



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

██████████
Garland C,¹
Complainant,

v.

Janet L. Yellen,
Secretary,
Department of the Treasury
(Internal Revenue Service),
Agency.

Appeal No. 2024004474

Agency No. IRS-24-0767

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 22, 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. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the reasons presented below, we AFFIRM the Agency's final decision dismissing Complainant's complaint.

ISSUES PRESENTED

Whether the Agency properly dismissed Complainant's formal complaint pursuant to 29 C.F.R. § 1614.107(a)(2) for untimely EEO counselor contact.

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 Lead Contact Representative, GS-0962-09 at the Agency's SB/SE Campus Collection Operation facility in Franklin, Tennessee.

On June 28, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of race (African-American), sex (male), color (Black), and age (YOB: 1970) when, on March 13, 2024, his supervisor yelled at him in a demeaning and emasculating manner in the presence of his colleagues and subordinates.

The Agency dismissed the claim pursuant to 29 C.F.R. § 1614.107(a)(2) for untimely EEO counselor contact. Complainant filed the instant appeal.

CONTENTIONS ON APPEAL

Complainant did not submit a brief or statement in support of his appeal.

The Agency contends on appeal that it is undisputed that Complainant did not contact an EEO counselor prior to the expiration of the 45-day time limit and there is no evidence in the record to support a determination to excuse the untimely initiation of EEO counseling.

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 forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) days of the effective date of the action. EEOC Regulation 29 C.F.R. § 1614.107(a)(2) provides for the dismissal of complaints where the complainant did not initiate contact with an EEO Counselor within forty-five (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. The Commission's regulations provide that these time limits are subject to waiver, estoppel, and equitable tolling. 29 C.F.R. § 1614.604(f).

Here, the matter alleged to be discriminatory occurred on March 14, 2024. Thus Complainant needed to contact an EEO counselor on or before April 29, 2024² to comply with the 45-day time limit. Complainant's intake form states his initial EEO counselor contact occurred on May 3, 2024 (Complaint File, p. 45), but the EEO counselor report states May 2, 2024 (Complaint File, p. 69). Even giving Complainant the benefit of the doubt, May 2, 2024 is beyond the time limit for contacting an EEO counselor.

In his formal complaint, Complainant stated "I made my attempt to reach out to EEO 03/15/2024." (Complaint File, p. 76). However, he did not provide any further explanation. On July 10, 2024, an Equal Employment Opportunity Specialist emailed Complainant asking him to provide evidence of his attempt to initiate contact with the EEO Office with the intent to file a discrimination complaint. Complainant was asked to provide this information by close of business on July 12, 2024. (Complaint File, p. 35). Complainant responded on July 25, 2024 (after the dismissal decision had already been issued). He apologized for his late response, indicating that he had been on leave. He stated he would email the information he had to show that he "acted well within the 45 days granted to submit my eeo[sic] complaint!" (Complaint File, p. 36). However, the record does not show he ever emailed this information to the EEO specialist. He also did not provide any further explanation or evidence on appeal.

² 45 days from March 14, 2024 is Sunday, April 28, 2024. Because the last day of the period falls on a Sunday, it is extended to the next business day. 29 C.F.R. § 1614.604(g).

A complainant satisfies the requirement of EEO Counselor contact by contacting an agency official “logically connected” with the EEO process, even if that official is not an EEO Counselor, *and* by exhibiting an intent to begin the EEO process. See Jayna A. v. U.S. Postal Serv., EEOC Appeal No. 2019000179 (Nov. 29, 2018), citing Cristantiello v. Dep't of the Army, EEOC Appeal No. 01992817 (Dec. 19, 2000), Allen v. U.S. Postal Serv., EEOC Request No. 05950933 (July 9, 1996); Floyd v. National Guard Bureau, EEOC Request No. 05890086 (June 22, 1989). The Commission looks at both elements to determine whether contact was sufficient.

Further, on multiple occasions, we have deemed complainants’ “bare assertions” of timely EEO counselor contact insufficient to reverse a dismissal without concrete evidence that complainants initiated contact within the 45-day period. See, e.g., Bret E. v. Dep’t of Transportation, EEOC Appeal No. 0120161763 (Jul. 27, 2016) (finding that complainant failed to provide sufficient justification to extend the 45-day window when the complainant did not submit evidence demonstrating that he initiated an electronic complaint “aside from his bare assertion”); Clyde B. Harvey v. Dep’t of Justice, EEOC Appeal No. 01A23352 (Sep. 3, 2003) (upholding an agency's dismissal of a complaint for untimeliness when the complainant produced no evidence to support his claim that the agency's EEO office failed to respond to his earlier attempt at contact).

Complainant has not provided any evidence to substantiate his claim that he contacted an EEO counselor or other individual logically connected with the EEO process on March 15, 2024. Nor has he substantiated that he expressed his intent to being the EEO process on that date.

Without further explanation and evidence, Complainant has not shown why the time limits in his case should be subject to waiver, estoppel or equitable tolling. As such, dismissal for untimely counselor contact pursuant to 29 C.F.R. § 1614.107(a)(2) is appropriate.

CONCLUSION

For the foregoing reasons, we AFFIRM the Agency’s dismissal of the formal complaint.

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 14, 2025

Date