



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

[REDACTED]
Maricela P,¹
Complainant,

v.

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

Appeal No. 2024003979

Agency No. 6X210000424

DECISION

Complainant timely appealed with the Equal Employment Opportunity Commission ("EEOC" or "Commission") from the Agency's May 20, 2024 dismissal of 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, the Commission REVERSES the Agency's Final Decision dismissing Complainant's complaint.

ISSUE PRESENTED

Whether the Agency properly dismissed Complainant's formal complaint for untimely filing 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

At the time of events giving rise to this complaint, Complainant was employed by the Agency as a Tractor Trailer Operator for the Agency's New Jersey International/National Distribution Center ("I/NDC") in Jersey City, New Jersey.

On May 1, 2024, Complainant filed a Formal EEO Complaint alleging that the Agency subjected her to discrimination on the bases of race (African-American), sex (female), and age (57) when:

On January 6, 2024, and other prior dates, the Workforce Planning Specialist prevented Complainant from receiving a transfer to a Tractor Trailer Operator position at the Agency's Charlotte, North Carolina facility.

Complainant, through her attorney, received a Notice of Right to File a Formal EEO Complaint on April 15, 2024. The Notice instructed Complainant that she must file her Formal EEO Complaint within 15 calendar days of receipt of the Notice and warned that failure to do so could result in dismissal for untimely filing.

The Agency dismissed Complainant's Formal EEO Complaint pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely filing. The Agency stated that the Notice was postmarked May 1, 2024, which is 16 days after receipt.

The instant appeal followed.

CONTENTIONS ON APPEAL

Complainant contends that she timely filed her Formal EEO Complaint on April 30, 2024. As supporting evidence, she provides documentation that the postage was paid and printed on April 30, 2024 and a signed declaration from her Attorney's paralegal attesting that he placed the notice in an official U.S. Postal Service mailbox for delivery on April 30, 2024.

The Agency did not file a brief or statement 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 the filing of a written complaint with the agency that allegedly discriminated against the complainant within fifteen (15) calendar days after the date of receipt of the Notice of Right to File an Individual Complaint required by 29 C.F.R. §1614.105(d), (e), or (f). A complaint is deemed timely if it is received or postmarked before the expiration of the applicable filing period, or in the absence of a legible postmark, if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. §1614.604(b). This time limit is subject to waiver, estoppel, and equitable tolling. 29 C.F.R. §1614.604(c). An agency shall dismiss a complaint which is not filed within the fifteen day time period. See 29 C.F.R. §1614.107(a)(2).

In cases where 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 the materials shall be computed from the time of receipt by the attorney. 29 C.F.R. §1614.605(d) However, at all times, Complainant is responsible for proceeding the complaint whether or not a representative has been designated. See 29 C.F.R. §1614.605(e).

For the instant complaint, it is undisputed that Complainant's attorney received the Notice of Right to File on April 15, 2024 and that the deadline to timely file fell on April 30, 2024. The envelope containing the Formal EEO Complaint reflects a postage label dated April 30, 2024, which the paralegal for Complainant's attorney paid for and printed via Stamps.com. However, the U.S. Post Office stamp on the envelope indicates that the Notice did not arrive at the post office until May 1, 2024.

In dismissing Complainant's complaint, the Agency reasoned that the term "postmark" in the Commission's regulations refers to the "official postmark of the U.S. Postal Service," not the date the postage was printed or

purchased. The Agency further reasoned that the April 30, 2024, mailing label only proved when the postage was purchased and printed, not when the Notice was filed.

Complainant asserts that the filing date should be calculated from the date the Notice was placed in the mail. Complainant aptly cites the Commission's decision in Tomaskovic v. United States Postal Service and presents Paralegal's signed declaration. EEOC Appeal No. 0120073146 (Sept. 20, 2007) (complaint deemed timely filed where the complainant's attorney provided affidavit testimony that the postmarked formal complaint was deposited the mail in a postal collection box on date of the filing deadline, before the posted collection time of 5:00 p.m.). The Agency did not set forth any evidence to rebut Complainant's assertion.

In light of Complainant's proffered evidence, the Commission finds her complaint was timely filed on April 30, 2024.

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is REVERSED.

We hereby REMAND the matter for further processing accordance with this Decision and the following order.

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 27, 2024

Date