



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

[REDACTED]
Zoraida T,¹
Complainant,

v.

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

Appeal No. 2024003984

Agency No. 1F841003824

DECISION

Complainant timely appealed with the Equal Employment Opportunity Commission ("EEOC" or "Commission") from the Agency's May 30, 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., Section 501 of the Rehabilitation Act of 1973 ("Rehabilitation Act"), as amended, 29 U.S.C. § 791 et seq., the Age Discrimination in Employment Act of 1967 ("ADEA"), as amended, 29 U.S.C. § 621 et seq., and Title II of the Genetic Information Nondiscrimination Act of 2008 ("GINA"), 42 U.S.C. § 2000ff et seq. For the reasons presented below, the Commission REVERSES the Agency's Final Decision dismissing Complainant's complaint and REMANDS the complaint for further processing.

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 Lead Mail Processing Clerk, 07-P, for the Agency's Processing and Distribution Center ("P&DC") in Phoenix, Arizona.

On April 29, 2024, Complainant filed a Formal EEO Complaint alleging discrimination, including a hostile work environment, on the bases of race (Black, African-American), sex (female), color (Not Specified), age (50), genetic information,² disability (physical and mental)³ and reprisal for prior protected EEO activity when:

1. On or around July 12, 2022, Complainant was subjected to a Health Insurance Portability and Accountability Act ("HIPPA") violation⁴ when management shared her medical diagnosis with a coworker;
2. On or around August 19, 2022, Complainant reported a

² Complainant's Formal EEO Complaint states "HIPPA/Stalking" to specify her GINA claim. The Genetic Information Nondiscrimination Act ("GINA") prohibits employers from discriminating against any employee because of genetic information with respect to the employee. 29 C.F.R. § 1635.1. Genetic information means information about: (i) an individual's genetic tests; (ii) the genetic tests of that individual's family members; and (iii) the manifestation of a disease or disorder in family members of such individual (family medical history). 29 C.F.R. § 1635.1(c).

³ Complainant's Formal EEO Complaint did not specify disability as a basis for discrimination, however Complainant identifies physical and mental disabilities as a basis for discrimination in the EEO Counselor's Report and in documents provided with her appellate brief. Also, Claim 4 concerns denial of reasonable accommodation and Claim 1 alleges a medical privacy violation, both disability-related issues covered under the Rehabilitation Act.

⁴ Alleged improper disclosure of confidential medical information states a claim under the Rehabilitation Act, which is enforced by the Commission. To the extent that Complainant is claiming a violation of the HIPPA law, the Commission has previously determined that matters concerning HIPAA, and the Privacy Act, are not within the regulations enforced by the Commission. Agustin L. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120161494 (Jun. 21, 2016).

workplace violence incident and management did not take the appropriate action; management accused her of sleeping in the tour superintendent's office; management gave her a written warning for being in the tour superintendent's office; management denied her schedule change request; management told her that she was not allowed to speak to the chain of command;

3. On or around August 21, 2022, management conducted an Initial Management Inquiry Process ("IMIP") and accused Complainant of being the harasser;
4. On or around August 26, 2022, management informed Complainant that she was not allowed to use the superintendent's office and that she must work with a broken chair, which conflicted with her request for accommodation;
5. On or around October 14, 2022, Complainant provided management with medical documents clearing you to return to work, but management would not allow her to perform your Lead Clerk duties;
6. On or around November 24, 2022, Complainant was denied access to the holiday solicitations, and not solicited for holiday overtime;
7. On or around December 8, 2022, Complainant was issued a Notice of Suspension;
8. On or around April 2, 2023, Complainant was issued a Letter of Warning ("LOW");
9. On or around April 15, 2023, Complainant was issued a Notice of Suspension;
10. On or around May 23, 2023, Complainant was subjected to an Investigative Interview ("II") for failure to follow instructions regarding clock rings, accused of stealing time, and on an unspecified date, she was subjected to a second Investigative Interview ("II");

11. On or around July 12, 2023, on Complainant's day off, management told the other clerks not to listen to her and that Complainant was no longer the Lead Clerk;
12. On or around August 4, 2023, Complainant was issued a 7-day Suspension for Failure to Follow Instructions;
13. On or around September 15, 2023, management stood across the aisle and watched Complainant while she was working, forcing her to leave work;
14. On or around September 29, 2023, management walked Complainant out of the building for failure to follow instructions;
15. On or around October 4, 2023, Complainant was issued a Letter of Warning ("LOW"); and
16. On or around October 10, 2023, Complainant was issued a Notice of Removal ("NOR").

