



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

[REDACTED]
Rosendo D.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service,
Agency.

Appeal No. 2024004129

Agency No. 1C-931-0125-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated June 4, 2024, dismissing his 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.

ISSUES PRESENTED

Whether the Agency's final decision properly dismissed Complainant's formal complaint based on untimely filing of the formal complaint and failure to state a claim, pursuant to 29 C.F.R. § 1614.107(a).

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Postal Clerk at an Agency Processing and Distribution Center in Greensboro, North Carolina.

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.

On March 15, 2024, Complainant initiated equal employment opportunity (EEO) contact alleging that the Agency subjected him to discrimination based on disability (on-the-job (OTJ) injury) when:

1. on March 15, 2024, the Agency would not allow Complainant to return to work following a December 14, 2023 OTJ injury; and
2. the Agency would not compensate Complainant for the OTJ injury.

In a Notice of Right to File (NORF) letter, dated April 12, 2024, an EEO Counselor informed Complainant of the right to file a formal complaint within "15 days from the date of receipt of this letter." The NORF stated that the formal complaint could be subject to dismissal if not filed within the 15-day timeframe. The record contains a Product Tracking & Reporting receipt stating that the NORF was delivered on April 17, 2024 at 16:00 to an individual at Complainant's address of record. The signature block contains two lines, and the address block contains Complainant's house number and street name of record. On May 10, 2024, Complainant filed a formal EEO complaint reiterating his claims, (1) and (2).

The Agency issued a final decision dismissing Complainant's complaint pursuant to 29 C.F.R. § 1614.107(a). The Agency dismissed claims (1) and (2) for untimely filing of the formal complaint, stating that Complainant filed on May 10, 2024, and the 15-day timeframe ended May 2, 2024. The Agency also dismissed claim (2) for failure to state a claim, citing lodging a collateral attack on the proceedings of another forum; specifically, the Department of Labor. The instant appeal from Complainant followed.

CONTENTIONS ON APPEAL

On appeal, Complainant stated that there were extenuating circumstances that led to a delay in filing his formal complaint. He provided a statement from his mother, a former neighbor, and former roommate. They all stated that he faced financial challenges after his OTJ injury. His mother stated that he lost stable housing after he was removed from his Agency position, and that she was unaware of the urgency of the NORF when she received it at her address. The Agency did not provide substantive comment.

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).

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 Services Administration, EEOC Request No. 05940131 (April 10, 1995).

In the present case, the record discloses that the NORF was received on April 17, 2024, by a person of suitable age and discretion at the address of record specified by Complainant. Specifically, the Agency sent Complainant the NORF on April 12, 2024. It determined that the NORF was received at Complainant's address of record on April 17, 2024. The Agency provided a Product Tracking & Reporting receipt to support its contention. The receipt contained two handwritten lines on the signature line and the house number and street name in the address section. The Agency stated that the NORF indicated that Complainant had to file a formal complaint within fifteen (15) days of its receipt, but that Complainant did not file his formal complaint until May 10, 2024, which was beyond the limitation period. Complainant's mother acknowledged receiving the NORF but stated that she did not realize its urgency and the need to contact Complainant regarding it.

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). We find that the Agency satisfied its burden.

Due to the fact that we found claims (1) and (2) were untimely filed, we will not address the alternative dismissal basis of failure to state a claim for claim (2).

CONCLUSION

We AFFIRM the Agency's final decision dismissing Complainant's complaint.

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:



Carlton M. Hadden, Director
Office of Federal Operations

December 19, 2024
Date