



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

[REDACTED]
Willie L,¹
Complainant,

v.

Antony Blinken,
Secretary,
Department of State,
Agency.

Appeal No. 2024004135

Agency No. DOS-0065-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated June 10, 2024, dismissing his complaint of unlawful employment discrimination in violation of the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. Upon review, the Commission finds that Complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(1) for stating the same claim that was raised in a prior EEO complaint.

ISSUES PRESENTED

Whether the Agency properly procedurally dismissed Complainant's complaint.

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

During the period at issue, Complainant worked as a Regional Financial Specialist at the Agency's Consulate in Frankfurt, Germany. Complainant's federal employment with the Agency began in 2005. When he was hired, he was age 45 and therefore deemed ineligible for the Agency's defined benefit retirement plan (ERGO) under German law. In 2015, the Agency discontinued the ERGO retirement plan for new employees and the ERGO retirement plan remained closed to those previously hired employees that were age-ineligible. In March 2019, the Agency enrolled Complainant in a direct contribution (DC) retirement plan but did not award him retroactive payment for the DC retirement plan based on his 14 years of service prior to the implementation of the DC retirement plan.

In July 2019, Complainant filed an EEO complaint (Agency No. DOS-0444-19) alleging that the Agency discriminated against based on age when it denied him retroactive payment into the Frankfurt Consulate's retirement plan for his prior 14 years of service. On August 24, 2020, the Agency issued a final decision finding no discrimination. Complainant appealed the Agency's final decision to the Commission. On appeal, the Commission affirmed the Agency's final decision. See EEOC Appeal No. 2021000158 (Mar. 24, 2022).

On December 20, 2023, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the basis of age (64) when:

Complainant was prohibited from participating in the ERGO retirement plan.

On June 10, 2024, the Agency issued a final decision dismissing the complaint pursuant to 29 C.F.R. § 1614.107(a)(1) for stating the same claim as a claim that Complainant had raised in a prior EEO complaint.

CONTENTIONS ON APPEAL

On appeal, Complainant explained that his present EEO complaint alleges that the Agency has denied him participation in the ERGO defined benefit retirement plan since the Agency hired him at the Frankfurt Consulate in 2005. Complainant stated that his co-worker, who was hired on the same date but was age 25, received vesting benefits under ERGO retirement plan. Complainant distinguished his present EEO complaint from the prior one, because his previous claim concerned the Agency not retroactively crediting

him for his 14 prior years of service (2005-2019) under its DC retirement plan as opposed to under the ERGO retirement plan.

In its response, the Agency contends that the current claim is identical to the one raised in his prior EEO complaint. The Agency contends that the claims in both cases relate to Complainant being denied retroactive participation in the Frankfurt Consulate's retirement plans. The Agency states that the matter had already been decided and cited to Commission's decision in EEOC Appeal No. 2021000158, which had affirmed the final Agency decision finding no discrimination in that case.

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

The regulation at 29 C.F.R. § 1614.107(a)(1) provides that an agency shall dismiss a complaint that states the same claim that is pending before or has been decided by the agency or Commission. The Commission has consistently held that in order for a complaint to be dismissed as identical, the elements of the complaint must be identical to the elements of the prior complaint in time, place, incident, and parties. See Jackson v. Dep't of the Air Force, EEOC Appeal No 01955890 (Apr. 5, 1996), rev'd on other grounds, EEOC Request No. 05960524 (Apr. 24, 1997).

After a careful review of the record and our prior decision EEOC Appeal No. 2021000158, the Commission finds that the instant claim is essentially the same as the previously filed claim from the earlier EEO complaint (Agency No. DOS-0444-19). We concur with the Agency because, in both cases, Complainant ultimately seeks an identical remedy, such that he would receive retroactive benefits of the Frankfurt Consulate's retirement plan based on his

2005 hire date.² In other words, whether under the DC retirement plan or the ERGO retirement plan, Complainant has asserted the same underlying claim for retroactive retirement benefits. As we determined in EEOC Appeal No. 2021000158, neither of the Frankfurt Consulate's retirement plans authorized retroactive benefits for Complainant.

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>

² We find that notwithstanding the second footnote in EEOC Appeal No. 2021000158, Complainant's arguments for retroactive retirement benefits under the ERGO retirement plan were raised, considered and rejected.

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

November 26, 2024
Date