



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

[REDACTED]
Valencia L,¹
Complainant,

v.

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

Appeal No. 2024004635

Agency No. 4J-604-0122-24

DECISION

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

ISSUE PRESENTED

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

BACKGROUND

During the period at issue, Complainant worked for the Agency as a Rural Carrier at the Agency's Post Office in Yorkville, Illinois.

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 May 13, 2024, Complainant requested pre-complaint processing. Informal efforts at resolution were not successful.

On July 13, 2024, Complainant filed a formal EEO complaint alleging that the Agency subjected her to discrimination based on race and in reprisal for prior protected activity..

On July 25, 2024, the Agency issued a final decision. The Agency found that the formal complaint was comprised of the following claim:

Complainant was terminated from Agency employment on March 12, 2024.

The Agency dismissed the formal EEO complaint pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely EEO Counselor contact. The Agency stated that Complainant's request for pre-complaint counseling was made more than 45 days after the issue alleged to be discriminatory. On March 12, 2024 the Complainant's employment was terminated during the probationary period. However, Complainant did not go to an EEO Counselor until May 13 , 2024.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant offers no new arguments, except for a corrected chronology, and has provided neither a brief nor a statement outlining a legal basis for overturning the Agency's final decision that the complaint was untimely filed.

The Agency provides no response to Complainant's 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) requires that complaints of discrimination should 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 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.

Here, the record reflects that the discrete act at issue occurred on March 12, 2024. Therefore, Complainant had 45 days from this action to timely contact an EEO Counselor. However, the record reflects that Complainant waited approximately 62 days to initiate EEO Counselor contact in May 2024. Therefore, Complainant's contact was untimely.

EEOC regulations provide that the Agency or the Commission shall extend the time limits when the individual shows that she was not notified of the time limits and was not otherwise aware of them, that she did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence she was prevented by circumstances beyond her control from contacting the Counselor within the time limits, or for other reasons considered sufficient by the Agency or the Commission. 29 C.F.R. § 1614.105(a)(2).

Here, Complainant did not claim that she was unaware of the time limit for contacting an EEO Counselor and the record contains an affidavit from an Agency official, reflecting that an EEO poster is appropriately displayed at her facility, with the appropriate timelines identified for pursuing the EEO complaint process. It is unclear why Complainant waited approximately 62 days to initiate EEO Counselor contact in May 2024.

Complainant does not deny that the Agency made available information regarding the 45-day deadline. Complainant has not presented any persuasive arguments or evidence warranting an extension of the time limit for initiating EEO Counselor contact. 29 C.F.R. § 1614.105(a)(2).

CONCLUSION

The Agency's final decision dismissing the formal complaint for the reason discussed above 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, **filings 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 13, 2025

Date