



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Shela O,¹
Complainant,

v.

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

Appeal No. 2024003980

Agency No. 4G335011324

DECISION

Complainant timely appealed to the Equal Employment Opportunity Commission ("EEOC" or "Commission"), from the Agency's May 21, 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. Upon review, the Commission MODIFIES the Agency's decision to dismiss Complainant's complaint.

ISSUE PRESENTED

Whether the Agency properly dismissed Complainant's formal EEO complaint pursuant to 29 C.F.R. §§ 1614.107(a)(1), 1614.107(a)(2), and/or 1614.107(a)(5).

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 Manager, Customer Service, EAS-22, for the North Fort Myers Station in Fort Myers, Florida.

On April 24, 2024, Complainant filed a Formal EEO Complaint alleging that the Agency subjected her to discrimination, including a hostile work environment, on the bases of race (Black) and reprisal for prior protected EEO activity² when:

1. On January 12, 2024, Complainant was informed that she was being placed on Emergency Placement;
2. On or around February 14, 2024, Complainant was sent a Letter of Demand to pay for a stamp shortage that she was not responsible for;
3. On January 19, 2024, Complainant was denied a Union Steward; and
4. On April 7, 2024, Complainant was issued a Proposed Letter of Removal.

The Agency dismissed Claim 1 pursuant to 29 C.F.R. §1614.107(a)(2), for untimely contact with an EEO Counselor.

The Agency dismissed Claims 2 and 3 pursuant to 29 C.F.R. §1614.107(a)(1) for failure to state a claim, reasoning that both claims constituted impermissible attempts to lodge a collateral attack on administrative proceedings outside EEOC jurisdiction.

The Agency dismissed Claim 4 pursuant to 29 C.F.R. §1614.107(a)(5) for alleging a preliminary or proposed action. The Agency reasoned that if Management implemented the action, Complainant could raise the matter with an EEO Counselor within 45 days of the effective date of the action.

² On November 1, 2023, Complainant initiated EEO contact alleging that the same management official named in the instant complaint had subjected her to a hostile work environment on the basis of race (Agency Case No. PRE-001939-2024). Following mediation, Complainant withdrew the complaint at the informal processing stage on January 5, 2024.

CONTENTIONS ON APPEAL

On appeal Complainant provided additional context for the missing stamps, referenced in the Demand Letter in Claim 2. Complainant also provided several signed employee testimonials about Complainant's character and to support the merits of Complainant's claims.

The Agency did not file a response to Complainant's 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

Untimely EEO Contact – Claim 1

The regulation set forth under 29 C.F.R. §1614.107(a)(2) states, in relevant part, that an agency shall dismiss a complaint or a portion of a complaint that fails to comply with the applicable time limits contained in §1614.105. Under §1614.105(a)(1), an aggrieved person must initiate contact with an EEOC Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action.

Claim 1 concerns Emergency Placement, which is a personnel action. The record contains a January 12, 2024 letter to Complainant entitled "Confirmation of Emergency Placement in Off-Duty Status," identifying the effective date as February 11, 2024. According to the EEO Counselor's Report, Complainant initiated EEO contact on March 4, 2024, more than 45 days later. Complainant has not set forth any explanation for the delay.

Claim 1 was properly dismissed pursuant to 29 C.F.R. §1614.107(a)(2). However, the Emergency Placement may still be considered as background information for Complainant's other claims.

Collateral Attack – Claims 2 and 3

Under 29 C.F.R. § 1614.107(a)(1), the EEO process cannot be used to lodge a collateral attack against another proceeding. "A claim that can be characterized as a collateral attack, by definition, involves a challenge to another forum's proceeding, such as the grievance process, the unemployment compensation process, or the workers' compensation process." See Lingad v. United States Postal Serv., EEOC Request No. 05930106 (June 25, 1993); Kleinman v. United States Postal Serv., EEOC Request No. 05940585 (Sept. 22, 1994); Wills v. Dep't of Def., EEOC Request No. 05970596 (July 30, 1998).

By challenging the Demand Letter, Claim 2 constitutes an attempt to lodge an impermissible collateral attack on the administrative processes of the Debt Collection Act. The Debt Collection Act, 31, U.S.C. 3711 et seq. mandates that monetary disputes involving an agency of the United States government, and any claimed debtor must be resolved through the provisions of the Debt Collection Act. The Commission has previously held that challenges to an agency's actions under the Debt Collection Act are not within the scope of the EEO complaint process and the Commission's jurisdiction. See Baughman v. Dep't of the Army, EEOC Appeal No. 01900865 (Feb. 26, 1990). The proper forum for Complainant to challenge the propriety of the collection process *including the validity of her debt* is through the administrative process of the Debt Collection Act.

