



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

[REDACTED]
Ela O.,¹
Complainant,

v.

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

Appeal No. 2024003277

Hearing No. 570-2024-00758X

Agency No. 200H-595-2023-151126

DISMISSAL OF APPEAL

Complainant appeals to the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated March 12, 2024, concerning her complaint of unlawful employment discrimination. At the time of events giving rise to this complaint, Complainant worked as a Secretary, GS-5 at the Agency's Group Practice Management Department, Lebanon Veterans Affairs Medical Center in Lebanon, Pennsylvania.

On April 25, 2023, Complainant filed her complaint alleging discrimination based on race and in reprisal for prior EEO activity concerning her leave, medical notes, and leave without pay which purportedly occurred from December 2022 to February 2023. After the Agency's investigation of the complaint, Complainant requested a final Agency decision on December 28, 2023. The Agency issued a final Agency decision on March 12, 2024.

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 Regulation 29 C.F.R. § 1614.402 provides that appeals to the Commission must be filed within 30 calendar days after complainants receive notice of the Agency's decision.

The record indicates that the Agency included the Certificate of Service in its decision. It stated that for timeliness purposes, it was presumed that Complainant received the Agency's final decision within five calendar days after it was emailed to Complainant. Complainant has not rebutted that presumption. The Agency decision was emailed to Complainant on March 12, 2024.

On April 26, 2024, the Agency submitted Complainant's Notice of Appeal, dated April 8, 2024, to the Office of Federal Operations. There is no evidence Complainant filed an appeal to the Office of Federal Operations prior to this submission.² The Agency's decision explicitly informed Complainant of the proper address to file the appeal with the Office of Federal Operations and the proper time limits on her right to appeal. We find that Complainant's April 26, 2024 appeal is beyond the 30-day time limit after her receipt of the final Agency decision, including the five-day receipt presumption, described above. On appeal, Complainant does not submit any adequate justification to invoke waiver or equitable tolling for filing the appeal.

Accordingly, the appeal is DISMISSED as untimely pursuant to 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.

² The record indicates that after her receipt of the final Agency decision, Complainant requested a hearing before an EEOC Administrative Judge (AJ) on April 12, 2024. On October 2, 2024, the AJ dismissed Complainant's request for lack of jurisdiction.

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 21, 2025

Date