



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

██████████
Elliot J,¹

Complainant,

v.

Janet L. Yellen,

Secretary,

Department of the Treasury

(Internal Revenue Service),

Agency.

Appeal No. 2024001078

Agency No. IRS-23-0893

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated October 18, 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. Upon review, the Commission determines that the formal complaint was properly dismissed .

ISSUES PRESENTED

Whether the Agency properly dismissed Complainant's formal complaint on various procedural grounds.

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.

BACKGROUND

During the period at issue, Complainant worked as a Special Agent / Program Manager, Grade GS-14, for Criminal Investigations at the Agency's National Headquarters, in Washington, D.C.

On July 21, 2023, Complaint contacted an EEO Counselor. Complainant and the Agency were unable to resolve the matter informally.

On October 6, 2023, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination based on religion (Catholic) and in reprisal for prior protected EEO activity when:

1. Complainant's October 6, 2021, reasonable accommodation request for a religious waiver to the COVID-19 vaccination mandate was closed without decision on June 9, 2023; and
2. On December 17, 2021, Complainant's reassignment position offer was rescinded.

The Agency dismissed Claim 1 for failure to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1). The Agency dismissed Claim 2 pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely EEO Counselor contact.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that the Agency acted in bad faith during the interactive reasonable accommodation process and improperly denied his request. Complainant further argues that having to continue to work without a religious exemption from the COVID-19 vaccine caused him employment harm. Complainant argues his second claim was timely raised with an EEO Counselor because it was not until July 2023 that he surmised that his reassignment offer was revoked in 2021 because the Agency perceived that his religious accommodation request complicated the protection and travel duties associated with the reassigned position.

STANDARD OF REVIEW

The Agency's decision to dismiss a complaint is subject to de novo review by the Commission, which requires the Commission to examine the record without regard to the factual and legal determinations of the previous decision maker and issue its decision based on the Commission's own assessment of

the record and its interpretation of the law. 29 C.F.R. § 1614.405(a). The Commission should construe the complaint in the light most favorable to the complainant and take the complaint's allegations as true. See Cobb v. Department of the Treasury, EEOC Request No. 05970077 (March 13, 1997). Thus, all reasonable inferences that may be drawn from the complaint's allegations must be made in favor of the complainant.

ANALYSIS

Claim 1

Regarding Claim 1, Complainant maintains that has improperly denied his religious accommodation request for an exemption from the COVID-19 vaccine mandate. A federal district court's preliminary nationwide injunction requires the federal government take no action to implement or enforce Executive Order 14043 which had mandated COVID-19 vaccination of federal employees. Because of this preliminary nationwide injunction, federal agencies are prohibited from processing requests that have already been received for disability or religious exceptions to the COVID-19 vaccination requirement and cannot take any steps related to adjudicating exception requests. The Agency's non-processing of Complainant's religious accommodation request is consistent with the federal district court's preliminary nationwide injunction to take no action to implement or enforce Executive Order 14043. Accordingly, Claim 1 was properly dismissed for failure to state a claim. See Shana C. v. Dep't of Veterans Affairs, EEOC Appeal No. 2022002553 (Apr. 17, 2023).

Claim 2

EEOC Regulation 29 C.F.R. § 1614.107(a)(2) states, in pertinent part, that the Agency shall dismiss a complaint for failure to comply with the applicable time limits. EEOC Regulation 29 C.F.R. § 1614.105(a)(1) provides, that complaints of discrimination must be brought to the attention of an EEO Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five days of the effective date of the action. Time limits are subject to waiver, estoppel, or equitable tolling. 29 C.F.R. § 1614.604(c).

The record discloses that the alleged discriminatory event occurred on December 17, 2021, but that Complainant did not initiate contact with an EEO Counselor until July 21, 2023, which is beyond the forty-five-day limitation period.

On appeal, Complainant presents no persuasive arguments or evidence warranting an extension of the time limit for initiating EEO Counselor contact.

CONCLUSION

Accordingly, 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

November 19, 2024

Date