Likewise, the alleged denial of union representation in Claim 3 constitutes an attempt to lodge an impermissible collateral attack on the grievance process. It is well established that issues relating to union representation fall within the grievance process, which is not enforced by the Commission. See Whitney G. v. United States Postal Serv., EEOC Appeal No. 0120161289 (Jun. 8, 2016) citing Spiwak v. United States Postal Serv., EEOC Appeal No. 01991180 (Jan. 26, 2001) other citations omitted. The proper forum to raise a claim regarding a denial of union representation is through the grievance process under the collective bargaining agreement or before the Federal Labor Relations Authority. See Simensen v. United States Postal Serv., EEOC Appeal No. 0120021068 (Feb. 26, 2002).

Claims 2 and 3 were properly dismissed in accordance with 29 C.F.R. §1614.107(a)(1).

Proposed Action – Claim 4

Under the regulations set forth at 29 C.F.R. Part 1614, an agency shall accept a complaint from an aggrieved employee or applicant for employment who believes that they have been discriminated against by that agency because of race, color, religion, sex, national origin, age or disability. 29 C.F.R. §§ 1614.103, .106(a). The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994). If the complainant cannot establish that they are aggrieved, the agency shall dismiss a complaint for failure to state a claim. 29 C.F.R. § 1614.107(a)(1).

For Claim 4, the Agency correctly determined that the Proposed Letter of Removal, did not subject Complainant to a concrete employment action. However, where, as here, a complaint does not challenge an agency action or inaction regarding a specific term, condition, or privilege of employment, a claim of harassment may survive if it alleges conduct that is sufficiently severe or pervasive to alter the conditions of the complainant's employment. See Harris v. Forklift Systems, Inc., 510 U.S. 17, 23 (1993).

Similarly, as Complainant is raising a reprisal claim, the Commission has stated that adverse actions need not qualify as "ultimate employment actions" or materially affect the terms and conditions of employment to constitute retaliation. Lindsey v. United States Postal Serv., EEOC Request No. 05980410 (Nov. 4, 1999). Instead, claims based on statutory retaliation clauses are reviewed "with a broad view of coverage. Under Commission policy, a complainant is protected from any retaliatory discrimination that is reasonably likely to deter... complainant or others from engaging in protected activity." Maclin v. United States Postal Serv., EEOC Appeal No. 0120070788 (Mar. 29, 2007).

As a general matter, the statutory anti-retaliation provisions prohibit any adverse treatment that is based on a retaliatory motive and is reasonably likely to deter a reasonable employee from engaging in protected activity. Burlington N. and Santa Fe Ry. Co. v. White, 548 U.S. 53 (2006).

Although petty slights and trivial annoyances are not actionable, adverse actions or *threats to take adverse actions* such as reprimands, negative evaluations, and harassment are actionable. Enforcement Guidance on Retaliation and Related Issues, EEOC Notice No. 915.004 (Enforcement Guidance on Retaliation), at § II. B. (Aug. 25, 2016).

While we find the Proposed Letter of Removal is not sufficiently severe or pervasive to create a hostile work environment, applying the broad view of coverage for reprisal claims, we find that a proposed removal is reasonably likely to deter Complainant or others from engaging in protected EEO activity.

Claim 4 states a claim of reprisal and was improperly dismissed pursuant to 29 C.F.R. §1614.107(a)(2).

CONCLUSION

Accordingly, the Commission MODIFIES the Agency's final decision. The Agency's dismissal of Claims 1, 2, and 3 is AFFIRMED and the Agency's dismissal of Claim 4 is REVERSED.

We hereby REMAND the matter in Claim 4 to the Agency for further processing in accordance with this Decision and the Order below.³

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.

³ When a complaint is filed on a proposed action and the agency subsequently proceeds with the action, the action is considered to have merged with the proposal. See Siegel v. Dep't of Veterans Affairs, EEOC Request No. 05960568 (Oct. 10, 1997); Charles v. Dep't of the Treasury, EEOC Request No. 05910190 (Feb. 25, 1991). Thus, if the Agency has since taken a final action on the April 7, 2024 Proposed Termination, that action shall be considered merged with Claim 4. If Complainant has since initiated an EEO complaint on the final action, the Agency shall consolidate the complaints to reflect Claim 4 as a single claim.

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 (T0124)

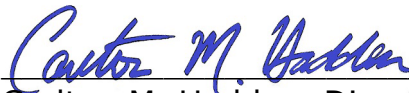
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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

March 4, 2025
Date