



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

[REDACTED]
Maryland E,¹
Complainant,

v.

Samantha Power,
Administrator,
Agency for International Development,
Agency.

Appeal No. 2024004264

Agency No. OCRD-020-24-F

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated April 2, 2024, dismissing her 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 properly dismissed Complainant's complaint for untimely EEO Counselor contact pursuant to EEOC Regulation 29 C.F.R. § 1614.107(a)(2) and alternatively, for failure to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1).

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 relevant time, Complainant worked for the Agency as a Secretary, GS-9 in Washington, DC. The record indicates that Complainant initiated EEO contact regarding his concerns on February 23, 2024. According to the report of the EEO Counselor, Complainant alleged that the Agency subjected her to discrimination on the basis of an unspecified mental and physical disability when:

on July 15, 2019, the Agency issued her a bill of collection in the amount of \$569.00, for unaccounted hours.

However, when she filed her formal complaint on March 22, 2024, she raised for the first time, allegations that the Agency subjected her to harassment with respect to reasonable accommodations, retaliation and retribution, unequal treatment, adverse employment actions and a hostile work environment.

On April 2, 2024, the Agency issued a final decision dismissing the formal complaint in its entirety. The Agency determined that the exclusive matter for which Complainant underwent EEO counseling, and which was raised in the formal complaint, related to the bill of collection. The Agency dismissed the matter for untimely EEO contact under the doctrine of laches. The Agency found that Complainant's EEO contact in February 2024, regarding an incident occurring in July 2019 was untimely raised with an EEO Counselor, and that years passed before Complainant initiated EEO counseling regarding the debt collection. The Agency also appears to determine that the variety of other actions first raised in the formal complaint were not raised during EEO counseling, and that they were not like or related to the debt collection matter for which Complainant indeed sought counseling.

Alternatively, the Agency determined that the instant complaint failed to state a claim within the purview of EEOC Regulations as it involved the Debt Collection Act. The Agency also noted that any additional claims raised by Complainant in her formal complaint were not raised with the Agency's EEO Counselor and in that regard are properly dismissed for failure to state a claim.

This appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant reiterates her claims and includes allegations of harassment not previously brought to the attention of an EEO Counselor.

In its brief on appeal, the Agency asks the Commission to affirm its dismissal of the instant matter.

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. § 1614.105(a)(1) requires that complaints of discrimination be brought to the attention of an EEO 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 long adopted a "reasonable suspicion" standard to determine when the forty-five (45) day limitation period is triggered. See Howard v. Department of the Navy, EEOC Request No. 05970852 (February 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 Regulation 29 C.F.R. § 1614.107(a)(2) provides for the dismissal of a complaint that fails to comply with the applicable time limits.

The record discloses that the alleged discriminatory event occurred on July 15, 2019, but that Complainant did not initiate contact with an EEO Counselor until February 23, 2024, which is five years beyond the forty-five (45) day limitation period. On appeal, Complainant has presented no persuasive arguments or evidence warranting an extension of the time limit for initiating EEO Counselor contact.

This Commission has consistently held that a complainant must pursue claims with due diligence, or the doctrine of laches may apply. Becker v. U.S. Postal Serv., EEOC Appeal No. 01A45028 (Nov. 18, 2004) (finding that the doctrine of laches applied because a complainant waited more than two years from the date of the alleged discriminatory events before contacting an EEO Counselor). In the instant matter, Complainant contacted an EEO counselor more than five years after Complainant's 45-day window for making timely EEO counselor contact closed. Therefore, under the doctrine of laches we must dismiss Complainant's formal EEO complaint for untimely EEO Counselor contact in accordance with 29 C.F.R. §§ 1614.105(a)(1) and 1614.107(a)(2). See Corie E. v. Dep't of Veterans Affairs, EEOC Appeal No. 2023000437 (Mar. 23, 2023) (the Commission finding Complainant's untimely EEO contact four years after the last discriminatory action mandated dismissal under the doctrine of laches).

The regulation at 29 C.F.R. § 1614.107(a)(2) states, in pertinent part, that an agency shall dismiss a complaint which raises a matter that has not been brought to the attention of a Counselor and it is not like or related to a matter that has been brought to the attention of an Counselor. A later claim or complaint is "like or related" to the original claim(s) if the later claim or complaint adds to or clarifies the original complaint or could have reasonably been expected to grow out of the original complaint during the investigation. See Scher v. U.S. Postal Serv., EEOC Request No. 05940702 (May 30, 1995); Calhoun v. U.S. Postal Serv., EEOC Request No. 05891068 (Mar. 8, 1990).

In her formal complaint, Complainant failed to raise matters "like or related" to that which she raised in EEO counseling. The Agency noted that the EEO Counselor reported Complainant only raised discrimination when on July 15, 2029, she was given a letter of debt collection. We find that the Agency's dismissal of the instant as untimely was proper.

Because we are affirming the Agency's dismissal for the reason discussed above, we will not address the Agency's alternative grounds for dismissal.

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>

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 16, 2024
Date