



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

[REDACTED]
Maricruz Y.,¹
Complainant,

v.

Xavier Becerra,
Secretary,
Department of Health and Human Services
(National Institutes of Health),
Agency.

Appeal No. 2024000264

Agency No. HHS-NIH-CC-062-23

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated September 7, 2023, dismissing a formal 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

During the period at issue, Complainant worked as a Medical Support Assistant, GS-7, at the Agency's National Institutes of Health in Bethesda, Maryland.

On February 28, 2023, Complainant initiated EEO Counselor contact. Informal efforts to resolve her concerns were unsuccessful.

On June 13, 2023, Complainant filed a formal EEO complaint claiming that the Agency unlawfully retaliated against her for her prior protected EEO activity when:

1. On January 5, 2023, Complainant received an email to stop all direct communication with housekeeping staff.

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. After January 5, 2023, Complainant's request for reassignment was denied.
3. On January 24, 2023, Complainant received an email to sign her 2022 Performance Management Appraisal Program close out, which was blank and without an official evaluation or justification.

On September 7, 2023, the Agency a final decision dismissing the complaint for untimely EEO counselor contact, pursuant to 29 C.F.R. § 1614.107(a)(2). The Agency determined that Complainant's initial EEO Counselor contact was on February 28, 2023, which it found to be beyond the regulatory 45-day limitation period. The Agency further found that claims 2 and 3 were not brought before the EEO Counselor and were only raised for the first time in Complainant's formal complaint.

The instant appeal followed.

ANALYSIS AND FINDINGS

Claim Not Raised During EEO Counseling

EEOC Regulation 29 C.F.R. § 1614.107(a)(2) states, in pertinent part, that an agency shall dismiss a complaint or portion thereof which raises a matter that has not been brought to the attention of an EEO Counselor and is not "like or related" to a matter on which the complainant has received counseling. Here, a fair reading of the record reveals that Complainant failed to raise Claims (2) and (3) during the pre-complaint counseling process. However, these issues were later raised by Complainant for the first time in her formal complaint. Upon review of the record, we find that the Agency appropriately dismissed Claims (2) and (3).

Untimely EEO Counseling Contact

EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination should be brought to the attention of the Equal Employment Opportunity Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within forty-five (45) days of the effective date of the action.

Here, the events alleged in Claim (1) occurred on January 5, 2023, but it is undisputed that Complainant did not initiate contact with an EEO Counselor about the matter until February 28, 2023, beyond the 45-day limitation period. Neither with the Agency nor on appeal has Complainant provided justification for extending the limitation period.

CONCLUSION

The Agency's final decision dismissing the formal 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

January 25, 2024

Date