



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

[REDACTED]  
Hana D,<sup>1</sup>  
Complainant,

v.

Pete Buttigieg,  
Secretary,  
Department of Transportation  
(Federal Aviation Administration),  
Agency.

Appeal No. 2024004309

Hearing No. 560-2024-00059X

Agency No. 2023-30041-02-FAA

**DECISION**

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final order dated June 18, 2024, implementing the dismissal by an Administrative Judge (AJ) of the formal 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 Complainant's complaint was properly dismissed for untimely EEO contact and a collateral attack on Office of Personnel Management (OPM) 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.

### BACKGROUND

During the relevant time, Complainant was a former employee of the Agency. Between August 4, 1988, and May 22, 1998, Complainant worked as a Property Disposal Specialist at the Agency's FAA Logistics Center in Oklahoma City, Oklahoma. Complainant states that she was removed from her position effective May 22, 1998, "because of [an] absence more than 5 days."

On July 12, 2023, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on disability when:

- (1) she was removed from service in May 1998 removal and
- (2) a June 2023 decision by the Office of Personnel Management (OPM) denying her deferred annuity due to the Agency's miscalculation of her years of service.<sup>2</sup>

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing.

On April 29, 2024, the Agency filed a Motion to Dismiss. On May 20, 2024, the AJ issued "Order Granting Agency's Motion to Dismiss, and Alternatively, Decision Without a Hearing and Order Entering Judgment" [hereafter Order]. The AJ found the Motion to Dismiss was warranted as Complainant had presented no evidence to support tolling the 45-day regulatory deadline for contacting an EEO Counselor for the 25-year period of time in which Complainant waited to seek EEO counseling. The AJ also found the Agency correctly concluded that Complainant's challenge to OPM's denial of her deferred annuity constitutes a collateral attack on another agency's adjudicatory proceedings.

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<sup>2</sup> Claims are stated as interpreted by the AJ. As noted in the record, the Notice of Acceptance letter issued by the Agency did not include a claim regarding Complainant's removal, and Complainant did not challenge the framing of the issues when given ample opportunity to do so. Later on, after contesting the investigation itself, Complainant argued the issue was her removal from service in 1998. For the sake of thoroughness, the AJ addressed both issues during the hearing process.

On June 18, 2024, the Agency issued a final order, adopting the AJ's Order in full. Complainant filed the instant appeal.

### CONTENTIONS ON APPEAL

On appeal, Complainant contends the Agency failed to issue a final order and for that reason should consider a settlement. Complainant states the regulations for timely EEO contact but fails to provide any justification for the decades-long delay in filing a formal complaint.

In opposition to the appeal, the Agency maintains Complainant provides no justification for her untimely pursuit of her removal from the Agency, through the EEO complaint process. Additionally, the Agency requests the Commission affirm the AJ's finding regarding her annuity claims because her allegations are a collateral attack against OPM and therefore failed to state a claim.

### 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

The regulation set forth at 29 C.F.R. §1614.107(a)(2) allows an agency to dismiss a complaint that fails to comply with the applicable time limits contained in 29 C.F.R. §1614.105(a)(1), which, in turn, specifies that an aggrieved person must initiate contact with an EEO counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action.

29 C.F.R. §1614.105(a)(2) states that the agency shall extend the 45-day time limit when the individual shows that he or she was not notified of the time limits and was not otherwise aware of them, that he or she did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence he or she was prevented by circumstances beyond his or her control from contacting the counselor within the time limits, or for other reasons considered sufficient by the agency or the Commission.

Complainant's Claim 1 addresses a discrete incident, removal from employment. The record discloses that that this alleged discriminatory event occurred in May 1988, but Complainant did not initiate contact with an EEO Counselor until June 2023 at the earliest, which is well beyond the forty-five day limitation period. On appeal, Complainant has presented no persuasive arguments or sufficient evidence to support excusing the delay in contacting an EEO Counselor. Upon review, the Commission finds that Complainant's Claim 1 was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely EEO Counselor contact.

Regarding Claim 2, pursuant to 29 C.F.R. 1614.109(b), during the hearings phase, an AJ may dismiss complaints pursuant to § 1614.107, on their own initiative, after notice to the parties, or upon an agency's motion to dismiss a complaint. Here, Complainant challenges OPM's calculation of her years of service in her annuity claim. We agree with the AJ's finding that Complainant is lodging a collateral attack on OPM's proceedings. See *Trey H. v. Dep't of Labor*, EEOC Appeal No. 2022004423 (August 30, 2022) (finding a challenge to the delayed receipt of retirement annuity allegedly caused by agency's failure to provide OPM with complainant's personnel file constituted a collateral attack on OPM's proceedings and was not properly before the Commission). Accordingly, this Commission finds Claims 1 and 2 were properly dismissed in accordance with 29 C.F.R. §1614.109.

### CONCLUSION

The Agency's final order dismissing Complainant's complaint for the reasons discussed above 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

November 20, 2024

Date