



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

████████████████████  
August V,<sup>1</sup>  
Complainant,

v.

Christine Wormuth,  
Secretary,  
Department of the Army,  
Agency.

Appeal No. 2024004049

Agency No. AREUSTUT24MAY001939

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated June 26, 2024, dismissing a formal 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 reason discussed below, we affirm the Agency's final decision.

**ISSUES PRESENTED**

Whether the Agency's final decision properly dismissed Complainant's complaint for untimely EEO Counselor contact.

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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 an Operations and Plans Specialist, GS-12 in Stuttgart, Germany. On June 11, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of national origin, age, and in reprisal for prior protected EEO activity when:

- a. In December 2022, Complainant expressed interest in the Counter-Narcotics Support Operations Specialist, GS-0301-13 position and asked the Agency's Deputy Director to be "direct hired" into the position. Complainant alleges further that he was referred but did not receive an interview;
- b. In April 2023, Complainant expressed interest to his supervisor, in a direct hire for the Counter Transnational Threats Future Operations Specialist, GS-13 position and the Counter Transnational Threats Operations/Plans Specialist, GS-13. Complainant further alleges that his supervisor that told him that he would need to confer with the Command. Complainant claims that his supervisor wanted to hire someone from outside the Command.
- c. In or around May or June 2023, after reading a declaration from a witness in a previous EEO complaint investigation, Complainant alleges that his supervisor approached the witness stating that she did not trust Complainant due to his wife's country of origin, and that she did not like him because Complainant was friends with an individual who had filed previous complaints naming Complainant's supervisor.

On June 26, 2024, the Agency issued the instant final decision. Therein, the Agency dismissed the formal complaint for untimely EEO Counselor contact.

### CONTENTIONS ON APPEAL

On appeal, Complainant offers no statement or argument in support of his appeal. However, he does submit copies of a series of emails between Complainant and an Agency official purportedly in support of the instant 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. § 1614.105(a)(1) requires that complaints of discrimination should be brought to the attention of the Equal Employment Opportunity Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) days of the effective date of the action. The Commission has adopted a "reasonable suspicion" standard (as opposed to a "supportive facts" standard) to determine when the forty-five (45) day limitation period is triggered. See Howard v. Dep't of the Navy, EEOC Request No. 05970852 (Feb. 11, 1999). Thus, the time limitation is not triggered until a complainant reasonably suspects discrimination, but before all the facts that support a charge of discrimination have become apparent.

The record discloses that at the time of these events, Complainant had another EEO complaint pending before an EEOC Administrative Judge (AJ)<sup>2</sup>. Complainant wanted to amend that pending complaint before the AJ to include additional claims of discrimination. Complainant alleges that the Agency's EEO Counselor advised him that the AJ had the authority to amend the complaint and that Complainant should contact the AJ's office to amend the complaint with any additional allegations. According to Complainant, he was also advised that if the AJ did not allow an amendment, Complainant could file another separate complaint regarding the additional allegations.

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<sup>2</sup> The record does not specifically identify the Agency number of the complaint pending before the EEOC AJ.

Concerning the subject claims, the record discloses that the alleged, most recent discriminatory event occurred in June 2023, but that Complainant did not initiate contact with an EEO Counselor until May 8, 2024, which is beyond the forty-five (45) day limitation period. However, Complainant alleges that his EEO contact regarding these matters was made in early October 2023. In an email dated June 26, 2024, to the EEO Counselor Complainant states,

“I contacted your office about this matter back in October 2023. I was given guidance which I followed. Apparently the guidance that was passed to me was not accurate.”

The record indicates that the AJ did not allow an amendment of Complainant's prior complaint. In an email to the EEO Counselor dated May 8, 2024, Complainant advised the EEO Counselor that because the AJ did not amend the complaint pending before the Commission, he intended to file a formal complaint naming his supervisor as the responsible management official. In his May 8, 2024 email, Complainant addressed claims 1, 2 and 3 of the instant complaint. Complainant contends that because he initially asked about amending his pending complaint in October 2023, his untimeliness in contacting an EEO Counselor regarding the instant matters should be waived. Here Complainant contends that the Agency's dismissal of the instant complaint was improper because he was advised by the Agency's EEO Counselor that he could file a separate complaint concerning the additional claims he wanted to amend.

Here, we find that the Agency's dismissal of the instant matter was proper. Complainant does not allege that he was unaware of the time limitations for seeking counseling. The record contains copies of two emails dated October 2023, in which Complainant specifically indicates that he would like additional claims of discrimination addressed by the AJ or alternatively, by the Agency. However, the claims Complainant sought to amend are *not identified* in the record. The Commission is therefore unable to make an independent determination that the claims 1, 2 and 3, herein were brought to the attention of an EEO Counselor in October, 2023 as asserted by Complainant. We therefore determine that the Agency's dismissal of the instant matter was proper.

In sum, the record discloses that the most recent alleged discriminatory event occurred on June in 2023, but Complainant did not initiate contact with an EEO Counselor until May 8, 2024, which is beyond the forty-five day limitation period.

On appeal, Complainant has presented no persuasive arguments or evidence warranting an extension of the time limit for initiating EEO Counselor contact.

### CONCLUSION

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

### 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 30, 2024  
Date