



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]

Merrill O,¹
Complainant,

v.

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

Appeal No. 2024004457

Hearing No. 410202400320X

Agency No. 4G300013924

DISMISSAL OF APPEAL

Complainant appealed to the Equal Employment Opportunity Commission ("EEOC" or "Commission"), from the Agency's June 5, 2024 dismissal of 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. Upon review, the Commission DISMISSES Complainant's appeal.

On April 13, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of race (African-American), sex (male), and reprisal for protected EEO activity. The Agency framed Complainant's claim as follows:

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.

1. On July 29, 2023 and October 4, 2023 Complainant was not paid Continuation of Pay ("COP") for his on-the-job injury; and
2. On January 12, 2024 Complainant was not allowed in the building to meet with his union representative regarding his cases with the Office of Workers Compensation Program ("OWCP").

Complainant's Formal EEO Complaint included the following additional allegation of reprisal:

3. On April 3, 2024, Complainant was not permitted to access his locker to obtain his belongings.

The Agency dismissed Claim 1 for untimely contact with an EEO Counselor pursuant to 29 C.F.R. § 1614.107(a)(2), or, in the alternative, for failure to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1). The Agency dismissed Claim 2 for failure to state a claim 29 C.F.R. § 1614.107(a)(1). The Agency's decision did not address Claim 3, however the EEO Counselor's Report notes that Complainant did not raise this matter during counseling.²

The June 5, 2024 dismissal notified Complainant that if he disagreed with the Agency's decision, he could either appeal to the EEOC's Office of Federal Operations ("OFO") or file a civil action in federal district court. 29 C.F.R. §§ 1614.110(b), 401(a). The dismissal also provided detailed instructions for Complainant to take either action, including notice that Complainant had to file within 30 days, *or risk having his complaint dismissed*.

On June 19, 2024, Complainant filed his appeal with the local EEOC District Office, seeking a hearing before an EEOC Administrative Judge ("AJ"). On July 10, 2024, the Agency filed a "Motion to Dismiss" Complainant's hearing request for lack of jurisdiction. The Agency's Motion correctly explained that pursuant to EEOC regulations, complainants have no right to a hearing when an agency dismisses an entire complaint under 29 C.F.R. § 1614.107 and does not investigate any claims asserted in a formal complaint. The Motion also noted that the Agency's June 5, 2024 dismissal included instructions for how to appeal such a dismissal to OFO, including the 30 day deadline.

² The Agency concluded EEO Counseling and issued Complainant's Notice of Right to File a formal EEO complaint on April 1, 2024.

On July 14, and 15, 2024, *rather than mitigate his error* and file an appeal with OFO, Complainant filed a motion "Not to Dismiss" with the AJ. Complainant's Motion stated, without elaboration, that there were "many ways" Complainant could appeal, and that his complaint required a hearing. On July 29, 2024, the EEOC AJ assigned to the complaint dismissed the matter for lack of jurisdiction.

EEOC Regulation 29 C.F.R. §1614.402(a) provides that appeals to the Commission must be filed within 30 calendar days after receipt of the Agency's decision. Complainant received the Agency's decision on June 5, 2024, but did not file an appeal with the Commission until July 29, 2024, which is beyond the 30-day deadline to file. Complainant was on notice of the appeal process and deadline to file. Although he submitted a brief in support of the instant appeal, Complainant did not offer any explanation or justification for his failure to timely file with OFO.

Accordingly, Complainant's July 29, 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

January 13, 2025
Date