



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

[REDACTED]
Tommie O,¹
Complainant,

v.

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

Appeal No. 2024004626

Agency No. 4E-980-0066-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 25, 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 discussed below, we affirm the Agency's final decision.

ISSUES PRESENTED

Whether the Agency properly procedurally dismissed Complainant's complaint.

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 relevant time, Complainant worked as a Mail Carrier (City) Grade Level 01/Q at the Agency's Carrier Annex in Seattle, Washington.

On June 25, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of disability (shoulder injury) and in reprisal for prior protected EEO activity (not specified) when:

- 1) On or around March 7, 2024, the start time and work duties/schedule on Complainant's Modified Job Offer (2499) was changed; and
- 2) On unspecified dates, management input his LWOP improperly.

On July 25, 2024, the Agency issued the instant final decision. The Agency dismissed Claim 1) as a collateral attack on the Department of Labor's Office of Workers' Compensation Programs (OWCP) process. The Agency determined that Claim 1) was outside of the EEOC's jurisdiction and should have been raised with the Department of Labor. The Agency dismissed Claim 2) because the matter therein was unlike and not related to the allegation that Complainant raised during informal EEO counseling.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant attached a brief statement referencing a copy of the grievance decision that was resolved in his favor. He stated that he would be filing additional grievances.

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

Claim 1)

Under the Commission's regulations at 29 C.F.R. §§ 1614.103, 1614.106(a), the Agency must accept a justiciable claim that an aggrieved employee has been subjected to discrimination based on EEO-protected characteristics or because of EEO-protected activities. EEOC Regulation 29 C.F.R. § 1614.107(a)(1) provides the Agency shall dismiss a complaint that fails to state a claim.

An employee cannot use the EEO complaint process to lodge a collateral attack on another proceeding. See Wills v. Dep't of Def., EEOC Request No. 05970596 (July 30, 1998); Kleinman v. U.S. Postal Serv., EEOC Request No. 05940585 (Sept. 22, 1994); Lingad v. U.S. Postal Serv., EEOC Request No. 05930106 (June 25, 1993). A complainant fails to state a claim where his allegation that can be characterized as a collateral attack, which involves a challenge to another forum's proceeding, such as the grievance process, the workers' compensation process, an internal agency investigation, or state or federal litigation. See Fisher v. Dep't of Def., EEOC Request No. 05931059 (July 15, 1994).

The essence of Claim 1) concerns the Agency decision to issue Complainant a Modified Job Offer which changed his work hours that did not conform with his regular duty hours. The record revealed that Complainant was a limited duty employee. The proper forum for Complainant to raise questions regarding the terms of his Modified Job Offer, including his tour of duty, is through the OWCP process as this process determines the terms of the Modified Job Offer. Consequently, any remedial relief available to Complainant would be through the OWCP. Therefore, the Agency properly dismissed Claim 1) pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim due to lodging a collateral attack on the proceedings of the OWCP process.

Claim 2)

EEOC Regulation 29 C.F.R. § 1614.107(a)(2) states, in pertinent part, that an agency shall dismiss a complaint which raises a matter that has not been brought to the attention of an EEO Counselor, and is not like or related to a matter on which the complainant has received counseling.

A later claim or complaint is "like or related" to the original complaint if the later claim or complaint adds to or clarifies the original complaint and could have reasonably been expected to grow out of the original complaint during the investigation. See Scher v. United States Postal Service, EEOC Request No. 05940702 (May 30, 1995); Calhoun v. United States Postal Service, EEOC Request No. 05891068 (Mar. 8, 1990).

Complainant first presented a narrative which raised Claim 2), regarding incorrect LWOP, in his formal complaint. Furthermore, the matter of the Agency's charging Complainant LWOP was neither like nor related to the underlying matter in Claim 1), concerning the Modified Job Offer matter which Complainant had raised during informal EEO counseling. Consequently, because Claim 2) was raised for the first time in his formal EEO complaint, it had not brought before an EEO Counselor and it was not like or related to Claim 1), we find that the Agency's dismissal of Claim 2) was proper in accordance with 29 C.F.R. § 1614.107(a)(2).

CONCLUSION

Based on the foregoing review, 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)

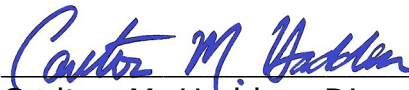
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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

February 3, 2025

Date