



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Lashell S,¹
Complainant,

v.

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

Appeal No. 2024004728

Agency No. 4G-290-0085-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 8, 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. For the reasons presented below, the Commission REVERSES the Agency's final decision dismissing Complainant's complaint and REMANDS the complaint for further processing.

ISSUE 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

During the relevant time, Complainant worked as a City Carrier Associate at the Agency's Leesburg Post Office in Columbia, South Carolina.

On June 13, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discriminatory harassment on the basis of race (not specified) and sex (sexual orientation) when:

1. From October 2023 to January 2024 and ongoing, Complainant was not reimbursed for mileage when Complainant used her own vehicle;
2. On December 25, 2023 and December 28, 2023, Complainant's supervisor made inappropriate/unwelcomed comments about Complainant's appearance;
3. On December 26, 2023, Complainant's supervisor verbally insulted Complainant;
4. On December 30, 2023, Complainant's supervisor denied Complainant's request to correct her time;
5. On January 13, 2024, management deducted 11 hours from hours Complainant had already worked during the week of January 6, 2024 to January 12, 2024; and,
6. On January 13, 2024, management failed to investigate the January 13, 2024 incident and Complainant was taken off the Leesburg Station work schedule and reassigned to work at the Dutch Fork Branch.

On July 8, 2024, the Agency issued a final decision dismissing the complaint pursuant to 29 C.F.R. § 1614.107(a)(2), finding that Complainant had not complied with the applicable time limits for filing her formal complaint.

The instant appeal followed.

CONTENTIONS ON APPEAL

Complainant timely submitted a brief and supporting evidence. On appeal, Complainant argues the Commission should reverse the Agency's decision due to her good faith effort and diligence to comply with the filing deadline. She argues that she received the Notice on June 9, 2024, and promptly filed her formal complaint. Complainant argues that because a copy of the Notice sent requiring signature confirmation was returned to sender after attempted delivery on May 28, 2024, Complainant was deprived of a fair opportunity to respond within the required filing period.

Complainant submitted documents showing the Notice sent with Signature Confirmation was scanned but not delivered to her address on May 28, 2024, and was returned to the post office.

The Agency did not file a brief in 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

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(f), 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).

The Agency bears the burden to prove untimeliness in final dismissal decisions. Ericson v. Dep't of the Army, EEOC Request No. 05920623 (Jan. 14, 1993). The Agency must always present sufficient evidence to support its determination of untimeliness. Guy v. Dep't of Energy, EEOC Request No. 05930703 (Jan. 4, 1994).

When a certified U.S. return receipt has been signed by an unidentified individual at the Complainant's address on a date certain to indicate delivery of an important document, the Commission has relied on a presumption of constructive receipt by Complainant on that date. See, e.g. Pazinick v. U.S. Postal Service, EEOC Request No. 05930337 (September 10, 1993). The presumption, however, is rebuttable.

In its final decision, the Agency asserted that tracking and signature confirmation established the Notice of Right to File a Formal Complaint (Notice) was delivered on May 28, 2024, to Complainant's address of record. Relying on the doctrine of constructive receipt, the Agency determined Complainant had to file her formal complaint no later than June 12, 2024, yet Complainant did not file her complaint until June 13, 2024.

On appeal, Complainant has effectively rebutted the presumption of constructive receipt of the Notice. The record includes Signature Confirmation 9410 8301 0935 5000 5225 33, which shows attempted delivery to Complainant's address of record on May 28, 2024. However, since there was no recipient to sign for the package, the Notice was held at the post office until it was returned to the Agency on June 8, 2024.

On appeal, Complainant indicates that she ultimately received the Notice on June 9, 2024. The Agency has not responded to Complainant's assertions that she did not receive the Notice until June 9, 2024, which is within 15 days of the postmark of her formal complaint, June 13, 2024. Therefore, the Commission finds that the dismissal was improper.

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is REVERSED and the matter is REMANDED for further processing in accordance with the following ORDER.

ORDER (E0224)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, or a copy of the final agency decision ("FAD") if Complainant does not request a hearing.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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 (R0124)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. 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. **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 5, 2025
Date