



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

[REDACTED]
Jaunita W.,¹
Complainant,

v.

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

Appeal No. 2024001787

Agency No. 4G-320-0209-23

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated October 6, 2023, dismissing her 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. For the reasons presented below, the Commission REVERSES in part and AFFIRMS in part the Agency's final decision.

ISSUE PRESENTED

Whether the Agency correctly dismissed Complainant's complaint for untimely contact with an EEO counselor.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Sales and Service Distribution Clerk at the Agency's Crestview Post Office in Crestview, Florida.

On September 27, 2023, Complainant filed a formal complaint which the Agency framed as alleging discrimination on the bases of race (Black), sex (female), color (Black), and reprisal (grievance) when:

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.

1. On August 30, 2022, Complainant was interviewed by Agency officials and officials from the Office of Inspector General (OIG), and she was not allowed to have representation.
2. On December 12, 2022, Complainant was issued a Notice of Removal.
3. On July 5, 2023, the Postmaster would not sign a grievance settlement and had Complainant arrested.

The Agency dismissed Complainant's complaint, pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely EEO counselor contact. For all three claims, the Agency determined that Complainant failed to initiate contact with an EEO Counselor within 45 days of the alleged discrimination as required pursuant to 29 C.F.R. § 1614.105(a)(1).

The instant appeal followed.

CONTENTIONS ON APPEAL

Complainant argues that she was unaware of the 45-day limitation period. She says that she did not have constructive knowledge of the EEO complainant process because she "never filed or participated in any EEO activity prior to [the instant] case." The Agency did not submit a response.

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

EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination be brought to the attention of the EEO counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action. EEOC Regulation 29 C.F.R. § 1614.107(a)(2) states that an agency shall dismiss an entire complaint that fails to comply with the applicable time limits.

Claim 1 and Claim 2

The record shows that Claims 1 and 2, as alleged, occurred on August 30, 2022, and December 12, 2022. However, Complainant did not initiate contact with an EEO counselor until August 20, 2023, which is beyond the 45-day limitation period.

On appeal, Complainant argues that the 45-day time limit should be extended because she did not have constructive knowledge of the 45-day limitation period. Complainant said that it was impossible for her to have constructive knowledge because she did not engage in prior EEO activity. Even if this is true, Supervisor of Customer Services submitted an affidavit, stating that an Agency EEO poster advising employees of the 45-day time limit has been posted in two conspicuous locations at the Crestview Post Office since April 22, 2022. He said that there was one poster in the breakroom, and another poster near the work floor by the restrooms. The posters were posted at her work location prior to all three claims. Consequently, we find the supervisor's verification of the posting since April 22, 2022, sufficient for the Agency to prove that Complainant was aware of the correct EEO time limit. Complainant has not provided sufficient justification for extending or tolling the time limit. Therefore, we find that, insofar as Claims 1 and 2 raise discreet claims of discrimination, the Agency properly dismissed those claims for untimely EEO counselor contact. However, as explained below, they may still be relevant to Complainant's overall claim of harassment.

Claim 3

Complainant argues that Claim 3 was filed within the 45-day time limit. Unless stated otherwise, EEOC's time limits are in calendar days. 29 C.F.R. § 1614.604(a). To be deemed timely filed, a document must be received or postmarked before the time limit expires. 29 C.F.R. § 1614.604(b). Time limits are subject to waiver, estoppel or equitable tolling. 29 C.F.R. § 1614.604(c). Time limits start the first day after notice and include weekends or holidays. However, if the last day falls on a weekend or holiday, then the time limit extends to the next business day. 29 C.F.R. § 1614.604(d).

The record shows that Claim 3 occurred on July 5, 2023. Therefore, Complainant was required to contact an EEO Counselor within 45 days of July 5, 2023, which was August 19, 2023, for her contact to be considered timely. However, because August 19, 2023, day fell on Saturday, the time limit was extended to the next business day, which was Monday, August 21, 2023. It is undisputed that, Complainant contacted the Agency EEO Counselor on August 20, 2023, therefore her EEO counselor contact was timely, and the Agency's dismissal of Claim 3 was improper.

Hostile Work Environment/Harassment Claim

A review of the record reveals that Complainant also alleged the Agency subjected her to a hostile work environment. A hostile work environment claim is comprised of a series of separate acts that collectively constitute one unlawful employment practice. National Railroad Passenger Corporation v. Morgan, Jr., 536 U.S. 101, 117 (2002). Unlike a claim which is based on discrete acts of discrimination, a hostile work environment claim is based upon the cumulative effect of individual acts that may not themselves be actionable. Id. at 115. A hostile work environment claim will not be time barred if all acts constituting the claim are part of the same unlawful practice even if some component acts of hostile work environment fall outside the statutory time period so long as an act contributing to the claim falls within the filing period. Id. at 117. Complainant's allegations included being subjected to harassing phone calls on a daily basis, from Postal Inspectors and unknown numbers, multiple voice mails, threats to arrest her, a warrant dated on or about July 6, 2023 and her arrest on July 5, 2023. As noted above, Complainant contacted the EEO Counselor on August 19, 2023, which was within 45 days of her arrest. Therefore, to the extent she raises a hostile work environment claim, that claim is also timely.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, the Agency's dismissal is AFFIRMED in part and REVERSED in part. The Agency's dismissal of Claims 1 and 2 is AFFIRMED. The Agency's dismissal of Claim 3 is REVERSED. Claim 3 and the overall harassment claim are and REMANDED to the Agency for further processing in accordance with this decision and the Order below.

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 (M0920)

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 his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit his or her 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 his or her 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(c).

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

July 9, 2024

Date