



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Merideth C,<sup>1</sup>  
Complainant,

v.

Carlos Del Toro,  
Secretary,  
Department of the Navy,  
Agency.

Appeal No. 2024004727

Agency No. 24-55262-00354

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 12, 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. and 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 properly dismissed Complainant's complaint.

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<sup>1</sup> 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 period at issue, Complainant worked as a General Engineer, Grade GS-12, at the Agency's Southwest Regional Maintenance Center facility in Naval Base San Diego, California.

On December 29, 2023, Complainant contacted an EEO Counselor. The parties were not able to resolve the matter through informal EEO counseling.

The Agency issued a notice of right to file a formal EEO complaint that Complainant uploaded on April 5, 2024.

On May 21, 2024, via email, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of disability (mental) and reprisal for prior EEO-protected activity.

In its July 12, 2024 final decision, the Agency dismissed the formal EEO complaint for being untimely filed.

### CONTENTIONS ON APPEAL

The instant appeal followed. On appeal, Complainant contends that she had sent her formal EEO complaint timely but to the wrong office. Complainant argues that a disabling mental condition prevented her from understanding and complying with the procedural requirements for filing her formal EEO complaint in a timely manner. Complainant states that her condition made her eligible for disability retirement, and that her mental conditions mitigated her late filing of the formal EEO complaint.

In opposing her appeal, the Agency stated that it had not received Complainant's appellate submission. The Agency noted that Complainant filed her discrimination in district court but asserted that her doing so did not excuse her untimely formal EEO complaint.

### 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. § 1614.107(a)(2) states, in pertinent part, that the Agency shall dismiss a complaint for failure to comply with the applicable time limits. EEOC Regulation 29 § C.F.R. 1614.106(b) requires a complainant to file a formal complaint within fifteen days of receiving notice of the right to do so.

Unless stated otherwise, EEOC's time limits are in calendar days. 29 C.F.R. § 1614.604(a). To be deemed timely filed, a document must be received or postmarked before the time limit expires. 29 C.F.R. § 1614.604(b). Time limits are subject to waiver, estoppel or equitable tolling. 29 C.F.R. § 1614.604(c). Time limits start the first day after notice and include weekends or holidays; if the last day falls on a weekend or holiday, then the time limit extends to the next business day. 29 C.F.R. § 1614.604(d).

Complainant picked up the notice through a file exchange on April 5, 2024. The Agency's notice instructed Complainant that she had to file a formal complaint within 15 calendar days of its receipt. Saturday, April 20, 2024, marked the fifteenth calendar day after Complainant received the notice. Therefore, Monday, April 22, 2023 was the deadline for Complainant to file her formal EEO complaint. Complainant's formal EEO complaint was not emailed until May 21, 2024 which was beyond the applicable regulatory time limit.

On appeal, Complainant has not offered adequate justification to warrant an extension of the time limit for filing her formal EEO complaint. If a complainant asserts that a medical condition prevented them from meeting a particular filing deadline, they must evidence incapacitation to the extent that they were unable to file timely. Crear v. U.S. Postal Serv., EEOC Request No. 05920700 (Oct. 29, 1992) (psychiatric or psychological incapacity necessary to excuse untimely filing).

In the instant case, the record contained a questionnaire with hand-written answers from Complainant's medical provider indicating that her condition was not expected to resolve before November 7, 2023.

For the period between April 2024 and May 2024, Complainant's medical documentation failed to establish that she was incapacitated to a degree that she could not timely file the instant formal EEO complaint. Therefore, the Agency properly dismissed the formal EEO complaint as untimely under 29 C.F.R. §§ 1614.107(a)(2) and 1614.106(b).

### CONCLUSION

The Agency's final decision dismissing Complainant's complaint is AFFIRMED for the reasons discussed above.

### 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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

December 31, 2024  
Date