



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

[REDACTED]  
Micheline L,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2024004456

Agency No. 2003-580-2024-157272

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision (Dismissal) 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. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons we AFFIRM the Dismissal.

**ISSUES PRESENTED**

Did the Agency correctly dismiss the complaint for untimely filing of the Formal complaint?

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as an Environmental Management Service worker, WG 01-02, at the Agency's

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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.

Michael E. DeBakey Medical Center facility in Houston, Texas. On May 9, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of sex (female) and age (48) when:

1. On January 25, 2024, the Environmental Management Services (EMS) Supervisor (Supervisor), failed to address Complainant's concerns of sexual harassment when a male coworker (Coworker) Housekeeping Aid, said to Complainant, "I want to suck your pussy;"
2. On February 5, 2024, Supervisor failed to address Complainant's concerns and replied, "It's a process" when Complainant reported that Coworker came on the unit in regular clothes "a hoodie" in spite of a no contact order;
3. on March 14, 2024, Supervisor failed to take appropriate corrective action when Complainant reported that Coworker stood by the elevator and walked towards Complainant as if to speak but then turned away violating the no contact order<sup>2</sup>;
4. on March 21, 2024, Supervisor failed to take appropriate corrective action when Complainant reported that Coworker was outside across from her car and made eye contact violating the no contact order.

The Agency dismissed the claims for untimely filing of the Formal complaint, finding that Complainant was sent the Notice of Right to File (Notice), via email, on March 20, 2024, but did not file her Formal complaint until May 9, 2024, which is beyond the 15-day limit. The Dismissal further noted that Complainant was repeatedly notified about the 15-day limit including when she received the Notice and that she provided no valid reason to justify the lateness of her Formal complaint.

#### CONTENTIONS ON APPEAL

Complainant makes no contentions on appeal. The Agency requests that we affirm the Dismissal.

#### 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

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<sup>2</sup> Claims 3 and 4 were added on May 9, 2024.

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. § 1614.106(b) states that a complaint of discrimination must be filed within 15 days of receipt of the notice of right to file. Furthermore, § 107(a)(2) states that the Agency shall dismiss a complaint that fails to comply with the applicable time limits. The Dismissal noted that the record showed Complainant received the Notice on March 20, 2024, via email, but that she did not file her Formal complaint until May 9, 2024, which is beyond the 15-day time limit. The Dismissal further noted that Complainant never timely requested an extension of time, and when asked why her Formal complaint had been submitted late, Complainant explained that:

I had every intent to send the email. I thought it was sent. As you can see that I dated the form with a date of 3/25/2024. I am mentally drained and stressed out and having anxiety attacks. I had experience several run in [sic] with the person of which I filed against. I became worried when I didn't hear anything for [sic] my case manager. I reach [sic] out to [the case manager] on May 9, 2024, stating that I have not heard anything from anyone. [The case manager] asked me to forward the email to her and which I did.

Complainant's response indicates that her late filing was an oversight on her part. To the extent Complainant's explanation can be considered an argument for incapacity, we have consistently held, in cases involving physical or mental health difficulties, that an extension is warranted only where an individual is so incapacitated by their condition that they are unable to meet the regulatory time limits. See Davis v. U.S. Postal Serv., EEOC Request No. 05980475 (August 6, 1998). Claims of incapacity must be supported by medical evidence of incapacity. See Crear v. U.S. Postal Serv., EEOC Request No. 05920700 (Oct. 29, 1992) (complaints of decreased mental and physical capacity, without medical evidence of incapacity, does

not warrant extension of time limits); cf. Maddux v. U.S. Postal Serv., EEOC Request No. 05980302 (Aug. 5, 1999) (psychiatrist's statement that complainant's mental condition rendered her unable to comprehend her legal rights and responsibilities during the relevant time frame was found sufficient to justify extension of time limit); Sohal v. U.S. Postal Serv., EEOC Request No. 05970461 (Apr. 24, 1997) (psychiatrist's statement that complainant's severe depression and anxiety rendered him unable to make decisions found sufficient to justify extension). However, evidence that a complainant has sought treatment does not, without evidence of incapacity, justify an extension of time. See Galbreath v. Dep't of the Navy, EEOC Request No. 05980927 (Nov. 4, 1999) (evidence that complainant was under great mental stress, and received an evaluation/treatment, did not render the complainant incapacitated). See also Dos Santos v. Dep't of Veteran's Affairs, EEOC Request No. 01992476 (Jan. 3, 2001); Lindsey T. v EEOC, EEOC Request No. 0120162544 (Nov. 27, 2019); King v. Dep't of Veteran's Affairs, EEOC Request No. 01A04960 (Dec. 22, 2000). Complainant has not provided any medical evidence of incapacity during the relevant time.

Following a review of the record we find that Complainant has not provided sufficient explanation for her untimely filing or argument for extension or waiver of the time limits. Therefore, the Agency correctly dismissed the complaint.

### CONCLUSION

The Dismissal 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

January 22, 2025

Date