



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

[REDACTED]
Brendon L.,¹
Complainant,

v.

Gary Washington,
Acting Secretary,
Department of Agriculture,
Agency.

Appeal No. 2024004523

Agency No. ARS-CF-2024-00033

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision (FAD) dated July 3, 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 Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the reasons presented below, we REVERSE the Agency's final decision dismissing the complaint and REMAND the matter for further processing.

ISSUES PRESENTED

Whether the Agency properly dismissed Complainant's formal complaint.

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 was an applicant for employment with the Agency.

On January 26, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of disability (physical) and reprisal (prior EEO activity). The Agency accepted the formal complaint and framed Complainant's claims as follows:

- A. On or after October 10, 2023, the Agency did not respond to Complainant's inquiry concerning the Schedule A hiring authority.
- B. In and after 2021, the Office of the Assistant Secretary for Civil Rights (OASCR) did not properly process Complainant's prior EEO complaints.

The Agency dismissed claim A for failure to state a claim. Claim B was dismissed on two grounds, i.e., dissatisfaction with the EEO process, and for collateral attack on another forum.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant argues in part, that a conflict of interest exists by OASCR personnel having jurisdiction over his EEO complaint. Complainant stated that two officials at OASCR discriminated against him, and OASCR's Director issued the FAD, dismissing his complaint. Complainant claims that the dismissal was an "attempt to hide ongoing misconduct . . . [at] OASCR . . . to prevent an investigation involving management."

The Agency filed a brief in response arguing that its dismissal should be upheld, for the reasons described in the FAD. The Agency did not address the conflict-of-interest issue.

On September 3, 2024, Complainant submitted a document, arguing that the Agency's brief should not be considered because it was filed late.

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

Agency's Opposition Brief

Complainant submitted a document, arguing that the Agency's brief should not be considered because it was filed late. Complainant correctly cited to 29 C.F.R. § 1614.403(f) and stated that the Agency was required to submit its brief within 30 days of receiving his August 1, 2024, appeal statement. However, he did not provide any evidence to show that the Agency received his appeal statement on August 1, 2024. Absent a receipt for delivery, that delivery is accomplished within 5 days of mailing. See Chereise D. White v. USPS, EEOC Appeal No. 0120070306 (Feb. 16, 2007). Therefore, the 30-day timeframe should be computed as commencing 5 days from August 1, 2024. To be considered timely, the Agency should have filed its brief by September 5, 2024. We find that the Agency's brief was filed timely because the Agency filed it on September 3, 2024. The brief has been considered in this decision.

Conflict of Interest

EEOC Management Directive (MD-110), Chapter I, (August 5, 2015) provides that, "[a]gencies must avoid conflicts of position or conflicts of interest as well as the appearance of such conflicts." For example, the same agency official(s) responsible for executing and advising on personnel actions, may not also be responsible for managing, advising, or overseeing the EEO pre-complaint and complaint processes. See Smith v. United States Postal Service, EEOC Request No. 05920962 (September 7, 1993); Schultz v. Department of the Navy, EEOC Appeal No. 0120063798 (November 16,

2007). Those processes generally challenge the motivations and impacts of personnel actions and decisions. In order to maintain the integrity of the EEO investigative and decision-making processes, these functions must be kept separate from the personnel function.

The record shows that on January 11, 2024, Complainant asked the EEO Counselor at OASCR if another Agency could process his complaint because there was a conflict of interest. Complainant stated that there was a conflict of interest because he named two officials at OASCR as discriminating officials in his complaint, namely, the Executive Director and Deputy Assistant Secretary for Civil Rights. He raised the conflict-of-interest issue again on appeal, when he declared that OASCR's Director dismissed his complaint to cover up her co-workers/staff's discrimination.

The Commission finds that it was clearly a conflict of interest for OASCR's Director to issue a decision dismissing Complainant's discrimination claim because her co-workers/staff were officials charged with discrimination. Based on the foregoing, this case is remanded to the Agency for an office other than OASCR to process Complainant's complaint and issue a new decision. The individuals who process the complaint and issue the decision should not be connected, in any manner, to the allegations raised therein. Since the Commission finds that OASCR's Director should have recused herself from a decision-making role, we will not address the Agency's grounds for dismissing claim A or claim B.

CONCLUSION

Accordingly, the Agency's decision dismissing the complaint is REVERSED. We REMAND the complaint for further processing in accordance with this decision and applicable regulations. On remand the Agency must ensure that the individuals responsible for processing the remanded allegations are not individuals charged by Complainant as participating in the discrimination or retaliation that he was subjected to.

ORDER (E0224)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued.

The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, or a copy of the final agency decision ("FAD") if Complainant does not request a hearing

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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 (R0124)


This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. 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. **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 28, 2025
Date