



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Concha E.,¹
Complainant,

v.

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

Appeal No. 2024003134

Hearing No. 460-2021-00233X

Agency No. 2003-0667-2021100930

DISMISSAL OF APPEAL

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the October 6, 2023 Agency final order concerning her 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.

On December 19, 2020, Complainant filed a filed a formal complaint alleging the Agency subjected her to discrimination based on sex (female), religion (Protestant), and in reprisal for protected EEO activity when: on October 1, 2020, management officials failed to select her for the Chaplain position under vacancy announcement number 10907071, and subsequently cancelled the vacancy announcement.

The Agency accepted Complainant's complaint. Following an investigation, the Agency informed Complainant of her right to request a hearing before an

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.

EEOC Administrative Judge (AJ) or receive an immediate final decision from the Agency. Complainant requested a hearing before an AJ. On October 2, 2023, the AJ issued a decision without a hearing. On October 6, 2023, the Agency issued its final order fully implementing the AJ's decision finding no discrimination.

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 her designated email address of record on October 6, 2023. 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 she had thirty calendar days after receipt of its final decision to file her appeal with the Commission's Office of Federal Operations (OFO).

Complainant's earliest contact with OFO regarding her appeal occurred on February 13, 2024. While she claims she submitted "appeal materials" with the EEOC's Hearings Unit in November 2023, we note the only documentation she provided was a November 14, 2023 email from her email address to an email address that was blacked out with the subject indicating Complainant shared "Appeal Documents." Given this evidence we are unable to determine who received the purported "Appeal Documents." Even assuming Complainant emailed her appeal to the EEOC's Hearing Unit on November 14, 2023, the Commission has held that, where proper appeal rights have been given, an appeal is untimely filed where the appeal is mailed to the wrong office, even if it would have been timely filed if mailed directly to the Commission. Kylee B. v. Dep't of Defense, EEOC Appeal No. 2023002274 (Oct. 30, 2023)(citations omitted)(dismissing appeal as untimely where Complainant filed notice of appeal with the wrong EEOC office); Denis M. v. Dep't of Veterans Affairs, EEOC Appeal No. 2019003981 (May 20, 2021). Moreover, even using a November 14, 2023 filing date, the appeal would have been untimely as this was beyond the applicable limitations period. Complainant has not offered adequate justification for failure to comply with the appeal instructions or for an extension of the applicable time limit for filing her 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