AJ's dismissal of the complaint was improper and is hereby REVERSED. The complaint is REMANDED to the Agency for further processing in accordance with the Order below.

ORDER

Within thirty (30) calendar days of the date this decision is issued, the Agency is ORDERED to submit a renewed request for a hearing, along with the complete complaint file and a copy of this appellate decision, to the Hearings Unit of the EEOC's Los Angeles District Office. The Agency shall provide written notification to the Compliance Officer at the address set forth below that the complaint file has been transmitted to the Hearings Unit. Thereafter, the Administrative Judge shall process the matter and issue a decision on the merits of the complaint in accordance with 29 C.F.R. § 1614.109, and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEALRECONSIDERATION (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 (R0124)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. 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. **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 25, 2024

Date