



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Laverne O.,¹
Complainant,

v.

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

Appeal No. 2024004555

Agency No. 1F-441-0188-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 23, 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 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)(1) for failure to state a claim and under the doctrine of laches for failure to contact an EEO counselor until over 10 years after the alleged discriminatory acts.

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

Complainant previously worked for the Agency as a Mail Processing Clerk in Detroit, Michigan before suffering an on-the-job injury. His subsequent medical restrictions required a change in position and he briefly worked in IT as a Call Center Agent before notifying the Agency of a recurrence of his injury in 2007. At some point Complainant began receiving benefits from the Department of Labor's Office of Workers' Compensation Programs (OWCP) and there was later a dispute about Complainant's medical restrictions and benefits.

On July 3, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of disability (not specified) and reprisal for prior protected EEO activity when: On or around June 11, 2011, management assured Complainant that he would be reinstated into the payroll system after his injury so he could obtain Office of Worker's Compensation (OWCP) benefits, and subsequently, on or around February 21, 2024, OWCP informed Complainant that he had not been reinstated and was not entitled to benefits.

The Agency dismissed these claims pursuant to 29 C.F.R. § 1614.107(a)(2) for untimely EEO counselor contact and under the doctrine of laches. In the alternative, the Agency dismissed the claims pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim finding that Complainant was attempting to lodge a collateral attack on the proceedings of another forum, namely the OWCP process. Complainant filed the instant appeal.

CONTENTIONS ON APPEAL

On appeal, Complainant states that the critical information that he was not on the Agency's rolls and had been separated on August 20, 2010 was not communicated to him until February 21, 2024, and he promptly contacted an EEO counselor upon learning this information. He also disputes the Agency's affidavit stating that an EEO poster with the relevant time limits was displayed at his facility. Complainant stated the call center where he worked in 2011 is no longer at the address where it was which raises questions about the validity of the affidavit. Lastly, Complainant asserts he is not challenging OWCP's decision, but instead the Agency's failure to reinstate him in the payroll system.

The Agency did not file a brief or statement in connection with this 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. §1614.105(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. The Commission has adopted a "reasonable suspicion" standard (as opposed to a "supportive facts" standard) to determine when the forty-five (45) day limitation period is triggered. See Howard v. Dep't of the Navy, EEOC Request No. 05970852 (Feb. 11, 1999). Thus, the time limitation is not triggered until a Complainant reasonably suspects discrimination, but before all the facts that support a charge of discrimination have become apparent.

The Commission also has consistently held that a complainant must act with due diligence in the pursuit of his EEO claim or the doctrine of laches may apply. See Fernando D. v. Dep't of the Air Force, EEOC Appeal No. 2022001505 (July 20, 2023) (finding the doctrine of laches applied where complainant waited three years from the date of the alleged discrimination to contact an EEO counselor); Corie E. v. Dep't of Veterans Affairs, EEOC Appeal No. 2023000437 (Mar. 23, 2023) (finding that complainant's untimely EEO contact four years after the last discriminatory action mandated dismissal under the doctrine of laches); James S. v. U.S. Postal Serv., EEOC Appeal No. 2023001453 (April 18, 2023) (finding doctrine of laches applies where complainant waited nearly two years after the alleged discrimination to contact an EEO counselor); Becker v. U.S. Postal Serv., EEOC Appeal No. 01A45028 (Nov. 18, 2004) (finding that the doctrine of laches applied because a complainant waited more than two years from the date of the alleged discriminatory events before contacting an EEO

Counselor). The doctrine of laches is an equitable remedy under which an individual's failure to pursue diligently his course of action could bar his claim. See O'Dell v. Dep't of Health and Human Services, EEOC Request No. 05901130 (Dec. 27, 1990).

Here, Complainant waited over a decade after the allegedly discriminatory acts to contact an EEO counselor. Although he contends he did not learn of the discriminatory action until February 2024, he informed the EEO counselor that management assured him on June 11, 2011 that he had been reinstated to the payroll system. In his formal complaint, he stated that HRM Manager ordered all reemployment actions for Complainant be stopped on June 20, 2011, and that on December 27, 2011, HRM Manager was made aware that Complainant had not been paid for time worked at the call center. Thus Complainant should have reasonably suspected discrimination well before 2024 and he should have acted with due diligence to pursue his claims. Because Complainant did not act with reasonable diligence in contacting an EEO Counselor, the doctrine of laches requires dismissal.

EEOC Regulation 29 C.F.R. §1614.105(a)(2) allows the Agency or the Commission to extend the time limit if Complainant can establish that Complainant was not aware of the time limit, that Complainant did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence complainant was prevented by circumstances beyond her control from contacting the EEO Counselor within the time limit, or for other reasons considered sufficient by the Agency or Commission.

We are not persuaded by Complainant's arguments regarding the display of an EEO poster at his work location as the record does reflect that Complainant has previously engaged in EEO activity, making informal EEO contact in 2009 and filing a formal complaint in 2010. See Dominique N. v. U.S. Postal Serv., EEOC Appeal No. 2023003580 (Nov. 13, 2023) (complainant deemed to have constructive knowledge of the EEO complaint process and the applicable time periods for filing claims where the record reflected he had engaged in prior EEO activity). We also note that Complainant did not state that he was unaware of the time limit. Thus we find that, on appeal, Complainant has presented no persuasive arguments or evidence warranting an extension of the time limit for initiating EEO counselor contact.

After a review of the record in its entirety and consideration of all statements and arguments submitted on appeal, including those not addressed herein, it is the decision of the Equal Employment Opportunity Commission to affirm the Agency's dismissal. Because we find the Agency properly dismissed the complaint for untimely EEO counselor contact based on the doctrine of laches, we decline to address the Agency's alternative grounds for dismissal here.²

CONCLUSION

Based on the foregoing, we AFFIRM the Agency's final decision dismissing Complainant's 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).

² We also note the record reflects that Complainant filed an MSPB appeal on this same matter. Because we find the Agency properly dismissed the EEO complaint on other grounds and the MSPB appeal contains additional claims, we do not address MSPB jurisdiction here.

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 21, 2025

Date