



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

[REDACTED]
Kathey Z,¹
Complainant,

v.

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

Appeal No. 2024004525

Agency No. 4B-100-0117-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision 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. Upon review, the Commission finds that Complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely EEO Counselor contact.

ISSUES PRESENTED

Whether the Agency properly dismissed Complainant's formal complaint 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

During the period at issue, Complainant worked as a Sales, Services, Distribution Associate at the Agency's Boulevard Station in The Bronx, New York.

On March 3, 2024, Complainant initiated EEO Counselor contact but the Agency and Complainant were unable to resolve the matter through informal counselling.

On July 2, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on religion (Hebrew Pentecostal) when:

1. On November 14, 2023 or November 21, 2023, management denied Complainant's request for a religious accommodation not to work on Saturdays; and
2. On January 13, 2024, management denied her request for a religious accommodation not to work on Saturdays.

On June 5, 2023, the Agency issued a final decision dismissing the formal complaint. The Agency determined that Claim 1) and Claim 2) failed to comply with the applicable forty-five-day time limit for EEO Counselor contact under 29 C.F.R. §§ 1614.105(a)(1) and 1614.107(a)(2).

CONTENTIONS ON APPEAL

Complainant did not submit a brief or any argument in support of her 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 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. § 1614.107(a)(2) states, in pertinent part, that the Agency shall dismiss a complaint for failure to comply with the applicable time limits. EEOC Regulation 29 C.F.R. § 1614.105(a)(1) provides, that complaints of discrimination must be brought to the attention of 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 forty-five days of the effective date of the action. Time limits are subject to waiver, estoppel, or equitable tolling. 29 C.F.R. § 1614.604(c).

The record discloses that the latest alleged discrete discriminatory event occurred on January 13, 2024, but that Complainant did not initiate contact with an EEO Counselor until March 3, 2024, which is beyond the forty-five-day limitation period.² On appeal, Complainant has presented no persuasive arguments or evidence warranting an extension of the time limit for initiating EEO Counselor contact.

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint 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.

² We considered, but rejected, Complainant's claims in the context of either an ongoing request for accommodation or an alleged recurring violation.

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

December 11, 2024
Date