



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

[REDACTED]
Mardell B.,¹
Complainant,

v.

Bill Nelson,
Administrator,
National Aeronautics and Space Administration,
Agency.

Appeal No. 2024004328

Agency No. NCN-24-HQ-00037

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated June 20, 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. Upon review, the Commission finds that Complainant's complaint was improperly dismissed pursuant to 29 C.F.R. § 1614.107(a).

ISSUES PRESENTED

Whether the Agency's final decision (FAD) properly dismissed Complainant's formal complaint for untimely equal employment opportunity (EEO) contact and failure to state a claim, pursuant to 29 C.F.R. § 1614.107(a).

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

At the time of events giving rise to this complaint, Complainant worked as a Program and Management Analyst, GS-14, at Agency Headquarters in Washington, DC. On March 6, 2024, Complainant initiated EEO contact alleging that the Agency subjected her to discrimination based on disability (unspecified) when it did not grant her request to extend her Permanent Change of Station (PCS) benefits. Specifically, Complainant alleged, when she relocated from California to Washington, DC, the Agency would not extend PCS entitlements (real estate purchase allowance) beyond the 2-year time-period given. The extension allowed Complainant a total of 2 years from her enter-on-duty date of March 24, 2021 to complete all aspects of her move. On November 20, 2023, Complainant requested extension of PCS benefits until March 21, 2024. The Agency extended the date to January 3, 2024. Complainant stated that closing for her home was February 13, 2024. The Agency stated that the matter is part of PCS benefits and is not related to the reasonable accommodation process. On April 16, 2024, Complainant filed a formal complaint reiterating her claim.

The Agency dismissed Complainant's complaint pursuant to 29 C.F.R. § 1614.107(a)(2) for untimely EEO contact. The Agency stated that management informed Complainant, on November 28, 2023, that the time period for her PCS benefit was calculated based on her physical report date of January 3, 2022. The Agency stated that Complainant should have had reasonable suspicion of discrimination as early as November 28, 2023, and her initial contact of March 6, 2024 was well beyond the statutory timeframe. The Agency stated further, on January 10, 2024, Complainant's supervisor attempted to have Complainant's PCS-related dates corrected, without success. The Agency stated that Complainant failed to present adequate justification for tolling the regulatory deadline. The Agency also dismissed for failure to state a claim. The instant appeal from Complainant followed.

CONTENTIONS ON APPEAL

On appeal, Complainant stated that her request is for the Agency to grant reasonable accommodation of reconsidering her eligibility date to receive the PCS benefit covering certain closing costs for a new home. Complainant stated that she uses an electric wheelchair, which substantially impacts her decision to purchase a home and it was difficult for her to find suitable housing to accommodate her wheelchair needs.

Complainant added that her parent passed, and two beloved pets were ill and then passed in 2023, and she had to travel back to California for some time as well. The Agency did not make substantive comment on appeal.

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) provides 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. EEOC Regulation 29 C.F.R. §1614.107(a)(2) states that the Agency shall dismiss a complaint or a portion of a complaint that fails to comply with the applicable time limits contained in §1614.105, §1614.106 and §1614.204(c), unless the Agency extends the time limits in accordance with §1614.604(c). EEOC Regulation 29 C.F.R. §1614.105(a)(2) allows the Agency or the Commission to extend the time limit if the complainant can establish that Complainant was not aware of the time limit, that Complainant did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence Complainant was prevented by circumstances beyond her control from contacting the EEO Counselor within the time limit, or for other reasons considered sufficient by the Agency or Commission.

Here, we find that Complainant alleged that the Agency denied her reasonable accommodation as to benefits and privileges of employment, *i.e.*, relocation assistance benefits. The Commission notes that the duty to reasonably accommodate is ongoing.

Complainant's claim addresses an allegation of ongoing reasonable accommodation denial and should be construed as timely raised. See Complainant v. Dep't of Health and Human Service, EEOC Appeal No. 0120130602 (September 12, 2014) (agency improperly dismissed EEO complaint for untimely EEO Counselor contact when management continued to ignore complainant's requests for reasonable accommodation, which complainant asserted were still ongoing).

The Commission has stated that because an employer has an ongoing obligation to provide a reasonable accommodation, failure to provide such accommodation constitutes a violation each time the employee needs it. See "Threshold Issues," EEOC Compliance Manual, at 2-IV (revised July 21, 2005). As such, at the time Complainant contacted the counselor, she was alleging that the Agency remained unwilling to provide her with the accommodation she still needed. Complainant stated, due to her disability, she needed additional time to locate a suitable home with the ability to access and maneuver in her wheelchair and needed the Agency to extend the PCS Benefit timeframe. Complainant stated that she anticipated closing on her home in February 2024 and the Agency ended her PCS benefit on January 3, 2024. We find that Complainant stated a viable claim - denial of reasonable accommodation - and raised it with an EEO Counselor in a timely manner.

CONCLUSION

Based on the above, we REVERSE the Agency's dismissal of Complainant's complaint for failure to state a claim and untimely EEO contact pursuant to 29 C.F.R. 1614.107(a). We REMAND the complaint for further processing consistent 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