



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

[REDACTED]
Chasity C.,¹
Complainant,

v.

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

Appeal No. 2024003845

Agency No. 4G-770-0421-23

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated January 22, 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. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the reasons presented below, we REVERSE the Agency's final decision dismissing Complainant's complaint and REMAND this matter to the Agency for further processing in accordance with the Order below.

ISSUES PRESENTED

Whether the Agency's final decision properly dismissed Complainant's formal complaint for untimely filing pursuant to 29 C.F.R. § 1614.107(a)(2) and whether Complainant's appeal was timely filed.

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 Rural Carrier for the Agency in Missouri City, Texas.

On January 5, 2024, Complainant filed a formal complaint alleging discriminatory sexual harassment based on sex (female), age (YOB: 1973), and retaliation (current EEO activity) when:

- 1) Beginning on December 14, 2022, Complainant alleged Manager has asked her out on a date on multiple occasions, Complainant alleged although she has rejected the advances, she is constantly watched, called on her personal cell phone, and called in the office.

Complainant also alleged discriminatory harassment based on Sex (female), Age (YOB: 1973), and Retaliation (Current EEO Activity) when:

- 2) On April 3, 2023, Complainant alleged she was given the wrong information about RREC's scanning procedure by management and instructed to not use the required functions needed to give an accurate evaluation.
- 3) On June 3, 2023, Complainant was required to use a dolly which would reduce the number of trips made to each delivery.
- 4) On August 7, 2023, Complainant alleged two businesses assigned to her route were changed repeatedly and she was the only carrier not compensated when the distance from the door to the vehicle was removed.
- 5) On August 12, 2023, Complainant alleged she was harassed during a street observation.
- 6) On August 31, 2023, Complainant became aware she was not being properly paid for the weight or size on her parcels due to the parcels having improper labels.
- 7) On September 22, 2023, Complainant alleged management has delayed or hide the packages assigned to her route.
- 8) On November 11, 2023, Complainant alleged Manager hit her while attempting to take the postal vehicle keys from her and the Postmaster instructed Manager to call the police on Complainant.
- 9) On or about November 11, 2023, Complainant alleged she was placed off the clock in a non-pay status.
- 10) Beginning on or about November 13, 2023, Complainant alleged she was micromanaged and constantly watch by all supervisors.

The Agency dismissed these claims pursuant to 29 C.F.R. § 1614.107(a)(2) for failure to timely file the formal complaint. Complainant filed the instant appeal.

CONTENTIONS ON APPEAL

On appeal, Complainant argues that the Agency admits the postal worker who delivered her Notice of Right to File her formal complaint signed for the mail before delivering it. She includes an email from the local Postmaster in support of this. She does not state on what day she actually received the Notice of Right to File, but she asserts that once she received the Notice of Right to File, she promptly filed her formal complaint.

Complainant further states that she later obtained legal counsel who attempted to obtain copies of the dismissal from numerous persons, but no one was able to produce a copy. Therefore, she argues her June 3, 2024 appeal was timely filed. Complainant acknowledges she received the Agency's dismissal decision, but she does not state when she received it.

The Agency did not file a brief or statement in connection with this 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 Appeal

A complainant may appeal an agency's dismissal of a complaint. 29 C.F.R. § 1614.401(a). However, 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 dismissal.

If a complainant does not file an appeal within the time limits, the appeal shall be dismissed by the Commission as untimely. 29 C.F.R. § 1614.403(c).

When the complainant designates an attorney as representative, service of all official correspondence shall be made on the attorney and the complainant, but time frames for receipt of materials shall be computed from the time of receipt by the attorney. 29 C.F.R. § 1614.605(d). However, at all times, Complainant remains responsible for proceeding with the complaint whether or not she has designated a representative. 29 C.F.R. § 1614.605(e).

Here, it does not appear that Complainant designed an attorney as her representative prior to the time the Agency issued its dismissal decision on January 22, 2024. Therefore, the Agency was under no obligation to serve the dismissal decision on Complainant's attorney representative at that time. Complainant did not file her appeal until June 3, 2024, over four months after the Agency issued its dismissal. However, the record is insufficient to establish exactly when Complainant received the Agency's dismissal decision leaving us unable to determine whether Complainant's appeal was filed within 30 days of her receipt of the Agency's dismissal. For that reason, we will not dismiss this appeal for untimely filing.

Timeliness of Filing of Formal Complaint

The regulation set forth at 29 C.F.R. § 1614.107(a)(2) provides, in relevant part, that an agency shall dismiss a complaint that fails to comply with the applicable time limits, unless the agency extends the time limits in accordance with 29 C.F.R. § 1614.604(c), which states these time limits are subject to waiver, estoppel and equitable tolling. A formal "complaint must be filed within 15 days of receipt of the notice required by § 1614.105 (d), (e) or (f)." (29 C.F.R. § 1614.106(b)).

Here, the Agency found that Complainant received the Notice of Right to File her formal complaint on December 13, 2023, based on the Signature Confirmation and Track and Confirm information. Therefore, the Agency concluded that her formal complaint filed on January 5, 2024 was untimely. However, Complainant provided an email from the local Postmaster in which the Postmaster acknowledged that regular mail carrier signed for the signature confirmation in question before delivering the mail. Complainant states that upon receiving the Notice of Right to File, she promptly filed her formal complaint.

Where, as here, there is an issue of timeliness, “[a]n agency always bears the burden of obtaining sufficient information to support a reasoned determination as to timeliness.” Guy v. Dep’t of Energy, EEOC Request No. 05930703 (January 4, 1994) (quoting Williams v. Dep’t of Defense, EEOC Request No. 05920506 (August 25, 1992)). In addition, in Ericson v. Dep’t of the Army, EEOC Request No. 05920623 (January 14, 1993), the Commission stated that “the agency has the burden of providing evidence and/or proof to support its final decisions.” See also Gens v. Dep’t of Defense, EEOC Request No. 05910837 (January 31, 1992).

Based on the record before us, the Agency has not established that Complainant actually received her Notice of Right to File on December 13, 2023. Therefore, the Agency has not met their burden to show Complainant’s filing of the formal complaint was untimely.

CONCLUSION

Based on the foregoing, we REVERSE the Agency's final decision dismissing Complainant's complaint, and we REMAND this matter to the Agency for further processing in accordance with the ORDER below.

ORDER (E0224)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant’s request.

As provided in the statement entitled “Implementation of the Commission's Decision,” the Agency must send to the Compliance Officer: 1) a copy of the Agency’s letter of acknowledgment to Complainant, 2) a copy of the Agency’s notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant’s request for a hearing, or a copy of the final agency decision (“FAD”) if Complainant does not request a hearing.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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 (R0124)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. 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. **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 19, 2024
Date