



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

[REDACTED]  
Mose R.,<sup>1</sup>  
Complainant,

v.

Louis DeJoy,  
Postmaster General,  
United States Postal Service  
(Field Areas and Regions),  
Agency.

Appeal No. 2024004220

Agency No. 1C-331-0332-24

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 Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, we AFFIRM the Agency's decision to dismiss the complaint.

ISSUES PRESENTED

The issue presented is whether the Agency properly dismissed Complainant's complaint for failure to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1).

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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

At the time Complainant contacted an EEO counselor and filed his EEO complaint, he was neither an employee of, nor an applicant for employment with, the Agency. Instead, Complainant was working for a private sector employer, O'Reilly Auto Parts. Complainant previously worked for the Agency, but he was granted disability retirement effective November 26, 2010.

On May 18, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of race(African-American), sex (male), disability ("knees"), age (YOB: 1965), and reprisal for prior protected EEO activity (Agency No. 1C-331-0210-23) when:

1. On April 17, 2024, Complainant's private sector employer, O'Reilly Auto Parts, sent Complainant a letter stating his FMLA packet was incomplete, and he needed to update his paperwork;
2. On May 2, 2024, Complainant's private sector employer, O'Reilly Auto Parts, makes him do more work than others on his shift; and
3. On November 26, 2010, Complainant was wrongfully terminated from the Agency.

The Agency dismissed the entire complaint pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim finding that Complainant was not an employee of the Agency at the time of the events in Claims 1 or 2 or within 45 days of those events. Additionally, the Agency dismissed Claim 3 for stating the same claim that is pending before or has been decided by the Agency or Commission, finding that Complainant had already raised Claim 3 in Agency No. 1C-331-0210-23. Complainant filed the instant appeal.

### CONTENTIONS ON APPEAL

Neither Complainant nor the Agency filed a brief or statement in connection with this 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

#### *Claims 1 and 2*

The issue here is whether the Agency properly dismissed Claims 1 and 2 for failure to state a claim on the basis that Complainant lacked standing because he was not its employee. EEOC Regulation 29 C.F.R. § 1614.103(a) provides that complaints of discrimination shall be processed in accordance with Part 1614 of the EEOC Regulations. EEOC Regulation 29 C.F.R. § 1614.103(c) provides that within covered departments, agencies, units, Part 1614 applies to employees and applicants for employment.

In Serita B. v. Dep't of the Army, EEOC Appeal No. 0120150846 (Nov. 10, 2016), the Commission reaffirmed its longstanding position on "joint employers" and noted that it is found in numerous sources. See, e.g., EEOC Compliance Manual Section 2, "Threshold Issues," Section 2-III(B)(1)(a)(iii)(b) (May 1, 2000) (Compliance Manual); EEOC Enforcement Guidance: Application of EEO Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms (Dec. 3, 1997) (Enforcement Guidance), "Coverage Issues," Question 2; Ma v. Dep't of Health and Human Services, EEOC Appeal Nos. 01962389 & 01962390 (May 29, 1998). We reiterate the analysis set forth in those decisions and guidance documents in this decision.

The term "joint employer" refers to two or more employers that each exercise sufficient control of an individual to qualify as the worker's employer. Compliance Manual, Section 2- III(B)(1)(a)(iii)(b).

To determine whether the Agency has the right to exercise sufficient control, EEOC considers factors derived from common law principles of agency. See Enforcement Guidance, "Coverage Issues," at Question 2. EEOC considers, inter alia, the Agency's right to control when, where, and how the worker performs the job; the right to assign additional projects to the worker; whether the work is performed on Agency premises; whether the Agency provides the tools, material, and equipment to perform the job; the duration of the relationship between the Agency and the worker; whether the Agency controls the worker's schedule; and whether the Agency can discharge the worker. Compliance Manual, Section 2 - III(A)(1) (citing Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 323-24 (1992)); EEOC v. Skanska USA Bldg., Inc., 550 F. App'x 253, 256 (6th Cir. 2013) ("Entities are joint employers if they 'share or codetermine those matters governing essential terms and conditions of employment'") (quoting Carrier Corp. v. NLRB, 768 F.2d 778, 781 (6th Cir. 1985); see also Ma, EEOC Appeal Nos. 01962389 & 01962390.

Here, Complainant has not alleged any facts to suggest that the Agency was a joint employer with O'Reilly Auto Parts during the events in Claims 1 and 2. He also alleges only actions taken by O'Reilly Auto Parts in Claims 1 and 2. Therefore, we find the Agency properly dismissed Claims 1 and 2 for lack of standing based on the fact that Complainant was neither an employee nor applicant of the Agency at all times relevant to Claims 1 and 2.

### *Claim 3*

With respect to Claim 3, the Agency dismissed this claim as being the same claim as was previously raised in Agency No. 1C-331-0210. We addressed this case in Kelvin J. v. U.S. Postal Serv., EEOC Appeal No. 2023002891 (Jul. 26, 2023), request for recon. denied, EEOC Request No. 2023004896 (Apr. 10, 2024). In that case, Complainant alleged that discrimination when "In April 2009, Complainant was terminated and given a fraudulent settlement agreement through the Office of Personnel Management."

In the instant case, Complainant alleged discrimination when he was "wrongfully terminated sometime in 2010."

The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides that the 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).

However, even though these claims are not identical in time, we find the Agency did not err in dismissing Claim 3. As noted in Kelvin J. v. U.S. Postal Serv., EEOC Appeal No. 2023002891 (Jul. 26, 2023), the Commission has consistently held that a complainant must act with due diligence in the pursuit of his claim, or the doctrine of laches may apply. See Complainant v. U.S. Postal Serv., EEOC Appeal No. 01A45028 (Nov. 18, 2004) (finding that the doctrine of laches applied when complainant waited over two years from the date of the alleged discriminatory events before contacting an EEO Counselor). The doctrine of laches is an equitable remedy under which an individual's failure to pursue diligently his course of action could bar his claim. In the instant matter, Complainant contacted an EEO Counselor over 10 years after the alleged incident at issue in Claim 3, and therefore, his claim is barred by the doctrine of laches.

### CONCLUSION

For the foregoing reasons, we AFFIRM the Agency's dismissal of the formal 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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

December 16, 2024

Date