



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

[REDACTED]
Wilbur W.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2024004323

Agency No. 2003-586A-2023-15186

DISMISSAL OF APPEAL

By Notice of Appeal postmarked July 19, 2024, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the June 13, 2023 final Agency decision (FAD) concerning his EEO 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.

EEOC Regulation 29 C.F.R. § 1614.402 provides that appeals to the Commission must be filed within 30 calendar days after complainants receive notice of the Agency's decision. Here, the Agency emailed its final decision to Complainant on July 13, 2023 and he responded the next day, July 14, 2023 asking for the password. The Agency responded with the password that same day. However, Complainant then waited over a year before filing his appeal with the Commission on July 19, 2024.

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.

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 O'Dell v. Dep't of Health and Human Services, EEOC Request No. 05901130 (Dec. 27, 1990). The doctrine of laches is an equitable remedy under which an individual's failure to pursue diligently a course of action could bar his claim. In this case, the doctrine of laches bars complainant's claim. See Complainant v. Dep't of Homeland Security, EEOC Appeal No. 0120070697 (Feb. 20, 2009) (appeal dismissed pursuant to the doctrine of laches where complainant waited nearly a year after the agency's final decision was mailed to her to contact the Commission to file an appeal); see also Bula P. v. Dep't of the Navy, EEOC Appeal No. 2021003971 (Oct. 4, 2022), request for recon. denied, EEOC Request No. 2023000545 (Mar. 16, 2023) (complainant's appeal was untimely under the doctrine of laches where she waited approximately one year to file an appeal after the AJ's decision where the agency did not issue a final order); Cathie K. v. Soc. Sec. Admin., EEOC Appeal No. 2020000209 (Apr. 27, 2021) (doctrine of laches was applicable when complainant did not act with due diligence in filing her appeal until almost one year after receiving the AJ's decision). Complainant has failed to provide any justification for waiting over a year to contact the Commission to pursue an appeal.

CONCLUSION

Accordingly, Complainant's July 19, 2024 appeal is hereby dismissed. See 29 C.F.R. § 1614.403(c).

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 17, 2024

Date