On February 6, 2024, the Agency issued a Notice of Right to File ("Notice") to Complainant. The Notice provided clear instructions on how to file a Formal EEO Complaint and stated that the Formal EEO Complaint must be filed within 15 calendar days of receipt of the Notice. Additionally, the Notice warned that failure to timely file could result in dismissal of Complainant's Formal EEO Complaint. The Agency asserts that tracking and signature confirmation established that Complainant received the Notice at her address of record on February 9, 2024.

The Agency dismissed Complainant's Formal EEO Complaint for untimely filing pursuant to 29 C.F.R. § 1614.107(a)(2). The Agency reasoned that based on the date of receipt, the deadline to timely file fell on February 26, 2024, yet Complainant did not file until April 29, 2024.

The instant appeal followed.

CONTENTIONS ON APPEAL

Complainant contends that she was "only provided with a couple of days to respond upon receiving a response." She recalls that she attempted to fax her reply to the number on the form, but the fax number was not functional.

She then called the Alternative Dispute Resolution (“ADR”) Specialist assigned to her complaint, and ADR Specialist confirmed that the fax number did not work. ADR Specialist also explained that Complainant’s request would be denied and suggested she file the instant appeal. Complainant does not specify when she received the Notice, when she attempted to send the fax, or when she spoke with ADR Specialist. She also asserts that she was evicted from her residence.

The Agency did not file a brief in 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

In relevant part, 29 C.F.R. §1614.107(a)(2) provides that an agency shall dismiss a complaint or a portion of a complaint that fails to comply with the applicable time limits contained in §1614.106 unless the agency extends the time limits in accordance with §1614.604(c).

Under 29 C.F.R. §1614.106(b), a complainant must file their written EEO complaint with the agency that allegedly discriminated against them within 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). This time limit be extended, as it is subject to waiver, estoppel, and equitable tolling in accordance with 29 C.F.R. §1614.604(c).

We note that complainants have a duty to apprise the agency of address changes and other circumstances that may affect the processing of EEO complaints. See, e.g. Reinbold v. United States Postal Serv., EEOC Appeal No. 0120050087 (Feb. 3, 2005) (affirming dismissal for untimely filing where the agency provided evidence that the notice of right to file was sent to the

complainant's address of record, and complainant did not receive the notice because he failed to notify the agency that he changed his address). At all times, the complainant is responsible for proceeding the complaint whether or not a representative has been designated. See 29 C.F.R. §1614.605(e).

However, "[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 (Jan. 4, 1994) (quoting Williams v. Dep't of Defense, EEOC Request No. 05920506 (Aug. 25, 1992)).

In this case, the Agency's proffered evidence of receipt consists of a signature confirmation with only a partial address and a signature that does not match Complainant's name. While the printed tracking document includes Complainant's full address of record, the signature certification provided includes only a partial street address and does not specify an apartment number.

The Commission has held that receipt of a document at a complainant's correct address, i.e., address of record, by a member of the complainant's family or household of suitable age and discretion creates a "rebuttable presumption of constructive receipt." Fontanella v. General Serv. Admin., EEOC Request No. 05940131 (Apr. 10, 1995). However, if an agency relies on the doctrine of constructive receipt to dismiss a formal complaint, the agency must *advise the complainant* on how to rebut the presumption of receipt. See Rafaela B. v. United States Postal Serv., EEOC Appeal No. 0120182003 (Sept. 5, 2018) (dismissal for untimely filing reversed where the signature confirmation was signed by someone other than the complainant and the agency failed to explain in its final decision that it was basing its dismissal on the doctrine of constructive receipt).

Here, the Agency's final decision did not advise Complainant that it was relying on the doctrine of constructive receipt. Rather, the Agency merely asserted that the record reflects, without further elaboration, that Complainant received the Notice on February 9, 2024. Moreover, it is not clear from the signature confirmation that the Notice was delivered to Complainant's address of record. See, e.g. Dixie K. v. Dep't of Agriculture, EEOC Appeal No. 2019002799 (Jul. 23, 2019) (agency failed to establish rebuttable presumption of receipt where the signature confirmation did not include an address or street name and was signed by someone with a different last name of the complainant.)

The Agency's dismissal was not clear that it was relying upon constructive receipt, based on the signature of an unidentified individual, and an incomplete address, thereby depriving Complainant of the fair opportunity to rebut such presumption on appeal. Id.

Although the Agency's assertion that Complainant received the Notice on February 9, 2024 fails, on appeal, Complainant indicates that she ultimately received the Notice. Complainant's wording is ambiguous regarding whether she filed her complaint within 15 days of actual receipt. Nevertheless, the Agency did not respond to Complainant's appeal with any evidence, such as a statement from the ADR Specialist, that would clarify when Complainant received the Notice. Thus, the Agency has not met its evidentiary burden with respect to timeliness.

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is REVERSED. The complaint is hereby remanded to the Agency for further processing in accordance with this decision and 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

December 4, 2024
Date