



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Herb F,¹
Complainant,

v.

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

Appeal No. 2024001316

Agency No. 4B-230-0237-23

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated November 2, 2023, dismissing his complaint of unlawful employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. Upon review, the Commission finds that Complainant's complaint was properly dismissed due to the untimely filing of the formal complaint and for failure to state a claim.

ISSUES PRESENTED

The issue presented before the Commission is whether Complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(1) and (2) for failure to state a claim and the untimely filing of the formal complaint.

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

At the time of events giving rise to this complaint, Complainant worked as a City Carrier at the Agency's postal facility in Norfolk, Virginia.

On October 25, 2023, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the basis of disability (Back) when:

- 1) On May 27, 2023, he was not paid Continuation of Pay (COP); and
- 2) On June 6, 2023, management took away his job offer.

The Agency dismissed the complaint as untimely filed, pursuant to 29 C.F.R. § 1614.107(a)(2). In so doing, the Agency found Complainant received the Notice of Right to File a Discrimination Complaint ("Notice") on September 28, 2023, but did not file his complaint until October 25, 2023, beyond the 15-day filing deadline. The Agency alternatively dismissed the complaint in accordance with 29 C.F.R. 1614.107(a)(1) for failure to state a claim due to lodging a collateral attack on the proceedings of another forum, specifically the Department of Labor's Office of Workers Compensation Programs' (OWCP) regulations concerning the Federal Employees Compensation Act. OWCP, as the designee for the Secretary of Labor, is the sole decision-making body to adjudicate disputes arising over benefits granted by the Act, such as Continuation of Pay. The Commission has no jurisdiction over the handling of COP. COP is related to the OWCP process and any challenges regarding that process should be raised with the Department of Labor, not the EEOC. The Agency noted that the validity of a limited duty job offer is also within the exclusive jurisdiction of the Department of Labor. The Agency further noted that at the informal stage of the complaint process, Complainant raised additional issues regarding not receiving a 7-Day and 14-Day Suspension. However, because Complainant did not include these incidents in his formal complaint, the Agency considered the claims abandoned and dismissed them.

Complainant filed the instant appeal.

CONTENTIONS ON APPEAL

Neither Complainant nor the Agency submitted a statement on appeal.

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

Untimely Formal Complaint

The record discloses that Complainant received the Notice on September 28, 2023. Although the Notice indicated that Complainant had to file a formal complaint within fifteen (15) calendar days of its receipt, Complainant did not file his formal complaint until October 25, 2023, which is beyond the limitation period. On appeal, Complainant has not offered adequate justification to warrant an extension of the time limit for filing the complaint.

Failure to State a Claim

The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that an agency shall dismiss a complaint that fails to state a claim. An agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that agency because of race, color, religion, sex, national origin, age or disability. 29 C.F.R. §§ 1614.103, .106(a). The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994).

We find the complaint fails to state a claim. The Commission has held that an employee cannot use the EEO complaint process to lodge a collateral attack on another proceeding. See Hannon v. Dep't of the Treasury, EEOC Appeal No. 05A01149 (May 8, 2003); Wills v. Dep't of Def., EEOC Request No. 05970596 (July 30, 1998); Kleinman v. U.S. Postal Serv., EEOC Request

No. 05940585 (Sept. 22, 1994). It is inappropriate to now attempt to use the EEO process to collaterally attack actions which occurred during the Department of Labor's OWCP process.

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's 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

February 10, 2025

Date