



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

[REDACTED]
Riley G.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2024003119

Agency No. 200P-691-2023-149297

DISMISSAL OF APPEAL

On April 16, 2024, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the March 2024 final agency decision concerning his EEO 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.

On January 5, 2023, Complainant filed a filed a formal complaint (Agency No. 200P-691-149297) alleging the Agency subjected him to harassment and discrimination based on race (Black), sex (male), disability (post-traumatic stress disorder, military sexual trauma, left ankle injury, and irritable bowel syndrome), and in reprisal for protected EEO activity when:

(a) On November 20, 2021, Supervisor informed Complainant that she was unaware of the type of leave and suggested he contact Human Resources. Complainant informed her that he had provided her a VA

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.

Schedule A letter and prior accommodations via his previous employer, the EEOC, to the hiring staff and forwarded it to her as well. Supervisor informed Complainant that she was unaware of the type of leave and was unsure of the accommodation process. Complainant submitted a formal request to telework on January 20, 2022. Supervisor later provided the contact for reasonable accommodation and Complainant began the reasonable accommodation process. Complainant alleges that he later asked Supervisor to approve his disabled veteran leave, submit his documentation for approval to supervision, or provide him with the process steps or procedures so he could do it. Complainant also requested emergency approval of his telework package which was delayed;

(b) on November 25, 2021, Complainant made a complaint to Supervisor, alleging that a coworker used a derogatory gesture (Knife Hand), attempted to intimidate Complainant and diminish his military service;

(c) harassment related claims from November 2021 to July 2022, to include training, leave, telework and reasonable accommodation claims;

(d) on January 4, 2022, Complainant was denied administrative leave and veteran related leave;

(e) on February 17, 2022, Complainant was not allowed to post his personal produced veteran video in social media, or provided assistance to distribute within the Agency by Supervisor and his video was only shared with the veteran himself and the PRRC [undefined] clinic;

(f) on February 17, 2022, Complainant was accused by Supervisor who informed legal that the video was posted online without authority and also informed legal to review his personal website;

(g) on June 21, 2022, Complainant was removed from training by the CERS (Community Engagement and Reintegration Service) HUD-VASH (HUD-Veterans Affairs Supporting Housing) Coordinator;

(h) on July 7, 2022, Supervisor barred Complainant from being selected to serve on the Diversity and Inclusion based I-DEA Committee;

(i) on an unspecified date, a Fact-Finding investigation was conducted with allegations against Complainant of creating a hostile work environment, personal financial gain, and privacy violations;

(j) reasonable accommodation pertaining to ergonomic and related equipment; and

(k) On October 19, 2022, Complainant received notice that he was being terminated during his probationary period and he resigned in lieu of termination on October 19, 2022.²

The Agency dismissed claims (a) – (j) on the grounds these events were raised in a prior EEO case. Specifically, the Agency noted Complainant previously raised those events during EEO counseling in Agency No. 200P-691-2022-147013 and then failed to file a formal complaint on the earlier EEO case. Additionally, the Agency dismissed Complainant’s claim of a hostile work environment on the ground it was not sufficiently severe or pervasive to be actionable. The Agency accepted claim (k) as a disparate treatment claim (renumbered as claim 1 in its partial acceptance letter).

Following an investigation of the accepted claim, the Agency informed Complainant of his right to request a hearing before an EEOC Administrative Judge (AJ) or receive an immediate final decision from the Agency. When Complainant did not respond, the Agency referred the matter for issuance of a final decision. Subsequently, the Agency determined further information was needed and conducted a supplemental investigation. On March 5, 2024, the Agency issued a final decision in Agency No. 200P-691-149297, finding no discrimination. However, a review of the decision reveals that although the Agency listed Complainant’s correct first name, a different last name was listed on the decision. The “Certification of Service” listed the correct Agency No. and Complainant’s first name. However, the incorrect last name was listed. The decision was sent via electronic mail to Complainant’s email address of record. The decision noted for timeliness purposes, it shall be presumed the parties received the decision within five calendar days after the date it was sent via email.

On March 5, 2024, Complainant emailed the Agency’s Office of Employment Discrimination Complaint Adjudication (OEDCA) noting they “did a piss poor job of the investigation and the transmittal” of the decision. Complainant stated he was not the person whose name was listed on the decision.

² We have renumbered the claims for ease of reference in this decision.

On March 7, 2024, the Agency issued an "Errata" noting that due to an administrative error, the March 5, 2024 decision incorrectly listed the wrong last name for Complainant. The Agency noted the "Errata" effectively revised the transmittal page 1 of the final decision and the Certificate to reflect Complainant's correct name. The Agency advised that the issuance of the "Errata" did not change the substantive rights and applicable time limits for Complainant to file his appeal. A "Certification of Service" noted that the final decision was sent to Complainant's email address of record on March 7, 2024. It was noted for timeliness purposes, it shall be presumed the parties received the decision within five calendar days after the date it was sent via email.

EEOC Regulation 29 C.F.R. §1614.402(a) provides that appeals to the Commission must be filed within 30 calendar days after receipt of the Agency's decision. The record reveals the final decision was emailed to Complainant at his designated email address of record on March 5, 2024. The decision contained a "Certification of Service" stating the decision was emailed and that for timeliness purposes, it would be presumed the decision was received by the parties within five calendar days after it was sent via email. A review of the final decision reveals that the Agency properly advised Complainant that he had thirty calendar days after receipt of its final decision to file his appeal with the Commission. Although Complainant acknowledged receipt of the decision on March 5, 2024, he informed the Agency he was not the person listed on the decision. As admitted by the Agency, the March 5, 2024 decision contained the wrong name and Complainant promptly notified the Agency of the error. As a result, on March 7, 2024, the Agency issued an "Errata" correcting Complainant's name. The new decision contained a "Certification of Service" stating the decision was emailed on March 7, 2024, and that for timeliness purposes, it would be presumed the decision was received by the parties within five calendar days after it was sent via email.

We acknowledge the confusion created by the Agency listing the incorrect name on the March 5, 2024 decision. However, even using the later date, Complainant should have filed his appeal at most within 30 days of March 7, 2024. However, he provided no evidence that he filed his appeal prior to April 16, 2024, the day he uploaded his appeal request to the Commission. Complainant has not offered adequate justification for an extension of the applicable time limit for filing his appeal.

CONCLUSION

Accordingly, Complainant's appeal is untimely and is DISMISSED. See 29 C.F.R. §1614.403(c).

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

January 8, 2025

Date