



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

[REDACTED]
Tyson L.,¹
Complainant,

v.

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

Appeal No. 2024000182

Agency No. 4B-230-0132-23

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated September 12, 2023, dismissing a formal 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.

BACKGROUND

During the period at issue, Complainant worked as a Lead Sales and Services Associate at the Agency's Post Office in Annandale, Virginia.

According to the Agency, Complainant filed a formal complaint on August 24, 2023, claiming that the Agency subjected him to discriminatory harassment based on race, color, and in reprisal for prior protected EEO activity.

On September 12, 2023, the Agency dismissed the formal complaint, pursuant to 29 C.F.R. § 1614.107(a)(2), finding that the formal complaint was untimely filed. The Agency stated that it mailed the Notice of Right to File a Formal Complaint (Notice) to Complainant, which was received by Complainant on May 17, 2023.

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 indicated that Complainant mailed his formal complaint on June 2, 2023, as evidenced by the postmark, and it was received by the Agency on June 12, 2023. However, Complainant's formal complaint was unsigned. Therefore, the Agency stated that it submitted a request for a signed complaint which was delivered to Complainant's home address on June 15, 2023. However, Complainant did not submit the completed formal complaint until August 24, 2023, well beyond the 15-day filing period.

The instant appeal followed.

ANALYSIS AND FINDINGS

EEOC Regulation 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 fifteen (15) days of receiving notice of the right to do so.

Here, the Agency acknowledged in its final decision that Complainant had mailed an unsigned formal complaint on June 2, 2023, which the Agency received on June 12, 2023. The Agency further stipulates that Complainant received its request for signature on June 15, 2023, thereby triggering the start of another the fifteen-day filing period. However, the Agency stated that Complainant waited to contact the Agency via email on August 18, 2023, and did not submit his formal complaint until August 24, 2023, well beyond the fifteen-day filing period.

Where timeliness is an issue, an agency bears the burden of proof of obtaining sufficient information to support a reasoned determination as to whether that time limit was met. Guy v. Dep't. of Energy, EEOC Request No. 05930703 (Jan. 4, 1994) (quoting Williams v. Dep't. of Defense, EEOC Request No. 05920506 (Aug. 25, 1992)).

In this case, Complainant disputes on appeal ever receiving the request for signature. Additionally, the Agency did not include in the record a copy of any delivery confirmation supporting that the request for signature was received by Complainant on June 15, 2023. Moreover, a copy of an August 22, 2023 email from the EEO office informed Complainant that the EEO office still had not received Complainant's signed formal complaint. The email instructed Complainant that he "may mail a copy of your formal complaint to the address cited below. **For timelines purposes, please be sure to include proof of the 6/2/23 mailing** [emphasis in original]." The record indicates that Complainant responded on August 24, 2023, and he sent examples of discrimination he originally included on his initial June 2, 2023 unsigned formal complaint. Although Complainant did not attach proof of June 2, 2023 mailing in his response, the Agency acknowledged, in its final decision, that Complainant had in fact submitted an unsigned formal complaint on June 2, 2023, which the Agency received on June 15, 2023. Therefore, absent adequate proof that Complainant received the request for signature on June 15, 2023, the Agency failed to meet its burden of proof that Complainant's formal complaint was untimely filed.

CONCLUSION

The Agency's final decision dismissing the formal complaint on the grounds of untimely formal complaint is REVERSED and the matter is REMANDED to the Agency for further processing pursuant to the following ORDER.

ORDER (E0618)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, a copy of complainant's request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

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 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 (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 23, 2024
Date