



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

[REDACTED]  
Monroe M,<sup>1</sup>  
Complainant,

v.

Louis DeJoy,  
Postmaster General,  
United States Postal Service,  
Agency.

Appeal No. 2024001931

Agency No. 4B-070-0368-23

**DECISION**

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated November 6, 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 AFFIRMS the Agency's dismissal of Complainant's complaint pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely EEO Counselor contact.

**ISSUE PRESENTED**

Whether the Agency properly dismissed Complainant's complaint.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a City Carrier Assistant (CCA) at an Agency facility in Sicklerville, New Jersey.

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<sup>1</sup> 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.

On October 13, 2023, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the basis of disability (fractured wrist) when on May 14, 2023, a supervisor came to his neighbor's house to spy on him to see if his brace and bandage was off.

The Agency dismissed the complaint for untimely EEO contact pursuant to 29 C.F.R. §1614.107(a) (2), and failure to state a claim pursuant to 29 C.F.R. 1614.107(a)(1). In its decision, the Agency noted that the May 14, 2023 incident was never brought to the attention of an EEO Counselor. In pre-complaint counseling and Complainant's informal complaint, Complainant only raised one claim regarding a Letter of Separation – there was nothing mentioned about the May 14, 2023 incident.<sup>2</sup> Therefore, the Agency concluded that Complainant's allegation concerning May 14, 2023 – raised for the first time in his formal complaint on October 13, 2023 – was made more than 45 days after the issue alleged to be discriminatory occurred.

The Agency also concluded that Complainant failed to allege a loss of term, condition, or privilege of employment as a result of the alleged incident on May 14, 2023.

The instant appeal followed.

#### CONTENTIONS ON APPEAL

Neither party submitted briefs 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. The Commission should construe the complaint in the light most favorable to the complainant and take the complaint's allegations as true.

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<sup>2</sup> We note that the Commission has long held that where a complainant raises a matter at counseling but later does not include that issue in the formal complaint, he cannot resurrect it later during processing or file another complaint concerning the abandoned claim. See Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120131852 (Jan. 8, 2014).

Thus, all reasonable inferences that may be drawn from the complaint's allegations must be made in favor of the complainant.

### ANALYSIS

The record discloses that the alleged discriminatory event occurred on May 14, 2023. A review of the EEO Counselor's Report reveals that the May 14, 2023 incident was not discussed during the informal counseling process. See Appeal File at 23. A review of the record reveals that Complainant did not include this allegation on his informal complaint either. See Appeal File at 27. It was not until Complainant filed his formal complaint that the May 14, 2023 incident was raised.

29 C.F.R. 1614.107 (a)(2) provides that an Agency shall dismiss a complaint where the complainant raises matters that were not brought to the attention of an EEO counselor and are not like or related to a matter that has been brought to the attention of an EEO counselor. It is clear that the May 14, 2023 claim was not brought to the attention of an EEO counselor at all, let alone within the 45-day statutory limitation period. Accordingly, we find that the Agency properly determined that that complaint was untimely and must be dismissed pursuant to 29 C.F.R. 1614.107 (a)(2).<sup>3</sup>

### 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.

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<sup>3</sup> Since we affirm the Agency's dismissal of the complaint for untimeliness, we do not find it necessary to address whether the complaint states a claim.

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 18, 2024  
Date