



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

[REDACTED]
Jaleesa P,¹
Complainant,

v.

Benjamine Huffman,
Acting Secretary,
Department of Homeland Security
(Transportation Security Administration),
Agency.

Appeal No. 2024004556

Agency No. HS-TSA-00496-2024

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated July 9, 2024, dismissing a formal 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. For the reasons discussed below, we affirm the Agency's final decision.

ISSUES PRESENTED

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

BACKGROUND

During the relevant time, Complainant worked for the Agency as a Transportation Security Officer, F-SV-1802 in Romulus, Michigan.

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 December 12, 2023, Complainant initiated contact with an Equal Employment Opportunity (EEO) Counselor.

On February 15, 2024, the Transportation Security Administration (TSA) notified Complainant of the conclusion of EEO counseling and of Complainant's right to file a formal complaint. The Notice informed Complainant of his right to file a formal EEO complaint within 15 calendar days of receipt of the Notice.

On March 8, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on race (Arab), national origin (Palestinian), religion (Islam), and reprisal for prior protected EEO activity.

On July 9, 2024, the Agency issued the instant final decision, dismissing the formal complaint as untimely filed. The Agency found that Complainant's explanation, which was that the untimely complaint was due to her moving from Ohio to Michigan, does not sufficiently suggest that Complainant was prevented by circumstances beyond her control from satisfying the timeliness requirement during the entire period at issue.

Complainant filed the instant appeal.

CONTENTIONS ON APPEAL

On appeal, Complainant argues she was in the process of moving to a different state during the timeframe. Complainant stated the move itself was the result of the harassment alleged in her EEO complaint. Complainant stated the "moving process, getting a new residence, and acclimating to anew atmosphere led to [her] filing a few days after the 15-day deadline."

In opposition to the appeal, the Agency maintains the record clearly shows Complainant received the notice, was not so incapacitated as to prevent her from timely filing a formal complaint but failed to do so. The Agency argues Complainant failed to provide justification as to why the timeframe should be tolled and the dismissal should be affirmed.

STANDARD OF REVIEW

The Agency's final 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

The record discloses that Complainant received the notice of right to file a formal complaint on February 15, 2024. According to Agency records, the February 15, 2024, Notice of Right to File was sent to Complainant via email at her email address of record at 9:45 p.m., and Complainant viewed the email at 10:17 p.m. that same day. Although the notice indicated that Complainant had to file a formal complaint within fifteen calendar days of its receipt, Complainant did not file her formal complaint until March 8, 2024, which is beyond the limitation period.

Complainant does not dispute that she was provided Notice of Right to File on February 15, 2024, or that she was aware of the time limitation. Rather, Complainant argues she was in the process of moving to Michigan during the time frame. Complainant contributed the move itself to the alleged harassment she raised in her EEO complaint.

The Commission has consistently held, in cases involving physical or mental health difficulties, that an extension is warranted only where an individual is so incapacitated by her condition that she is unable to meet the regulatory time limits. See Davis v. U.S. Postal Serv., EEOC Request No. 05980475 (Aug. 6, 1998); Crear v. U.S. Postal Serv., EEOC Request No. 05920700 (Oct. 29, 1992). Complainant has not shown that she was so incapacitated to render her physically unable to timely file a formal complaint. As Complainant has not offered adequate justification to warrant an extension of the time limit for filing the complaint, the Commission finds that Complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(2), due to the untimely filing of the formal complaint.

CONCLUSION

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.

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 29, 2025

Date