



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]

Idell M.,¹
Complainant,

v.

Lloyd J. Austin III,
Secretary,
Department of Defense
(Defense Finance & Accounting Service),
Agency.

Appeal No. 2024003951

Agency No. DFAS-00042-2023

DISMISSAL OF APPEAL

Complainant appeals to the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's May 6, 2024, final decision concerning her equal employment opportunity (EEO) 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.

At the time of events giving rise to this complaint, Complainant worked as a Military Pay Technician, GS-0545-05, at the Agency's DFAS Cleveland facility in Cleveland, Ohio.

On October 11, 2023, Complainant filed an EEO complaint alleging that the Agency subjected her to discrimination based on race (African American), color (black), disability ("physical"), age (61), and in reprisal for prior

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.

protected EEO activity when, on October 3, 2023, Complainant's first-line supervisor and second-line supervisor terminated her from her position as a Military Pay Technician, GS-0545-05. Complainant's EEO complaint also included several other claims. The Agency determined that her termination claim was appealable to the Merit Systems Protection Board (MSPB or Board) and bifurcated that claim as a separate complaint. Therefore, by letter dated October 24, 2023, the Agency accepted the termination claim as a mixed case complaint. See Case File at 33.

Upon completion of the investigation into the mixed case complaint, the Agency issued a final decision finding that Complainant was not subjected to discrimination as alleged. The final decision provided Complainant with appeal rights to the MSPB and not the EEOC. Nonetheless, the instant appeal to the Commission followed.

A mixed case complaint is a complaint of employment discrimination filed with a federal agency related to or stemming from an action that can be appealed to the MSPB. 29 C.F.R. § 1614.302(a)(1). An aggrieved person may initially file a mixed case complaint with an agency or may file a mixed case appeal directly with the MSPB, but not both. 29 C.F.R. § 1614.302(b).

EEOC Regulation 29 C.F.R. § 1614.302(d)(1)(ii) requires that if complainants are dissatisfied with the agency's final decision on a mixed case complaint, complainants may appeal the matter to the MSPB (not the EEOC) within 30 days of receipt of the agency's final decision. Individuals who have received a final decision from the MSPB on the appeal of a final decision on a mixed case complaint may petition the EEOC to consider the MSPB's decision. 29 C.F.R. § 1614.303(a).

Here, the Agency determined that Complainant's claim was a mixed case complaint and issued a final decision finding no discrimination. The final decision advised Complainant of her right to appeal the Agency's final decision to the MSPB, not the EEOC. Complainant, however, filed her appeal with the EEOC. Under the regulations, the Commission has no jurisdiction to consider Complainant's appeal, and the appeal is DISMISSED.

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 4, 2024
Date