



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

[REDACTED]  
Keturah F,<sup>1</sup>  
Complainant,

v.

Antony Blinken,  
Secretary,  
Department of State,  
Agency.

Appeal No. 2024004034

Hearing No. 570-2024-00803X

Agency No. DOS-0072-23

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final order dated June 28, 2024, implementing the dismissal by an Administrative Judge (AJ) of a formal complaint of unlawful employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. Upon review, the Commission finds that Complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(2), due to the untimely filing of the formal complaint.

ISSUES PRESENTED

Whether the EEOC AJ properly dismissed Complainant's complaint, finding she failed to timely file her formal complaint pursuant to 29 C.F.R. § 1614.107(a)(2).

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<sup>1</sup> 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

During the relevant time, Complainant worked for the Agency as a Human Resources Specialist, GS-11, in Washington, D.C.

After engaging in the EEO counseling process, Complainant was issued a Notice of a Right to File a Formal Complaint on February 21, 2023. Complainant signed and returned her acknowledgement of receipt of the Notice the same day. The Notice informed Complainant of the right to file a formal EEO complaint within 15 calendar days of receipt of the Notice.

On March 14, 2023, Complainant filed a formal complaint alleging that the Agency subjected her to a hostile work environment and discrimination based on disability.

Complainant submitted a request for hearing before an EEOC AJ. Thereafter, the Agency filed a Motion to Dismiss, citing Complainant's failure to file a formal complaint within 15 calendar days as grounds for dismissal.

After reviewing responses by both parties, the AJ issued an Order on Motion to Dismiss on June 24, 2024, granting dismissal. The AJ found Complainant's assertion that she was too incapacitated to file on time is too generalized. Citing to caselaw and comparing Complainant's situation, the AJ noted Complainant offered no documentation, e.g., doctor's notes, to support her incapacity to file a timely on time. Moreover, the AJ noted Complainant, while untimely by one week, was able to send the formal complaint to the correct address, do research of a stress claim, prepare a rebuttal statement in response to her performance evaluation, and maintained a heavy workload, demonstrating she was capable of timely filing her formal complaint. Yet she failed to do so.

The instant appeal followed.

### CONTENTIONS ON APPEAL

On appeal, Complainant reiterates arguments made before the Agency and AJ as to why the stress of her EEO complaint caused a delay in her filing for formal complaint.

In opposition to the appeal, the Agency argues the AJ properly reviewed the facts, Complainant's explanation, and caselaw to determine Complainant failed to justify why her formal complaint should be deemed timely.

The Agency argues Complainant failed to provide justification as to why the timeframe should be tolled.

### 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 complaint with an appropriate Agency official within 15 calendar days after the date of receipt of the notice of the right to file the formal EEO complaint. The Agency shall dismiss a complaint that fails to comply with the 15-day time limit contained in 29 C.F.R. § 1614.107(a)(2) unless the Agency extends the time limits in accordance with 29 C.F.R. § 1614.604(f).

Complainant received the notice of right to file a formal complaint on February 21, 2023. Complainant signed the acknowledgement of receipt the same day and does not dispute she received the Notice on that date. Although the notice indicated that Complainant had to file a formal complaint within fifteen (15) calendar days of its receipt, Complainant did not file her formal complaint until March 14, 2023, which is beyond the limitation period.

Where, as here, there is an issue of timeliness, the 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 Ericson v. Dep't of the Army, EEOC Request No. 05920623 (January 14, 1993), EEOC stated that "[t]he Agency has the burden of proving evidence and/or proof to support its final decisions." See Gens v. Dep't of Def., EEOC Request No. 05910837 (Jan. 31, 1992). The record reflects that a time stamp of Complainant's receipt of the Notice, along with her acknowledgement of the time frame for filing.

Complainant does not dispute that she was unaware of the fifteen-day limitation period. Instead, Complainant argues the stress of the pursuit of the EEO complaint process delayed the filing.

On appeal, Complainant argues that she continued to suffer impacts from the hostile work environment which contributed to her not timely filing her formal complaint. As the AJ noted, Complainant failed to provide any medical documentation or documentation to support her claim of duress. The Commission's regulations confer upon its AJs very broad responsibility for adjudicating an EEO complaint once a complainant's hearing request has been granted, and that responsibility gives the AJs wide latitude in directing the terms, conduct, or course of EEO administrative hearings. Chere S. v. Gen. Serv. Admin., EEOC Appeal No. 0720180012 (Nov. 30, 2018). We agree the AJ properly dismissed the complaint and we find Complainant has not offered adequate justification to warrant an extension of the time limit for filing the complaint. Upon review, the Commission finds that Complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(2), due to the untimely filing of the formal complaint.

#### CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is affirmed for the reasons discussed above.

#### 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

December 18, 2024  
Date