



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

[REDACTED]  
Bulah C,<sup>1</sup>  
Complainant,

v.

Thomas J. Vilsack,  
Secretary,  
Department of Agriculture,  
Agency.

Appeal No. 2024004279

Agency No. USDA-CCD-CF-2024-00163

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated June 11, 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., 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 improperly dismissed.

**ISSUES PRESENTED**

The issue presented before the Commission is whether Complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(2) for the untimely filing of the formal complaint.

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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 of events giving rise to this complaint, Complainant worked as a Executive Director at the Agency's Center for Civil Rights Operations (CCRO) facility in Washington, DC.

On April 8, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to hostile workplace discrimination on the bases of race (African-American), sex (female), color (Dark Brown), disability (kidney, cancer), age, and reprisal for prior protected EEO activity. In support of her claim, Complainant raised the following allegations:

1. On an unspecified date after the close of FY 2023, Complainant was rated improperly by the Executive Director (ED) based on false information;
2. On an unspecified date in December 2023, Complainant was involuntarily detailed to a directed assignment in New Orleans, LA, which became a permanent assignment on or around February 26, 2024;
3. Complainant was subjected to multiple instances of discriminatory harassment by her supervisors and their agents including:
  - a. On November 14, 2022, the (Acting) Deputy Assistant Secretary (DAS) for Civil Rights asked Complainant about late work products, (which Complainant claims was a false allegation), in front of other staff;
  - b. On an unspecified date, DAS issued a false memorandum to Complainant with copies to OGC staff indicating she and her staff did not allow sufficient planning time for CR Directors meetings;
  - c. On an unspecified date, Complainant was given a letter of expectation by ED based upon fabricated information.
  - d. On multiple dates in Fiscal Years 2022 and 2023, an agent provocateur (position not identified) sent a series of e-mails and made public statements containing false information that caused Complainant and her staff to have to respond and correct; and

e. On three separate occasions (dates not provided), ED and DAS took away Complainant's authority to select staff for critical vacancies and assigned it to other agents in the organization.

4. On an unspecified date, after Complainant had already made a selection for the position of Director, Mission Area Liaison Division, the position was reposted due to a failure in the USA Staffing electronic system, and Complainant was removed as the selecting official for the position.

The Agency dismissed the complaint as untimely filed, pursuant to 29 C.F.R. § 1614.107(a)(2). In so doing, the Agency found Complainant received the Notice of Right to File a Discrimination Complaint ("Notice") on March 21, 2024, but did not file her complaint until April 8, 2024, beyond the 15-day filing deadline. The Agency noted that because Complainant is an Executive Director for the Center for Civil Rights Operations, it is reasonable to believe that she was well aware of the time frames associated with the EEO process.

The instant appeal followed.

#### CONTENTIONS ON APPEAL

Complainant requested an extension of time to submit a brief in support of her appeal, which the Commission granted. Complainant timely submitted her brief.

On appeal, Complainant, through counsel, argues that her complaint was not untimely, as she received the Notice on March 24 or 25, 2024 and submitted her appeal within 15 days of that date. She explains that, effective February 25, 2024, the Agency reassigned her to a duty station in New Orleans, Louisiana and she traveled back and forth from Louisiana to her home in Silver Spring, Maryland. She also provides an email showing that she instructed the Agency's Office of Civil Rights to direct any correspondence to her by email because she could not be sure that she would receive correspondence by Postal Mail in a timely manner. Regarding delivery of the Agency's Notice, she asserts:

Tracking the delivery of the Agency's letter to [Complainant] using the correct tracking number on the envelope shows that the letter was "Delivered to Agent for Final Delivery" on March 21, 2024. Delivery to an agent for final delivery is not the same as delivery to [Complainant] at her address. The only person other than

[Complainant] who might have been authorized to accept and sign for the Agency's letter was her son, who drops by her house once a week to pick up the mail. He neither saw nor signed for the Agency's letter. See Ex. 5. While it is unclear who signed for the Agency's letter and left it at [Complainant's] door, it is clear that whoever signed for the letter, if anyone, was not an authorized agent of [Complainant]. Moreover, in the absence of the receipt, which [Complainant] does have, it is impossible for the Agency to establish when the letter was delivered or who signed for it. [Complainant] is certain that she electronically filed her formal complaint within 15 days of discovering the letter, which she recalls finding either on Sunday, March 24, 2024, or Monday March 25, 2024, left between her front door and her storm door, with no green card attached.

Complainant also submits a signed declaration from her son stating that he visited Complainant's house weekly to check her mail since she was transferred to New Orleans and, at no time did he "see, receive, or sign a document sent by certified mail with a green card attached from any source."

