



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

[REDACTED]
Trevor F,¹
Complainant,

v.

Janet L. Yellen,
Secretary,
Department of the Treasury
(U.S. Mint),
Agency.

Appeal No. 2024004370

Hearing No. 530-2024-00177X

Agency No. MINT-23-0961

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 24, 2024, dismissing his 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.

ISSUES PRESENTED

Whether Complainant's complaint was properly dismissed for untimely EEO contact and failure to state a claim.

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 Machinist (organizational title Die Manufacturer), WG-11, at the Agency's Philadelphia Mint Office facility in Philadelphia, Pennsylvania. Complainant initiated contact with the Agency's EEO counselor on July 26, 2023.

On November 8, 2023, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of national origin (Polish) and reprisal for prior protected EEO activity when, "on an ongoing basis and through the present," management denied his requests for position-related training.²

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 May 15, 2024, the Agency filed a Motion to Dismiss. On June 24, 2024, the AJ issued "Order Granting Agency's Motion to Dismiss Due to Untimeliness and Failure to State a Claim" [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 almost three-year period of time in which Complainant waited to seek EEO counseling. The AJ also found the Agency correctly concluded that Complainant's claim failed to state a claim for which relief could be granted.

On July 24, 2024, the Agency issued a final order, adopting the AJ's Order in full. Complainant filed the instant appeal.

² Complainant's formal complaint originally had two claims. Claim 2 stated "On June 20, 2023, Complainant was non-selected for the position of Tool Maker under vacancy announcement 23-Mint-399." On December 18, 2023, the second claim was dismissed by the Agency for failure to state a claim, finding Complainant did not allege he applied or was prevented from applying for the position at issue. The AJ also noted the record showed Complainant's last email inquiry about training was in October 2022. Complainant did not challenge the dismissal of Claim 2 on appeal. Claim 1 was accepted by the Agency for investigation and is at issue in the instant appeal.

CONTENTIONS ON APPEAL

On appeal, Complainant provided the Commission with a series of statements in support of Complainant's claim of reprisal and national origin-based discrimination which were not provided to the AJ. As a general rule, no new evidence will be considered on appeal unless there is an affirmative showing that the evidence was not reasonably available prior to or during the investigation. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.A.3. (Aug. 5, 2015). Here, Complainant has indicated that this evidence could not have been obtained prior to or during the hearing before the AJ or the investigation before the Agency. Accordingly, the Commission declines to consider this new evidence on appeal.³

In opposition to the appeal, the Agency notes Complainant raised new claims and put forth new evidence which was not provided before the AJ or during the investigation. The Agency maintains the AJ properly dismissed Complainant's claim as untimely as he delayed almost three years to file a claim regarding training required for a position he was awarded in Fall 2020.

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.

³ In addition, for the first time on appeal, Complainant is alleging the Agency failed to provide him training records. This claim was not raised at any point prior to the instant appeal. We note Complainant may not raise a new claim for the first time on appeal. Rather, Complainant should contact the EEO Counselor if he wishes to pursue a new claim of discrimination.

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 his allegation that he was denied training as a part of his apprenticeship. As noted in the record, Complainant completed his apprenticeship and all required training to be assigned Die Machinist by September 2020. Complainant did not initiate contact with an EEO Counselor until July 26, 2023, which is well beyond the forty-five day limitation period. The record discloses that even if Complainant is attempting to allege before the EEOC AJ that he was denied training as late as January 2023, the AJ noted that Complainant still failed to justify why the time limitation should be tolled. 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.

Additionally, the AJ dismissed Claim 1 for failure to state a claim under 29 C.F.R. § 1614.107(a)(1), finding Complainant failed to show he was "aggrieved" or any training was denied. The AJ noted to the extent Complainant alleges he was denied training necessary for the Die Manufacturer position, his claim fails as he was promoted to the position back in fall 2020. The Commission need not address this additional ground for dismissal as Claim 1 is already dismissed for untimely EEO contact.

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:



Carlton M. Hadden, Director
Office of Federal Operations

January 21, 2025

Date