



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

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

v.

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

Appeal No. 2024003078

Agency No. 1C-231-0347-23

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated April 1, 2024, 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 set forth below, we AFFIRM the Agency's final decision dismissing Complainant's complaint.

**ISSUE PRESENTED**

Whether the Agency's final decision properly dismissed Complainant's formal complaint as untimely filed pursuant to 29 C.F.R. § 1614.107(a)(2).

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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.

### BACKGROUND

During the period at issue, Complainant worked as a Mail Processing Clerk for the Agency's Post Office in Warrendale, PA.

On September 27, 2023, Complainant requested pre-complaint processing. Informal efforts at resolution were not successful.

On December 22, 2023, Complainant was sent a final interview letter. And that Notice of Right to File was not received by Complainant. Therefore, a second Notice of Right to File was sent via mail on February 14, 2024.

On February 16, 2024, Complainant received the second Notice of Right to File via mail informing her that she had 15 days to file her formal complaint.

On March 12, 2024, Complainant filed a formal EEO complaint alleging that the Agency subjected her to harassment based on Retaliation for prior protected EEO activity.

On April 1, 2024, the Agency issued a final decision dismissing the formal EEO complaint pursuant to 29 C.F.R. § 1614.107(a)(2), finding that the formal complaint was untimely filed. The Agency reasoned that Complainant received the Notice of Right to File a Formal Complaint on February 16, 2024. The Agency found, however, that Complainant did not file her formal complaint until March 12, 2024, which it determined was well beyond the 15-day filing period.

The Agency also dismissed claim 1, pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim reasoning that this matter was a collateral attack on the proceedings of another forum.

The instant appeal followed.

### CONTENTIONS ON APPEAL

On appeal, Complainant addresses only the merits of her claims and does not address the Agency's reasons for dismissing her complaint.

The Agency provides no response to Complainant's 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

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. 1614.106(b) requires a complainant to file a formal complaint within fifteen (15) days of receiving notice of the right to do so.

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; 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).

Here, Complainant received the notice of right to file a formal complaint on February 16, 2024. The timeframe for Complainant to file the formal complaint would have been from the first calendar day counted (February 17, 2024) through the last calendar day counted or the seventeenth calendar day (fifteenth day was a Saturday), March 4, 2024, which was a Monday and not a federal holiday or weekend day. The record clearly establishes that Complainant's formal complaint was sent to the Agency twenty-five days after her receipt of the notice of right to file a formal complaint as evidenced by the "03/12/24" postmark on the envelope. Therefore, Complainant did not file her formal complaint until March 12, 2024, which was beyond the applicable limitation period.

Accordingly, we find that Complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(2) and Complainant did not offer adequate justification to warrant an extending the time limit for filing the formal complaint.

### CONCLUSION

The Agency's final decision dismissing the formal complaint for the reason discussed above is AFFIRMED.

Because we affirm the Agency's final decision dismissing the formal complaint for the reason discussed above, we will not address alternative dismissal grounds.

### 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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

November 19, 2024  
Date