



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

[REDACTED]
Regina M,¹
Complainant,

v.

Carlos Del Toro,
Secretary,
Department of the Navy,
Agency.

Appeal No. 2024003156

Agency No. DON 24-00245-00058

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated April 2, 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 REVERSE the Agency's final decision and REMAND this matter for further processing.

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 a Resource Specialist in San Diego, California. On February 29, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on sex (female) and disability (mental). Complaint File at 21-24.

In its April 2, 2024, final decision, the Agency dismissed Complainant's formal complaint on the grounds it was untimely filed. Complaint File at 5-6. In its final decision, the Agency reasoned that Complainant received the Notice of Right to File a Formal Complaint (Notice) on January 25, 2024, but did not file her formal complaint until February 29, 2024,² outside of the applicable time limit.³ The Agency further set forth "I also acknowledge that an administrative error occurred when this office erroneously sent a second Notice of Right to File Letter dated February 28, 2024 for the same complaint. This second letter has no impact on the timeliness of your formal complaint and this is determined to be harmless error." Complaint File at 5-6.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant asserts that the Agency improperly dismissed her formal complaint. Complainant asserts that she initially mailed her formal complaint via regular first-class mail on January 27, 2024. She asserts that she sent the Agency a copy of a postal receipt supporting her assertion that she initially filed her formal complaint on January 27, 2024.⁴ She asserts that her representative followed up with the Agency regarding her formal complaint

² While the Agency's final decision sets forth that Complainant's formal complaint was filed on February 28, 2024, we find that this is an inadvertent error because the formal complaint was dated February 28, 2024, but postmarked February 29, 2024. See Complaint File at 23-24.

³ The record reflects that the Notice was delivered to Complainant's non-attorney representative on January 25, 2024.

⁴ The record contains a copy of a postage receipt dated January 27, 2024, indicating payment for a first-class letter to be sent to "San Diego, CA 92132." Complaint File at 31. The city, state, and zip code on the postal receipt are the same as the city, state, and zip code listed on the January 12, 2024 Notice for Complainant to file her formal complaint. See Complaint File at 44.

and the Agency indicated that it did not receive the formal complaint which she asserts she filed on January 27, 2024. Complainant asserts that the Agency sent her a second Notice after it could not locate her formal complaint which she asserts that she mailed on January 27, 2024.

In response, the Agency requests that we affirm its final decision dismissing Complainant's complaint. The Agency reiterates that the record reflects that Complainant received the Notice on January 19, 2024, which set forth the 15-day time limit. Regarding Complainant's assertion that she initially mailed her formal complaint to the Agency on January 27, 2024, the Agency asserts that the postal receipt submitted by Complainant reflects the purchase of postage for a first-class letter on January 27, 2024, for San Diego, California, but the receipt neither identifies the contents of the letter, nor the addressee. The Agency asserts that it sent a second Notice to Complainant, at her request, because she stated that she no longer had the forms. Finally, the Agency sets forth that Complainant has not provided justification to extend the applicable time limit. The Agency's opposition brief also contains a declaration under penalty of perjury from an Agency EEO Specialist asserting that the EEO Office has never received the formal complaint which Complainant claims to have filed on January 27, 2024.

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).

The Agency improperly dismissed Complainant's complaint. We acknowledge that the record reflects that the Agency initially sent a Notice to Complainant on January 12, 2024, via certified mail, which was delivered to Complainant's address of record on January 19, 2024. Complaint File at 44, 46, 50. The January 12, 2024 Notice set forth that a formal complaint must be filed within 15 calendar days from receipt of the Notice. Complaint File at 44.

Complainant asserts that she initially filed the formal complaint on January 27, 2024, while the Agency asserts that it never received it. Complaint File at 35-36. Complainant requested the Agency's EEO Office re-send her the applicable forms because she stated she no longer had them. Complaint File at 32.

On February 28, 2024, the Agency sent Complainant a second Notice. Complaint File at 38, 40. The second Notice set forth a formal complaint must be filed "within fifteen (15) calendar days after receipt of this notice..." Complaint File at 38. Complainant subsequently filed a formal complaint on February 29, 2024. Complaint File at 24.

In the instant matter, the Agency's EEO Office sent a second Notice to Complainant, we find that Notice superseded the first Notice in terms of determining the timeliness of the instant complaint.⁵ Thus, we find Complainant's February 29, 2024, formal complaint was within the 15-day time limit. See Middleton v. Dep't of Veteran Affairs, EEOC Appeal No. 0120103021 (Nov. 12, 2010) (OFO reversing the agency's dismissal that the formal complaint was untimely filed reasoning that the agency sent complainant a second Notice which superseded the first Notice); see also King v. Dep't of the Interior, EEOC Appeal No. 01A21908 (June 19, 2002).

⁵ The second Notice was devoid of language that the time limit to file a formal complaint still ran from receipt of the first Notice.

CONCLUSION

Accordingly, we REVERSE the Agency's final decision dismissing Complainant's complaint and we REMAND this matter to the Agency for further processing in accordance with the ORDER below.

ORDER (E0224)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, or a copy of the final agency decision ("FAD") if Complainant does not request a hearing.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to

enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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 (R0124)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. 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. **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

December 2, 2024

Date