



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

[REDACTED]
Christeen H,¹
Complainant,

v.

Lloyd J. Austin III,
Secretary,
Department of Defense
(Defense Health Agency),
Agency.

Appeal No. 2024002478

Agency No. DHA-202411-0010

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated January 31, 2024, 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. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the reasons set forth herein, we AFFIRM the Agency's final decision dismissing the formal complaint.

ISSUES PRESENTED

Whether the Agency's final decision properly dismissed Complainant's formal complaint on the grounds it was untimely filed.

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 for the Agency as an Occupational Health Nurse in Fort Johnson, Louisiana. On January 12, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on race (Hispanic), national origin (Puerto Rican), sex (female), color (Brown), disability, and in reprisal for prior protected EEO activity (witness to EEO charge). Complaint file at 129.

In its January 31, 2024 final decision, the Agency dismissed Complainant's formal complaint on the grounds it was untimely filed. Complaint File at 100. The Agency reasoned that Complainant received the Notice of Right to File a Formal Complaint (Notice) on December 21, 2023, but did not file a formal complaint until January 12, 2024, outside of the applicable time limit. Id. The Agency's final decision found Complainant did not provide justification to extend the applicable time limit. Id.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant requests that we reverse the Agency's final decision dismissing her formal complaint. Complainant acknowledges that she missed the applicable time limit but sets forth various reasons for the delay. For example, Complainant asserts that she was unfamiliar with the EEO process, she missed a day of work due to an arthritis flare up, she was trying to obtain statements from witnesses which were delayed due to the holidays, and that the Agency EEO official assisting her in the process did not communicate well.

In response, the Agency requests that we affirm its final decision dismissing Complainant's complaint. The Agency asserts that Complainant acknowledges that she opened the email containing the Notice on December 22, 2023; thus, she had until January 8, 2024, to file a formal complaint. The Agency asserts that the Notice set forth the 15-day time limit and an EEO Official reiterated this information to Complainant on January 8, 2024, but Complainant did not file her formal complaint until January 12, 2024, outside of the applicable time limit.

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. § 1614.106(b) requires the filing of a written complaint with an appropriate agency official within fifteen (15) calendar days after receipt of the notice of the right to file a formal complaint. 29 C.F.R. § 1614.107(a)(2) provides that the agency shall dismiss a complaint that fails to comply with the applicable time limits contained in §§ 1614.105, 1614.106, and 1614.204(c), unless the agency extends the time limits in accordance with § 1614.604(c).

We find that the Agency properly dismissed Complainant's formal complaint on the grounds it was untimely filed. The Agency sent the Notice to Complainant on December 21, 2023 via email. Complaint File at 95. Complainant acknowledges that she opened the email with the Notice on December 22, 2023. Complaint File at 112. Thus, Complainant had until January 8, 2024, to file her formal complaint.² The Notice properly set forth that Complainant had "**15 calendar days**" from receipt of the Notice to file a formal complaint. (emphasis in the original) Complaint File at 93.

Complainant has not presented sufficient justification to extend the applicable time limit. Complainant asserts that the Agency EEO Manager was difficult to communicate,. However, the record reflects that Complainant emailed the Agency EEO Manager on January 4, 2024, in which Complainant set forth that she was trying to attach to her formal complaint statements from others and thus was seeking additional time to file her formal complaint.

² Fifteen days from December 22, 2023, was Saturday, January 6, 2024. Thus, the applicable time limit was extended to the next business day Monday, January 8, 2024. See 29 C.F.R. § 1614.604(g).

The Agency EEO Manager replied on January 8, 2024 reiterating that Complainant had “15 calendar days” from receiving the Notice to file the formal complaint.³ Complaint File at 126. In a subsequent email to Complainant on January 8, 2024, the Agency EEO Manager set forth that Complainant only needed to complete the formal complaint form and that additional statements can come later. Complaint File at 128. However, Complainant still did not file her formal complaint until January 12, 2024. Complaint File at 129.

Complainant also asserts that she had an arthritis flare for one day following receipt of the Notice. This assertion is insufficient to extend the applicable time limit. In cases involving physical or mental difficulties, an extension is warranted only where an individual is so incapacitated by one’s condition that Complainant is unable to meet the regulatory time limits. See Davis v. U.S. Postal Serv., EEOC Request No. 05980475 (Aug., 6, 1998); Crear v. U.S. Postal Serv., EEOC Request No. 05920700 (Oct. 29, 1992). Complainant has not provided medical documentation that she was so incapacitated during the filing period that it prevented her from timely filing her formal complaint. See Emelda F. v. Dep’t of Navy, EEOC Appeal No. 0120171441 (Aug. 15, 2017) (complainant’s own statement that she was depressed and that her arthritis flared up, without more, was insufficient to establish incapacity preventing timely filing). Based on the foregoing, we find that Complainant has not prevented sufficient justification to extend the applicable time limit.

CONCLUSION

Accordingly, we AFFIRM the Agency’s final decision dismissing Complainant’s complaint.

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

³ As set forth above, the Agency had previously informed Complainant in the Notice that she had 15 days from its receipt to file her formal complaint.

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