



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

[REDACTED]
Myrna S.,¹
Complainant,

v.

Martin J. O'Malley,
Commissioner,
Social Security Administration,
Agency.

Appeal No. 2024004614

Agency No. BOS-23-0754-SSA

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 19, 2024, dismissing her complaint of unlawful employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. Upon review, 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.

ISSUES PRESENTED

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

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 worked as a Customer Service Representative at the Agency's Augusta Field Office in Augusta, Maine. On July 28, 2023, Complainant initiated equal employment opportunity (EEO) contact alleging that the Agency discriminated against her based on disability (unspecified) when:

1. on May 10, 2023, it denied Complainant's reasonable accommodation request;
2. between May 10, 2023 and July 6, 2023, it subjected Complainant to nonsexual harassment regarding denial of accommodation, denial of representation at a management meeting, and failure to approve leave without pay; and
3. on July 6, 2023, it constructively discharged Complainant.

On October 26, 2023, via email, the Agency issued Complainant a Notice of Right to File a Formal Equal Employment Opportunity Complaint ("NORF"). In the NORF, the Agency stated:

[D]ue to COVID-19, the process for filing formal complaints has changed to address COVID-19 teleworking. If you are interested in filing a formal EEO complaint, please be advised that the Office of Civil Rights and Equal Opportunity (OCREO) at SSA Headquarters, which will process your formal EEO complaint, is not able to accept mail via USPS or other delivery services at this time. Therefore, you can file your formal complaint electronically while OCREO is teleworking due to COVID-19. . . .

Please submit the formal complaint to the following email address: ^OCREO Formal EEO Complaints². . . .

Please note that if you decide to file a formal complaint, you must do so within 15 CALENDAR DAYS AFTER RECEIPT OF THIS NOTICE.

On November 6, 2023, Complainant sent an e-fax to 212-336-3790 with the subject of "Formally filing my EEO complaint." The record shows the fax number is that of the New York District Office of the EEOC, not the Agency.

² The Agency provided the email address as a hyperlink.

Subsequently, on April 18, 2024, Complainant sent an email to the assigned EEO Counselor asking, "Where are we with this case?" The EEO Counselor informed Complainant that the matter had been closed out with the informal complaint and a formal EEO complaint was not filed. Complainant responded that she filed a formal EEO complaint via fax on November 6, 2023.

On July 19, 2024, the Agency issued a final decision (FAD) dismissing Complainant's formal complaint pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely filing of the formal complaint. The FAD found that Complainant attempted to file her formal complaint by faxing it to EEOC's New York District Office, instead of submitting it to SSA, the agency that allegedly discriminated against her. The FAD found that the Agency informed Complainant of the proper way to file her complaint and it is unclear why she faxed it to EEOC instead. Further, the FAD noted that Complainant communicated with the assigned EEO Counselor via email and, if she had questions about electronic filing, could have asked him. The FAD stated that the Commission has held filing at the wrong address does not constitute a proper filing, even if done so mistakenly, and does not toll the statutory timeframe. Lastly, the FAD found that the doctrine of laches applies as Complainant failed to pursue her claim of discrimination for over five months. The instant appeal from Complainant followed.

CONTENTIONS ON APPEAL

On appeal, Complainant stated that the Agency provided a hyperlink that did not work for filing her formal complaint, so she had to figure out on her own where to send her formal complaint. Complainant asked the Commission to reverse the Agency dismissal, stating that she was not provided correct information for filing her complaint electronically. She added that five months was not an inordinate amount of time to follow up on the status of her complaint as she was told it could take a year or more to process.

In opposition to Complainant's appeal, the Agency stated that Complainant initially informed the assigned EEO Counselor that she had difficulty opening emailed forms, but she did not mention problems with the email hyperlink provided for filing her formal complaint. The Agency stated that Complainant filed her formal complaint with the EEOC, instead of the Agency, and failed to inform the Agency of her actions until six months later.

Complainant stated that the Agency filed its brief in an untimely manner.

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. § 1614.106(b) requires the filing of a complaint with an appropriate Agency official within 15 calendar days after the date of receipt of the notice of the right to file the formal EEO complaint. The Agency shall dismiss a complaint that fails to comply with the 15-day time limit contained in 29 C.F.R. § 1614.107(a)(2) unless the Agency extends the time limits in accordance with 29 C.F.R. § 1614.604(f).

Where, as here, there is an issue of timeliness, the Agency always bears the burden of obtaining sufficient information to support a reasoned determination as to timeliness. Guy v. Dep't of Energy, EEOC Request No. 05930703 (January 4, 1994)(quoting Williams v. Dep't of Defense, EEOC Request No. 05920506 (August 25, 1992)). In Ericson v. Dep't of the Army, EEOC Request No. 05920623 (January 14, 1993), EEOC stated that "[t]he Agency has the burden of proving evidence and/or proof to support its final decisions." See Gens v. Dep't of Def., EEOC Request No. 05910837 (Jan. 31, 1992).

The record shows, on October 26, 2023, via email, the Agency issued Complainant a NORF, informing her, due to COVID-19 related teleworking, she can file her formal complaint electronically to OCRC Formal EEO Complaints. The Agency provided a hyperlink to the email address. Further, the Agency informed Complainant she had 15 calendar days from receipt of the NORF to do so. On November 6, 2023, Complainant sent an e-fax to an EEOC District Office with the subject of "Formally filing my EEO complaint." Subsequently, on April 18, 2024, Complainant sent an email to the assigned EEO Counselor inquiring about the status of the instant complaint.

On appeal, Complainant stated that the Agency provided a hyperlink that did not work for filing her formal complaint, so she had to figure out on her own where to send her formal complaint. She added that inquiring about the status of the November 2023 complaint in April 2024 was reasonable as she was told it could take a year or more to process her complaint.

The Commission has previously held that when provided with the proper address, filing at the wrong address does not constitute a proper filing. See Pacheco v. U.S. Postal Service, EEOC Request No. 05930700 (September 10, 1993) (appeal untimely when sent to wrong address despite receipt of proper instructions); Jones-Sylvester v. U.S. Postal Service, EEOC Appeal No. 0120093789 (March 10, 2010) (formal complaint untimely when sent to wrong address despite receipt of proper instructions).

There is no evidence that Complainant filed her formal complaint with the Agency in a timely manner, and her filing with the EEOC New York District Office after receipt of specific electronic filing instructions was improper. Complainant failed to properly justify why she filed with the Commission and did not follow up with her assigned EEO Counselor for further electronic filing instructions, if needed. Complainant emailed the assigned EEO Counselor six months later for complaint status. On appeal, Complainant has not presented adequate justification for extending the limitation period beyond 15 days. Therefore, we find that the Agency properly dismissed the instant complaint.

CONCLUSION

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).

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