



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

[REDACTED]
Sharolyn S,¹
Complainant,

v.

Gina M. Raimondo,
Secretary,
Department of Commerce
(Bureau of the Census),
Agency.

Appeal No. 2024003752

Agency No. 63-2024-00160

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated May 15, 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the reason discussed below, we affirm the Agency's final decision.

ISSUES PRESENTED

Whether Complainant's complaint was properly dismissed for untimely EEO Counselor contact pursuant to 29 C.F.R. § 1614.107(a)(2).

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 was a former Field Representative, Grade GS-4, at the Agency's Regional Office in Los Angeles, California.

On April 5, 2024, Complainant initiated EEO Counselor contact. The parties were unable to resolve the matter through informal counseling.

On May 6, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of race (African-American), disability (not specified), age (62), and in reprisal for prior EEO-protected activity when:

Despite applying for the position of Field Supervisor in 2020, she was not selected. Instead, she was selected for the position of Field Representative.

On May 15, 2024, the Agency issued a final decision dismissing the formal complaint. The Agency determined Complainant failed to comply with the applicable forty-five-day time limit for EEO Counselor contact under 29 C.F.R. §§ 1614.105(a)(1) and 1614.107(a)(2). The Agency reasoned that for Complainant's claim to have been timely counseled, the underlying non-selection should have occurred on or after February 20, 2024, which was 45 days before she contacted the EEO Counselor regarding this claim. Instead, the non-selection occurred in 2020, well over two years prior to Complainant's EEO Counselor contact on April 5, 2024. The Agency stated that, in March 2023, Complainant had received No Fear Act training that put her on notice about the forty-five-day time limit and her EEO Counselor contact did not take place until more than a year after that. The Agency further stated that Complainant should have had a reasonable suspicion of the alleged discrimination in her 2020 non-selection well before April 5, 2024. The Agency concluded that Complainant had failed to pursue her claim with due diligence and so her claim was time-barred by the equitable doctrine of laches.

CONTENTIONS ON APPEAL

The instant appeal followed. On appeal, acknowledges that she had received the No Fear Act training in March 2023. However, Complainant argues that she was distracted, distraught and depressed because of the Agency's egregious harassment and retaliation, which she argues was constant remained ongoing.

Complainant also argues that it is unreasonable to expect her to have remembered the 45-day EEO Counselor contact time limit from the No Fear Act training or from prior experience. Complainant states that she was unable to pursue her claim until she had gathered enough strength to do so. Complainant additionally accuses the Agency of deliberately withholding information about the EEO process from her.

In response, the Agency argues that, even if Complainant was not aware of the applicable timeline or did not develop a reasonable suspicion of discrimination until after the No Fear Act training of March 2023, the Commission has applied the doctrine of laches to bar claims where EEO counselor contact did not occur until a year after the event alleged to be discriminatory.

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. § 1614.107(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. 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).

The Commission has adopted a "reasonable suspicion" standard (as opposed to a "supportive facts" standard) to determine when the 45-day limitation period is triggered. 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*. Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120120499 (Apr. 19, 2012) emphasis added.

Here, we concur with the Agency that Complainant's claim is barred by the doctrine of laches. The Commission has consistently held that a complainant must act with due diligence in the pursuit of her claim or the doctrine of laches may apply. The doctrine of laches is an equitable remedy under which an individual's failure to diligently pursue her course of action could bar her claim. Becker v. U.S. Postal Serv., EEOC Appeal No. 01A45028 (Nov. 18, 2004).

Complainant had constructive notice about the applicable 45-day EEO time limit. She should have developed a reasonable suspicion of the discriminatory non-selection, at the latest, by the time the Agency provided her its No Fear Act training in March 2023. On appeal, Complainant has not presented evidence or contentions to persuade us that she acted with due diligence in pursuit of her 2020 non-selection claim. See Micha T. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120182466 (Sept. 26, 2018) (doctrine of laches applied where complainant contacted an EEO Counselor approximately one year after the fiscal year appraisal period for which she determined that she had not received a performance appraisal).

Based on the foregoing analysis, the Commission finds that Complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely EEO Counselor contact.

CONCLUSION

The Agency's final decision dismissing Complainant's complaint for untimely EEO contact 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:



Carlton M. Hadden, Director
Office of Federal Operations

January 2, 2025

Date