



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Clinton M.,¹
Complainant,

v.

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

Appeal No. 2024004645

Agency No. 1C-231-0217-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 23, 2024², dismissing the 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 the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the reasons presented below, we AFFIRM the Agency's final decision dismissing Complainant's complaint.

ISSUES PRESENTED

Whether the Agency's final decision properly dismissed Complainant's formal complaint on the grounds of 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.

² The Agency's dismissal is dated July 23, 2023, but this is believed to be a typo since the complaint was not filed until 2024.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Mail Processing Clerk at the Agency's facility in Capital Heights, Maryland. Complainant sought EEO counseling regarding alleged discrimination. At the end of the informal EEO counseling process, the Agency issued Complainant a Notice of Right to File Formal EEO Complaint (NORF) dated June 11, 2024. The Agency sent the NORF via Priority Mail with Tracking. The record includes a tracking document containing Complainant's address of record, the related tracking number, and notation the mail was delivered on June 13, 2024, at 10:42 am in or at mailbox.

The NORF specifically stated:

If you opt to file a formal complaint, you have 15 days from the date of receipt of this letter to file a timely formal complaint. Your complaint could be subject to dismissal in accordance with 29 CFR Part 1614.107 if not filed within the 15 day time limit. Your complaint will be deemed timely if it is postmarked before the expiration of the 15 day time limit.

On July 9, 2024, Complainant filed a formal complaint alleging that the Agency subjected Complainant to discrimination on the bases of race (Black), national origin (not specified), sex (male), religion (not specified), color (not specified), age (not specified), and reprisal for prior protected EEO activity when:

1. On April 23, 2024, Complainant was presented with inaccurate absence warning letters and subsequently, on May 6, 2023, Complainant was issued a Letter of Warning (LOW);
2. On May 6, 2024, Complainant was denied a union steward; and
3. On a date not specified, Complainant was accused of poor work performance.

The record contains a copy of the envelope in which Complainant mailed the complaint, showing that it was postmarked July 9, 2024.

The Agency dismissed the complaint in its entirety pursuant to 29 C.F.R. § 1614.107(a)(2), finding that Complainant had not timely filed the formal complaint.

The Agency stated that Complainant's complaint was sent to the NEEOISO 26 days after receipt of the NORF, as evidenced by the February 9, 2024 postmark on the mailing envelope. Complainant filed the instant appeal.

CONTENTIONS ON APPEAL

Complainant raised no new arguments on appeal and did not address the timeliness of the formal complaint filing, but instead reiterated a May 17, 2024 email sent to the Agency's EEO office in which Complainant outlined the discrimination being alleged.

The Agency did not file a brief or statement in connection with this 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

The regulation set forth at 29 C.F.R. § 1614.107(a)(2) provides, in relevant part, that an agency shall dismiss a complaint that fails to comply with the applicable time limits, unless the agency extends the time limits in accordance with 29 C.F.R. § 1614.604(c), which states these time limits are subject to waiver, estoppel and equitable tolling. A formal "complaint must be filed within 15 days of receipt of the notice required by § 1614.105 (d), (e) or (f)." (29 C.F.R. § 1614.106(b)).

Here, the record reflects the NORF was delivered to the mailbox at Complainant's address of record on June 13, 2024. Complainant has not disputed this. Thus, Complainant needed to file a formal complaint on or before June 28, 2024 to be timely. The record reflects Complainant did not file the formal complaint until July 9, 2024.

Complainant has not provided sufficient explanation for untimely filing or argument for extension or waiver of the time limits. Therefore, the Agency correctly dismissed the complaint.

CONCLUSION

For the foregoing reasons, 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 11, 2025
Date