



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Jenee W,¹
Complainant,

v.

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

Appeal No. 2024004577

Agency No. 4J-606-0212-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision (Dismissal) dated July 24, 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. For the reasons stated below, we REVERSE the Dismissal.

ISSUES PRESENTED

Whether the Agency correctly dismissed the complaint for untimely EEO Counselor contact and for failure to state a claim.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier, 01 Q, at an unidentified Agency work facility in Glenview,

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.

Illinois. On July 7, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of race (White), national origin (Ukraine), sex (female), color (White), and age (49) when:

1. On April 25, 2024, a co-worker who had previously assaulted Complainant in 2023, was returned to work;
2. On May 30, 2024, a co-worker made false statements against Complainant when the co-worker said that Complainant went to her route on her non-scheduled day;
3. On dates not specified since May 22, 2024, the keys to Complainant's assigned vehicle were missing;
4. On or around June 18, 2024, management made an inappropriate comment during a service talk; and
5. On June 26, and other dates not specified, management violated arrow key and vehicle policies.

The Agency dismissed claim 1 for untimely EEO Counselor contact and the remaining claims for failure to state a claim, finding that the actions complained of were insufficiently severe to constitute harassment. With regard to claim 1, the Dismissal noted that Complainant had filed a previous complaint under Agency number 4J-606-0104-24 "that was dismissed on May 24, 2024. . . . You should have brought forth this issue in your prior complaint but you failed to do so. Therefore, this issue is considered untimely."

CONTENTIONS ON APPEAL

Complainant contends that she states valid claims of harassment. The Agency makes no contention 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 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

With regard to claim 1, we note that EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination be brought to the attention of the Equal Employment Opportunity 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 Dismissal found that Complainant contacted a Counselor on June 4, 2024, and concluded “[b]ased on the Case Chronology [sic] just described, your request for pre-complaint counseling was made over 45 days after the issue alleged to be discriminatory.” We note, however, that the record shows that the co-worker who allegedly assaulted Complainant was returned to the office on April 25, 2024. Complainant’s June 4, 2024, Counselor contact, therefore, was 40 days after the effective date of the action and was thus within the forty-five (45) day limitation period by five days and was timely.

With regard to the Dismissal’s argument about another Complaint, we note initially that the Agency has not included copies of such a complaint. Where, as here, there is an issue of timeliness, “[a]n agency always bears the burden of obtaining sufficient information to support a reasoned determination as to timeliness.” Guy, v. Department of Energy, EEOC Request No. 05930703 (January 4, 1994) (quoting Williams v. Department of Defense, EEOC Request No. 05920506 (August 25, 1992)). In addition, in Ericson v. Department of the Army, EEOC Request No. 05920623 (January 14, 1993), the Commission stated that “the agency has the burden of providing evidence and/or proof to support its final decisions.” See also Gens v. Department of Defense, EEOC Request No. 05910837 (January 31, 1992). In the instant case, the Agency has provided insufficient evidence of a prior complaint.

Furthermore, even assuming *arguendo* the existence of such an earlier complaint, that does not justify the Dismissal’s finding that claim 1 should be dismissed. According to the Dismissal, the prior complaint was dismissed by the Agency on May 24, 2024. Such a dismissal, however, does not act to shorten a complainant’s time-limit for Counselor contact. Complainant had 45 days from April 24, 2024, to raise the matter, and given the Agency’s contention that the prior complaint was dismissed roughly two weeks before the end of the 45-day period, it is disingenuous of the Agency to expect Complainant, while still within the 45-day regulatory period, to seek to amend a complaint that had been dismissed.

Instead, Complainant did the logical and required thing in timely contacting a Counselor, seeking to initiate a new complaint. We therefore find the Dismissal erred in finding that claim 1 was untimely.

With regard to the remaining claims, the Dismissal found they were insufficiently severe and/or pervasive to state a claim of harassment, including retaliatory harassment. The Dismissal's finding, however, was not based on any evaluation of harm caused by the incident in claim 1, because that claim was erroneously dismissed for untimely Counselor contact. Given that we find Complainant's Counselor contact to have been timely, any evaluation of the severity or pervasiveness of any harassment should have included claim 1. By failing to include all the incidents, we find that the Dismissal has not shown that the harassment was insufficiently severe and/or pervasive to state a claim of harassment, including retaliatory harassment.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we VACATE the Dismissal and REMAND the claim for further processing in according with this decision and the Order below.

ORDER (E0618)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108 et seq. 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, a copy of

complainant's request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

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 21, 2025

Date