



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

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

████████████████████  
Calvin D.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2024004251

Agency No. 4G-752-0169-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated June 18, 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. Upon review, the Commission finds that Complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(2) and (1), for untimely EEO Counselor contact and failure to state a claim.

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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.

### ISSUES PRESENTED

Whether the Agency properly dismissed Complainant's complaint for untimely EEO counselor contact when Complainant made EEO counselor contact on February 14, 2024, after incident(s) occurring from November 28, 2022 through October 2023, and for his dissatisfaction with a grievance settlement.

### BACKGROUND

During the period at issue, Complainant worked as a rural carrier at the Agency's facility in Grand Prairie, Texas.

On February 11, 2024, Complainant initiated EEO contact. Informal efforts at resolution were not successful

On May 21, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination based on race, sex, color, disability age, and in reprisal for prior protected EEO activity when:

1. On November 28, 2022, Complainant alleged that he was placed off the clock when he refused to follow management's instructions to cross craft and do additional route assignments;
2. On December 12, 2022, Complainant alleged that he was placed off the clock when he followed the union's instructions rather than management's instructions and refused to case or carry rural routes while coded on a phantom route;
3. In July 2023, he alleged that he was not notified of being awarded Rural Route 08;
4. In October 2023, Complainant alleged that he was injured on the job and told he should retire; and
5. In or about October 2023, he alleged he was dissatisfied when the union entered into a grievance settlement with management without your knowledge which only compensated him for one (1) pay period.

The Agency's final decision dismissed all five claims for untimely EEO Counselor contact and alternatively, claim 5 for failure to state a claim.

The Agency reasoned that Complainant failed to make EEO Counselor contact within 45 calendar days of suspecting discriminatory actions. The Agency further reasoned regarding claim 5, that Complainant attempted to lodge an attack on another forum's proceeding when Complainant filed an EEO complaint regarding a union grievance settlement.

### CONTENTIONS ON APPEAL

In a brief hand-written statement, Complainant appears to argue the merits of the formal complaint, but does not appear to be responsive for the procedural grounds of dismissal made by the Agency.

### 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 1-5

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.

EEOC Regulations provide that the agency or the Commission shall extend the time limits when the individual shows that he was not notified of the time limits and was not otherwise aware of them, that he did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence he was prevented by circumstances beyond his control from contacting the Counselor within the time limits, or for other reasons considered sufficient by the agency or the Commission.

The Agency dismissed Complainant's complaint for untimely EEO Counselor contact. The incidents alleged by Complainant occurred between November 2022 and October 2023, but Complainant did not make EEO Counselor contact until February 11, 2024, beyond the applicable time limit. Complainant has presented no persuasive arguments or evidence warranting an extension of the time limit for initiating EEO Counselor contact. He did not initiate EEO contact until well beyond the 45-day time limit.

#### Claim 5

Alternatively, the Agency dismissed Claim 5 for failure to state a claim. An agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that Agency because of race, color, religion, sex, national origin, age or disabling condition. 29 C.F.R. §§1614.103, 106(a). The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994). The regulation at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that an agency shall dismiss a complaint that fails to state a claim.

In his formal complaint, Complainant stated that he filed a grievance "for being taken off the clock for coming off restrictions ... My union and [other employee or management official] settled for 1 pay period only without me knowing." The Commission has held that an employee cannot use the EEO complaint process to lodge a collateral attack on another adjudicatory proceeding. See Wills v. Dep't of Defense, EEOC Request No. 05970596 (July 30, 1998); Kleinman v. U.S. Postal Serv., EEOC Request No. 05940585 (September 22, 1994).

The Commission finds that claim 5 fails to state a claim under the EEOC regulations because Complainant failed to show that he suffered harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy.

### CONCLUSION

The Agency's final decision dismissing the formal 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:

  
Carlton M. Hadden, Director  
Office of Federal Operations

December 31, 2024  
Date