



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

████████████████████  
Anton S,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2024003511

Agency No. 4J-630-0056-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated April 12, 2024, dismissing his 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. Upon review, the Commission finds that Complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim.

ISSUES PRESENTED

Whether the Agency properly procedurally dismissed Complainant's complaint.

BACKGROUND

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<sup>1</sup> 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.

### CONTENTIONS ON APPEAL

On appeal, Complainant submitted appellate briefs in addition to images of various documents with his contentions written thereon. Complainant's appellate arguments appeared to assert new claims regarding threats of discipline, harassment and denial of a reasonable accommodation.<sup>2</sup> He accused the Agency of twisting the facts of his case in order to support dismissal. Complainant also accused management of withholding from him information about the OWCP process and making erroneous payments on his OWCP case. Complainant contended that dismissal of Claim 1 as a collateral attack was improper because the Commission decisions cited by the Agency were meritless concerning his case. Complainant averred that Claim 1 was timely because he was unaware of the time limitations for the EEO process.

The Agency did not respond to Complainant's appeal.

### 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

#### *Timeliness of Claim 1*

EEOC Regulation 29 C.F.R. § 1614.107(a)(2) states, in pertinent part, that the Agency shall dismiss a complaint for failure to comply with the applicable time limits. EEOC Regulation 29 C.F.R. § 1614.105(a)(1) provides, that complaints of discrimination must be brought to the attention of an EEO Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five days of the effective date of the action.

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<sup>2</sup> It is not appropriate for Complainant to assert new claims on appeal.

Time limits shall be extended if a complainant was not notified of the time limits, was unaware of them, or reasonably did not know that the discrimination occurred, or that, despite due diligence, circumstances beyond a complainant's control prevented timely EEO Counselor contact, or for other reasons considered sufficient by the Agency or EEOC. 29 C.F.R. § 1614.105(a)(2).

Here, Complainant has stated that he was not aware of the applicable time limit for EEO counselor contact. The Agency did not provide evidence to the contrary. Accordingly, we extend the applicable time limit such that Claim 1 merits further analysis.

#### *Claim 1 and Claim 2 as Collateral Attacks*

EEOC has consistently held that a complaint fails to state a claim where a complainant failed to show that he suffered harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy under the EEOC regulations. See Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (April 21, 1994).

An employee cannot use the EEO complaint process to lodge a collateral attack on another adjudicatory proceeding. Wills v. Dep't of Def., EEOC Request No. 05970596 (July 30, 1998). A claim that can be characterized as a collateral attack, by definition, involves a challenge to another forum including the Department of Labor's Office of Workers' Compensation Programs. Fisher v. Dep't of Def., EEOC Request No. 05931059 (July 15, 1994).

Regarding Claim 1, Complainant has explained, among other things, that management improperly coded his OWCP leave as Sick Leave or Leave Without Pay. Here, Agency management's actions were governed by the OWCP regulations. The EEO complaint process cannot remedy alleged violations of the OWCP process. Smith v. U.S. Postal Service, EEOC Appeal No. 0120080070 (Mar. 20, 2009) (the Commission affirmed the agency's dismissal of Complainant's claim that the agency refused to process his leave buy back as a collateral attack on the OWCP process); Sharolyn S. v. U.S. Postal Serv., EEOC Appeal No. 2023001439 (Apr. 11, 2024)(affirming dismissal of claim regarding improperly-coded OWCP leave as a collateral attack). As to Complainant's position that the Agency incorrectly processed his Continuation of Pay benefit, it is an similarly an impermissible collateral attack on the Department of Labor's OWCP. See Smart v. U.S. Postal Service,

EEOC Appeal No. 0120054627 (Nov. 19, 2007) (the Commission found that complainant's claim that she was not being paid COP was an collateral attack). The award of COP and review of COP violations are determinations that must be made within the OWCP adjudicatory process. Donny F. v. U.S. Postal Serv., EEOC Appeal No. 2023000385 (Feb. 8, 2023).

We find that OWCP was proper forum for Complainant to raise his COP and OWCP leave concerns.

Regarding Claim 2, to the extent that Complainant claimed a violation of the Health Insurance Portability and Accountability Act (HIPAA), the Commission has previously determined that matters concerning HIPAA are not within the regulations enforced by the Commission. The Department of Health and Human Services' Office of Civil Rights enforces HIPAA, making the EEO complaint process the improper forum to raise a HIPAA violation. Augustin L. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120161494 (June 21, 2016) citing Lee v. U.S. Postal Serv., EEOC Request No. 0520110481 (Nov. 4, 2011).

### CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is AFFIRMED.

### 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

January 22, 2025

Date