



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Bobbye C,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2024004203

Agency No. 2001-626-2024-156609

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision (Dismissal) dated June 14, 2024, dismissing 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. For the reasons below, we AFFIRM the Dismissal.

ISSUES PRESENTED

Did the Agency correctly dismiss the complaint for untimely filing of the Formal complaint?

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Credentialing Program Assistant/ADPAC/GS-6 at the Agency's Tennessee Valley Healthcare System facility in Nashville, Tennessee.

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 April 29, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the basis of reprisal for prior protected EEO activity under an EEO statute that was unspecified in the record when:

1. On January 14, 2024, the Administrative Officer, Research & Development, issued Complainant a "fully successful" Performance Appraisal;
2. On January 9, 2024, the Attending Physician denied Complainant's request for Union representation during a meeting; and
3. On January 17, 2024, the Administrative Officer issued Complainant a Letter of Counseling.

The Dismissal dismissed the claims on various grounds. The Dismissal found that all claims should be dismissed for untimely filing of the Formal complaint, noting that Complainant received the Notice of Right to File (Notice) on April 11, 2024, but did not file her Formal complaint until April 29, 2024, which is three days beyond the 15-day limit. In addition, the Dismissal found that claims 1 and 3 should be dismissed for failure to state a claim of harassment because the actions complained of were insufficiently severe and/or pervasive to constitute harassment.

The Dismissal further found that, with regard to claim 2, the proper forum for Complainant to pursue any remedy would be through the grievance process, rather than the EEO process, and that the claim should therefore be dismissed for failure to state a claim. With regard to claim 3, the Dismissal found that the matter should be dismissed for stating the same claim as a previously-filed claim. Specifically, the Dismissal noted in a footnote that although Complainant mentioned receiving the Letter of Counseling on January 17, 2024, Agency records did not show Complainant receiving such a letter on that date but did reveal a Letter of Counseling issued to Complainant dated September 21, 2023, and hence the Dismissal used that date. The Dismissal found that on October 20, 2023, Complainant had been issued a Notice of Right to file a Formal complaint under Agency case number 200I-626-2023-153306, alleging discrimination when the Administrative Officer issued Complainant a Letter of Counseling on September 21, 2023, and hence the instant Dismissal found that claim 3 should be dismissed for stating the same claim as the claim raised under Agency case number 200I-626-2023-153306.

CONTENTIONS ON APPEAL

Complainant apologizes for the lateness of the filing of the Formal complaint but makes no contention on appeal. The Agency reiterates the arguments made in its Dismissal and requests that we affirm the Dismissal.

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. § 1614.107(a)(2) states that the Agency shall dismiss a complaint that fails to comply with the applicable time limits contained in 1614.106. In addition, § 106(b) states that a complaint must be filed within 15 days of receipt of the notice of right to file a Formal complaint (Notice). The record shows that the Notice of Right to File (Notice) was delivered to Complainant via email on April 11, 2024. Complainant, however, did not file her Formal complaint until April 29, 2024, which is beyond the regulatory limit. On appeal, Complainant states "I acknowledge that I filed a formal complaint shortly after the deadline hoping that this matter would resolve within the office. But [sic] the lack of notification of denial due to late filing led me to assume the acceptance of my submission." Because Complainant filed her Formal complaint after the deadline we find that the Dismissal correctly found her filing to be untimely. We therefore need not address the other reasons the Agency gave for dismissing the Complaint.

CONCLUSION

The Dismissal 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:



Carlton M. Hadden, Director
Office of Federal Operations

December 31, 2024
Date