



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

[REDACTED]
Preston B.,¹
Complainant,

v.

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

Appeal No. 2024000594

Agency No. 4J-493-0043-23

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated September 20, 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., and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

BACKGROUND

During the period at issue, Complainant worked as a City Carrier Assistant at the Agency's Post Office facility in Holt, Michigan.

On August 31, 2023, Complainant filed a formal complaint claiming that the Agency subjected him to discriminatory harassment based on disability and in reprisal for prior protected EEO activity.

On September 20, 2023, the Agency issue a final decision. 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's address on record which was delivered on August 14, 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 found, however, that Complainant did not file the formal complaint until August 31, 2019, which it found to be two days beyond the 15-day filing period.

The instant appeal followed.

ANALYSIS AND FINDINGS

The regulation at 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.

The Agency properly dismissed Complainant's formal complaint for failure to timely file. Here, documentation in the record reflects that the Agency mailed Complainant the Notice on August 11, 2023. A copy of the Notice stated, in pertinent part,

If you opt to file a formal complaint, you have 15 days from the date of receipt of this letter to file a timely formal complaint. Your complaint could be subject to dismissal in accordance with 29 C.F.R. Part 1614.107 if not filed within the 15-day time limit. Your complaint will be deemed timely if it is postmarked before the expiration of the 15-day time limit.

Delivery confirmation indicates that the Notice was delivered to Complainant's address on record on August 14, 2023. Therefore, Complainant had fifteen days from August 14, 2023, or until August 29, 2023, to timely file. However, Complainant failed to do so and did not file his formal complaint until August 31, 2023.

We acknowledge Complainant's arguments on appeal that he did not sign for the Notice delivered on August 14, 2023, because he was working at the time it was delivered. Complainant did not state when he received the Notice. However, Complainant indicated that his wife, who also serves as his non-legal representative, received the Notice in their mailbox on August 15, 2023. Even if we presume that the Notice was received on August 15, 2023, Complainant would have had to have filed the formal complaint by August 30, 2023.

Complainant also argues on appeal that he and his wife were unable to timely file due to a hospitalization during the 15-day filing period. When a complainant claims that a physical condition prevents her from meeting a particular filing deadline, we have held that in order to justify an untimely filing, Complainant must be so incapacitated by the condition as to render her physically unable to make a timely filing. See Zelmer v. U.S. Postal Serv., EEOC Request No. 05890164 (Mar. 8, 1989). Here, Complainant states that he and his wife had an accident while attempting to move siding at their home on August 25, 2023. While moving the siding, Complainant and his wife lost their footing and the siding fell on top of him. Complainant indicated that he went to the hospital that day because his "fingers were flattened, [he] could not use [his] hand, and [he] could not walk."

Complainant provided hospital records reflecting that he was admitted to the hospital on August 25, 2023, with a “fracture of hamate bone of left wrist” and he was discharged on August 26, 2023. Although, Complainant states that his wife sustained injuries as well, he indicates that she did not seek medical care. However, Complainant clarified that his wife experienced pain from the accident such that she notified her employer that she would be unable to teach her classes on Monday, August 28, 2023, or Tuesday, August 29, 2023. Complainant asserts that he could not complete his formal complaint during this period due to physical pain and exhaustion which also reduced his wife’s ability to assist him.

However, the record indicates that Complainant’s wife was able to email both the EEO Counselor and her employer on August 27, 2023. Complainant’s wife requested that the EEO Counselor extend the 15-day filing deadline by three days to account for them losing power from August 24 – 26, 2023 and to account for Complainant’s hospitalization on August 25, 2023. Complainant’s wife further notified her employer, via email, on August 27, 2023, that she would cancel her classes for August 28 and 29, 2023, but she would “have no trouble” teaching” on August 30 and 31, 2023. By her own omission, Complainant’s wife indicates that she was not so incapacitated that she could not have filed the formal complaint by the August 30, 2023 deadline. Additionally, Complainant and his wife have not provided any explanation why they were unable to file the formal complaint during the ten-day period (August 14, 2023 – August 24, 2023) before they experienced the power outage and siding incident. Therefore, Complainant has not provided adequate justification for extending the limitation period beyond fifteen days.

CONCLUSION

The Agency’s final decision to dismiss the formal complaint on the grounds of untimely filing 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 24, 2024

Date