In response, the Agency maintains:

Even assuming [Complainant's] son did sign for the certified letter as claimed by [Complainant] **and she did not read the Notice of Right to File until Monday, March 25, 2024, the letter was clearly dated, and [Complainant] still had 10 days to timely file her complaint by Friday, April 4, 2024. Moreover, as the former Executive Director for the Center for Civil Rights in the Office of the Assistant Secretary, an Office which processes EEO complaints, [Complainant] knew that she had 15 days to file a formal complaint and yet waited to electronically file her complaint untimely on Monday, April 8, 2024.** Therefore, based on clear Commission case law, the Agency correctly determined that [Complainant] was untimely in filing her formal complaint and she did not demonstrate any physical or mental health difficulties, or that an extension was warranted because she was so incapacitated by any condition that she was unable to meet the regulatory time limits.

### 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.

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### ANALYSIS

The regulation set forth at 29 C.F.R. § 1614.107(a)(2) states, in pertinent part, that an agency shall dismiss a complaint which fails to comply with the applicable time limits contained in 29 C.F.R. § 1614.106, which, in turn, requires the filing of a formal complaint within fifteen (15) days of receiving the notice of the right to do so. However, this time limit is subject to waiver, estoppel and equitable tolling. 29 C.F.R. § 1614.604(c).

Where there is an issue of timeliness, "[a]n agency always bears the burden of obtaining sufficient information to support a reasoned determination as to timeliness." Guy v. Dep't of Energy, EEOC Request No. 05930703 (January 4, 1994) (quoting Williams v. Dep't of Defense, EEOC Request No. 05920506 (August 25, 1992)).

In instances of untimely filing, the Agency must not only demonstrate that the complainant received Notice, but that the Notice clearly informed the complainant of the 15-day time limit to file. See Paoletti v. U. S. Postal Service, EEOC Request No. 05950259 (August 17, 1995). In addition, in Ericson v. Dep't of the Army, EEOC Request No. 05920623 (January 14, 1993), the Commission stated that "the agency has the burden of providing evidence and/or proof to support its final decisions." See also Gens v. Dep't of Defense, EEOC Request No. 05910837 (January 31, 1992).

The Agency asserts that Complainant received the Notice on March 21, 2024, thereby making her April 8, 2024 filing untimely. To support its decision, the Agency relies upon USPS tracking information indicating that the Agency mailed Complainant the Notice by First Class Certified Mail to her address of record, and it was delivered on March 21, 2024. However, the return receipt indicates that the item was signed for by an "Agent" as apposed to Complainant. The signature is illegible and it is unclear who signed the returned receipt.

The Commission has held that receipt of a document at a complainant's correct address, i.e., address of record, by a member of the complainant's family or household of suitable age and discretion creates a "rebuttable presumption of constructive receipt." Fontanella v. General Serv. Admin., EEOC Request No. 05940131 (Apr. 10, 1995). However, if an agency relies on the doctrine of constructive receipt to dismiss a formal complaint, the agency must advise the complainant on how to rebut the presumption of receipt. See Rafaela B. v. United States Postal Serv., EEOC Appeal No. 0120182003 (Sept. 5, 2018) (dismissal for untimely filing reversed where the signature confirmation was signed by someone other than the complainant and the agency failed to explain in its final decision that it was basing its dismissal on the doctrine of constructive receipt). Here, the Agency's final decision did not advise Complainant that it was relying on the doctrine of constructive receipt. Rather, the Agency merely asserted that the record reflects, without further elaboration, that Complainant received the Notice on March 21, 2024.

As mentioned above, the record contains a statement from Complainant's son indicating that he did not receive the Notice when checking on Complainant's mail while she was away. We find the record does not establish who signed the return receipt for the Notice.

Complainant stated that she received the Notice on March 24 or 25, 2024, as she had been away from her home. Complainants have a duty to apprise the agency of address changes and other circumstances that may affect the processing of EEO complaints. See, e.g. Reinbold v. United States Postal Serv., EEOC Appeal No. 0120050087 (Feb. 3, 2005) (affirming dismissal for untimely filing where the agency provided evidence that the notice of right to file was sent to the complainant's address of record, and complainant did not receive the notice because he failed to notify the agency that he changed his address). At all times, the complainant is responsible for proceeding the complaint whether or not a representative has been designated. See 29 C.F.R. §1614.605(e). The record shows that Complainant informed the Agency that she was going to be away from home, due to the Agency's transferring her to another facility in New Orleans, Louisiana, and asked that any documents be sent to her via email, as she was traveling back and forth. There is no indication that the Agency provided Complainant the Notice by email or otherwise took these circumstances into account when providing Complainant with the Notice.

Assuming Complainant received the Notice on March 24 or 25, 2024, she submitted her formal complaint on April 8, 2024, within the requisite period. Alternatively, the Agency was aware that she had been transferred to another office and the circumstances warrant tolling or extending the time to submit the formal complaint. For these reasons, we find the dismissal was improper.

#### CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is REVERSED. The complaint is hereby REMANDED to the Agency for further processing in accordance with this decision and the Order below.

#### **ORDER (E0224)**

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time.

If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, or a copy of the final agency decision ("FAD") if Complainant does not request a hearing.

#### IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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 (R0124)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. 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. **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

January 13, 2025  
Date