



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

[REDACTED]
Shara D.,¹
Complainant,

v.

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

Appeal No. 2024003259

Hearing No. 440-2024-00109X

Agency No. ID-652-0009-23

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's final action dated April 2, 2024, implementing the decision of an Administrative Judge (AJ) in dismissing the instant formal complaint alleging 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. the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq., and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, For the following reasons, the Agency's final action is AFFIRMED.

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.

ISSUE PRESENTED

Whether the EEOC AJ properly issued a decision by its Notice of Intent to Dismiss finding that Complainant's hearing request in its entirety for failure to comply with the time limits contained in EEOC Regulation 29 C.F.R. § 1614.105.

BACKGROUND

During the period at issue, Complainant worked for the Agency as a Motor Vehicle Operator at the Agency's Cardiss Collins P&DC in Chicago, Illinois.

On October 21, 2022, Complainant initiated contact with an EEO Counselor. Informal efforts at resolution were not successful.

On February 14, 2023, Complainant filed a formal EEO complaint alleging that the Agency subjected her to discrimination based on disability and age when:

1. On July 10, 2022, she was told she was fired and to leave the building.
2. On or about May 23, 2022, Complainant was not paid Continuation of Pay.

The Agency dismissed claim 2 for failure to state a claim, finding that it was a collateral attack on the proceedings of the Office of Workers' Compensation. However, the Agency accepted claim 1 for investigation.

After an investigation of claim 1, the Agency provided Complainant with a copy of the report of investigation and notice of the right to request a hearing before an EEOC AJ. On or about March 5, 2024, Complainant timely requested a hearing.

On March 7, 2024, the AJ issued its Notice of Intent to Dismiss (Notice), finding that both claims raised in the formal complaint were untimely raised with an EEO Counselor. The Notice provided the parties an opportunity to be heard, which terminated on March 22, 2024.

On March 22, 2024, Complainant responded to the AJ's Notice of Intent by email. The Agency did not file a response.

On March 25, 2024, the AJ issued an Order of Dismissal.

On April 2, 2024, the Agency issued its Notice of Final Action implementing the AJ's decision.

The record reflects that Complainant failed to make timely EEO contact for all events related to this complaint. Believing that she was a victim of discrimination, Complainant made EEO initial contact on October 21, 2022. On February 14, 2023, Complainant's formal complaint was received, which identified dates of the alleged discrimination as May 20, 2022 (Claim 2), June 8, 2022, and July 10, 2022 (Claim 1).

The AJ specifically determined that all identified dates in the subject claims are outside the 45-day deadline for timely initial EEO contact. The AJ determined further that because Complainant failed to complete an affidavit, the record fails to support any event for this complaint occurred on or after September 6, 2022, which is 45-days prior to her EEO initial contact.

Finally regarding claim 2, the AJ determined that even if Complainant requested reinstatement of dismissed claim 2, it would be unsuccessful because the Agency correctly dismissed this matter. The AJ also found that at the very latest, Complainant did not receive Continuation of Pay on July 7, 2022, which is also beyond the 45-day deadline for initial contact. Thus, Claim 2 would also be untimely.

Following the Agency's implementation of the AJ's decision, the instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant argues that she did not understand the process and deadlines. Complainant further argues that she was waiting for further instructions from the AJ on what her next steps would be as she had no representation or guidance on filing an appeal. Complainant, however, offered no argument or evidence that she was unaware of the 45-day deadline for initial EEO contact.

In response, the Agency argues that its final action implementing the AJ's Order was supported by the record.

STANDARD OF REVIEW

In rendering this appellate decision, we must scrutinize the AJ's legal *and* factual conclusions, and the Agency's final order adopting them, *de novo*. See 29 C.F.R. § 1614.405(a) (stating that a "decision on an appeal from an Agency's final action shall be based on a *de novo* review . . ."); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (Aug. 5, 2015) (providing that an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed *de novo*). This essentially means that we should look at this case with fresh eyes. In other words, we are free to accept (if accurate) or reject (if erroneous) the AJ's, and Agency's, factual conclusions and legal analysis – including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. See id. at Chapter 9, § VI.A. (explaining that the *de novo* standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that EEOC "review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law").

ANALYSIS

Administrative judges may dismiss complaints pursuant to 29 C.F.R. § 1614.107, on their own initiative, after notice to the parties, or upon an agency's motion to dismiss a complaint. See 29 C.F.R. § 1614.109(b).

The AJ dismissed the formal complaint for untimely EEO Counselor contact. EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination should be brought to the attention of the Equal Employment Opportunity Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) days of the effective date of the action. The Commission has adopted a "reasonable suspicion" standard (as opposed to a "supportive facts" standard) to determine when the forty-five (45) day limitation period is triggered. See Howard v. Dep't of the Navy, EEOC Request No. 05970852 (Feb. 11, 1999). Thus, the time limitation is not triggered until a complainant reasonably suspects discrimination, but before all the facts that support a charge of discrimination have become apparent.

EEOC Regulations provide that the agency or the Commission shall extend the time limits when the individual shows that she was not notified of the time limits and was not otherwise aware of them, that she did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence she was prevented by circumstances beyond her control from contacting the Counselor within the time limits, or for other reasons considered sufficient by the agency or the Commission. 29 C.F.R. § 1614.105(a)(2).

Complainant initiated contact with the EEO Counselor over one hundred days after the alleged discriminatory events, well past the deadline permitted by EEOC regulations. Complainant does not dispute the Agency's contention that she was aware of the 45-day timeframe because she has been trained on her EEO rights as an Agency employee. Complainant instead argues that she "did not fully understand the process and deadline when filing an EEOC," yet indicates that she "was waiting for further instructions from the [Administrative] judge on what my next steps would be." Complainant presents no argument or evidence that she was unaware of the 45-day deadline for initial EEO contact. Further, nothing in the record suggests that Complainant was prevented by circumstances beyond her control from contacting the EEO Counselor or that any other reason justifies Complainant's delay.

CONCLUSION

We AFFIRM the Agency's final action implementing the AJ's dismissal of the formal complaint for untimely EEO contact.

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

December 4, 2024

Date