



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

[REDACTED]
Devona V,¹
Complainant,

v.

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

Appeal No. 2024004522

Agency No. 4B-200-0133-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 3, 2024, dismissing her complaint of unlawful employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the reasons discussed below, we affirm the Agency's final decision.

ISSUES PRESENTED

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

BACKGROUND

During the relevant time, Complainant worked as a City Carrier, Grade 01/A, at the Agency's Germantown Post Office in Germantown, Maryland.

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.

On March 4, 2024, Complainant initiated contact with the EEO Office for pre-complaint processing. On June 18, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on disability when:

1. On January 12, 2024, Complainant was given an Investigative Interview (II) and subsequently issued a Letter of Warning (LOW) on January 17, 2024;
2. On December 26, 2023, Complainant was sent a Return to Duty letter; and,
3. On an unspecified date, management told other employees Complainant was lazy and didn't want to work and they were never going to let Complainant return.

On July 3, 2024, the Agency issued a final decision dismissing the formal complaint. The Agency dismissed Claims 1 and 2 pursuant to 29 C.F.R. § 1614.105(a)(1) for untimely EEO contact. The Agency dismissed Claim 3 pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim.²

Complainant filed the instant appeal.

CONTENTIONS ON APPEAL

On appeal, Complainant reiterates her claims in her formal complaint.³

The Agency did not submit a brief on appeal.

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

² The Agency dismissal also noted that Claim 2 also failed to state a claim.

³ On appeal, Complainant also raises new allegations. Complainant is advised that if she wishes to pursue the additional allegations raised for the first time on appeal, she should initiate contact with an EEO Counselor. The Commission will not accept a new claim raised on appeal.

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

The regulation at 29.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.

The most recent alleged discriminatory event occurred on January 12, 2024, but Complainant did not initiate contact with an EEO Counselor until March 4, 2024, which is beyond the forty-five (45) day limitation period.

On appeal, Complainant argues that the 45-day time limit should be extended because she did not have knowledge of the 45-day limitation period. However, the Postmaster of Germantown Post Office submitted an affidavit, stating that an Agency EEO poster advising employees of the 45-day time limit has been posted in breakroom and restroom conspicuous locations at the Germantown Post Office for the past six years she worked at the location. The Postmaster stated one poster was in the breakroom, and another poster near the restrooms. Consequently, we find the supervisor's verification of the posting in place years prior to the alleged discriminatory actions sufficient for the Agency to prove that Complainant was aware of the correct EEO time limit. Complainant has not provided sufficient justification for extending or tolling the time limit.

The Commission finds that Complainant's Claims 1 and 2 were properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely EEO Counselor contact.

Regarding Claim 3, the Agency dismissed this matter for failure to state a claim.⁴ Upon review, Complainant is alleging a claim of hostile work environment. In Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993), the Supreme Court reaffirmed the holding of Meritor Savings Bank v. Vinson, 477 U.S. 57, 67 (1986), that harassment is actionable if it is sufficiently severe or pervasive to alter the conditions of the complainant's employment. The Court explained that an "objectively hostile or abusive work environment [is created when] a reasonable person would find [it] hostile or abusive:" and the complainant subjectively perceives it as such. Harris, supra at 21-22. Thus, not all claims of harassment are actionable. Where a complaint does not challenge an agency action or inaction regarding a specific term, condition or privilege of employment, a claim of harassment is actionable only if, allegedly, the harassment to which the complainant has been subjected was sufficiently severe or pervasive to alter the conditions of the complainant's employment.

Here, Complainant alleged in the formal complaint management made comments to her co-workers about her not returning to work. We find, when viewed collectively, the alleged incidents are not sufficiently severe or pervasive to set forth an actionable claim of harassment. The Commission finds that Complainant's Claim 3 was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim.

CONCLUSION

The Agency's final decision dismissing the formal complaint is AFFIRMED, for the reasons discussed above.

⁴ As noted, the Commission found the Agency properly dismissed Claim 2 as untimely raised with an EEO Counselor. Accordingly, the Commission need not address the additional dismissal ground the Agency noted in the decision for Claim 2.

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

November 27, 2024

Date