



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

[REDACTED]
Lenita T,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs
(Veterans Health Administration),
Agency.

Appeal No. 2024003809

Agency No. 200P-612-2024-156119

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated May 30, 2024, dismissing her 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. Upon review, the Commission finds that Complainant's complaint was properly dismissed due to the untimely filing of the formal complaint.

ISSUES PRESENTED

The issue presented before the Commission is whether Complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(2), due to the untimely filing of the formal complaint.

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

At the time of events giving rise to this complaint, Complainant worked as a Healthcare Manager at the Agency's Health Care Center in Mather, California.

On April 30, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to hostile workplace discrimination on the basis of race (African-American) when:

- a) On unspecified dates, she was not allowed to make clinical decisions and required to clear each veteran with leadership prior to release;
- b) On unspecified dates, information was withheld from her, she was belittled and questioned, required to inform various groups of her whereabouts, received excessive messages and calls, and required to clear her notes at the end of the day;
- c) Since September 2023, the Director of Mental Health referred to her only in the third-person;
- d) Since September 2023, her supervisor and staff psychiatrist ridiculed her about the way she spoke;
- e) In November 2023, her lunch was thrown out of the community refrigerator;
- f) On November 17, 2023, she was not allowed to ride in a car with other team members to a retreat; and to include the following discrete events:
 1. On an unknown date, her request for a compressed schedule was denied.
 2. In September 2023, she received a written counseling.
 3. On October 25, 2023, she was marked AWOL for 30 minutes.
 4. On November 16, 2023, she was terminated during her probationary period.

The Agency dismissed the complaint as untimely filed. In so doing, the Agency found Complainant received the Notice of Right to File a Discrimination Complaint ("Notice") on March 15, 2024, but did not file her complaint until April 30, 2024, beyond the 15-day filing deadline. The Agency explained that on March 15, 2024, the Notice was sent (via e-mail) informing Complainant she had 15 days to file a formal complaint. The case file includes a follow-up e-mail dated April 5, 2024, entitled "SUBJECT: Notice of Right to File", wherein Complainant responds to the EEO Counselor's e-mail of April 3, 2024, where the Counselor advised Complainant that she sent the Notice a couple weeks prior, and that Complainant needs to file formally as soon as possible and to request the password to the Notice. However, Complainant's answer was non-responsive to the Counselor's notification about the Notice, instead addressing mediation and getting a copy of her paperwork from an interview. Complainant was made aware of the Notice on March 15, 2024, and April 5, 2024, and had 15 days from that point to file her formal complaint. Still, Complainant filed her formal complaint on April 30, 2024.

CONTENTIONS ON APPEAL

Complainant argues she "did not have appropriate due process and understanding of the administrative guidelines." Specifically, she asserts that she had difficulty speaking with her assigned EEO Counselor and was confused about the complaint process and timeframes. The Agency asks that we affirm its final decision.

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

The regulation set forth at 29 C.F.R. § 1614.107(a)(2) states, in pertinent part, that an agency shall dismiss a complaint which fails to comply with the applicable time limits contained in 29 C.F.R. § 1614.106, which, in turn, requires the filing of a formal complaint within fifteen (15) days of receiving the notice of the right to do so.

The record discloses that Complainant received the Notice on March 15, 2024. Although the Notice indicated that Complainant had to file a formal complaint within fifteen (15) calendar days of its receipt, Complainant did not file her formal complaint until April 30, 2024, which is well beyond the limitation period. While Complainant asserts on appeal that she had difficulty speaking with her assigned EEO Counselor and was confused about the process and requisite timeframes, Complainant was provided timely notice on at least two occasions (March 15, and April 5, 2024) by her EEO Counselor of what she needed to do in order to file a timely formal complaint. Complainant has not offered adequate justification to warrant an extension of the time limit for filing the complaint. Therefore, we find that the Agency's dismissal was proper.

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:



Carlton M. Hadden, Director
Office of Federal Operations

November 25, 2024

Date