



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

[REDACTED]
Evelyn S.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Appeal No. 2024004378

Agency No. 1F-441-0171-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 2, 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. For the reasons set forth below, the Commission **AFFIRMS** the Agency's dismissal.

ISSUE PRESENTED

Whether the Agency properly dismissed Complainant's formal complaint pursuant to 29 C.F.R. § 1614.107(a)(1), for 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 Mail Handler at the Agency's Detroit Network Distribution Center in Allen Park, Michigan.

On June 14, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of race (Arab) and religion (Muslim) when, on February 17, 2024, she was moved to another operation before a junior employee. Complainant explained that she was instructed to assist with work in the LCUS Unit, which was outside of her bid unit. She said, according to the Union contract, the first employees that should have been moved were junior employees. But her junior co-workers were allowed to continue working in her bid unit while she worked in the LCUS Unit.

The Agency dismissed Complainant's complaint pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim. Specifically, the Agency found that Complainant failed to allege that she suffered harm or loss with respect to a term, condition or privilege of employment for which there is a remedy.

CONTENTIONS ON APPEAL

Complainant filed a statement reiterating that junior employees should have been moved to the LCUS unit first.

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

An agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that they have been discriminated against by that agency because of race, color, religion, sex, national origin, age or disabling condition. 29 C.F.R. §§ 1614.103, .106(a). An "aggrieved employee" is one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994). An agency shall dismiss a complaint that fails to state a claim. 29 C.F.R. § 1614.107(a)(1).

The Agency correctly found that Complainant's allegations concerning the move from her bid assignment to the LCUS Unit failed to state a claim. That determination is consistent with Commission precedent, which states that being required to work outside of one's typical assignment generally does not state a claim. See, e.g., Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120140519 (Mar. 25, 2014) (distribution clerk who alleged that his supervisor routinely required him to work outside of his bid section failed to state a claim); Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120140108 (Feb. 14, 2014) (mail handler who alleged that a supervisor improperly reassigned him to a different workstation failed to state a claim); Eason v. U.S. Postal Serv., EEOC Appeal No. 0120082626 (Aug. 20, 2008) (employee who alleged that her supervisor required her to work outside of her bid assignment failed to state a claim). Further, Complainant's claims that assignments were not given according to the Union contract should be addressed under the collective bargaining agreement, not in the EEO process.

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint 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

December 18, 2024
Date