



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

[REDACTED]  
Rosemarie G,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2024003817

Agency No. 4E-800-0046-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated May 29, 2024, dismissing a formal complaint of unlawful employment discrimination in violation of 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

The issue is whether the Agency properly dismissed Complainant's formal complaint as untimely for failing to adhere to 29 C.F.R. § 1614.106(b).

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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.

### BACKGROUND

During the relevant time, Complainant was a Rural Carrier Associate at the Agency's Briargate Station in Colorado Springs, Colorado.

Complainant was mailed a Notice of Right to File Individual Complaint of Discrimination (PS Form 2579-A) on March 25, 2024. The Notice advised Complainant that pursuant to the applicable regulations, specifically 29 C.F.R. § 1614.106(b), she must file a formal complaint within 15 calendar days of her receipt of the Notice. As evidenced by USPS Track/Signature Confirm record, Complainant signed for and received the Notice of Right to File on March 26, 2024, at her address of record.

On April 26, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of disability (physical), age (62), and in reprisal for prior protected EEO activity.

On May 29, 2024, the Agency issued the instant final decision dismissing the formal complaint pursuant to 29 C.F.R. § 1614.107(a)(2) for failing to comply with the applicable time limits contained in 29 C.F.R. §§ 1614.105, 1614.106, and 1614.204(c). The Agency noted Complainant filed her formal complaint thirty days after receipt of the Notice, and well beyond the 15 calendar day time limit. The Agency found dismissal was warranted under the regulations.

Complainant filed the instant appeal.

### CONTENTIONS ON APPEAL

On appeal, Complainant submits a statement alleging that at the time of receipt of the Notice, she had in place a change of address notice, effective on March 29, 2024, with the local post office. Complainant alleged she did not sign for the Notice and only received it when she collected the last of her mail from the address on April 24, 2024. Complainant stated she filed her formal complaint two days later.

The Agency did not submit a brief on 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

EEOC Regulation 29 § C.F.R. 1614.106(b) requires a complainant to file a formal complaint within fifteen days of receiving notice of the right to do so. EEOC Regulation 29 C.F.R. § 1614.107(a)(2) states, in pertinent part, that an agency shall dismiss a complaint for failure to comply with the applicable time limits. However, all EEO time limits are subject to waiver, estoppel or equitable tolling under 29 C.F.R. § 1614.604(c).

The Agency bears the burden to prove untimeliness in final dismissal decisions. Ericson v. Dep't of the Army, EEOC Request No. 05920623 (Jan. 14, 1993). The Agency must always present sufficient evidence to support its determination of untimeliness. Guy v. Dep't of Energy, EEOC Request No. 05930703 (Jan. 4, 1994). In the instant matter, we find the Agency met this burden. The record shows Complainant signed for the Notice on March 26, 2024 at her address of record. 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 26, 2024, which is beyond the limitation period.

Complainant argues the timeframe should be tolled because Complainant had a Change of Address on file with the local post office. We are not persuaded by this argument as Complainant provided no evidence of such, but also Complainant admits the change of address was only effective after March 29, 2024. Complainant was served on March 26, 2024. Complainant also argues the timeframe should be tolled as she allegedly did not sign for the Notice on March 26, 2024.

A review of the signature from the USPS Tracking/Signature Confirm provided by the Agency shows a signature identical to Complainant's signature (page 79 of the complaint file) she submitted with her formal complaint (page 12 of the complaint file). Additionally, the signature has Complainant's middle initial while the Agency's certificate of service notes only Complainant's first and last name. Complainants are also advised in the EEO process that they are responsible for maintaining an accurate, current contact information, including mailing address. We find Complainant has not offered adequate justification to warrant an extension of the time limit for filing the formal complaint.

### 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

December 30, 2024  
Date