



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

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Carrol L,<sup>1</sup>  
Complainant,

v.

Denis R. McDonough,  
Secretary,  
Department of Veterans Affairs,  
Agency.

Appeal No. 2024004758

Agency No. 200P-593-2024-158332

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated August 13, 2024, dismissing his complaint of unlawful employment discrimination in violation of 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 dismissed Complainant's complaint for untimely EEO Counselor contact in accordance with EEOC Regulation 29 C.F.R. § 1614.107(a)(2).

**BACKGROUND**

During the relevant time, Complainant worked for the Agency as an Orthopedic Surgeon in Las Vegas, Nevada.

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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.

On July 10, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination based on disability when:

1. On or about November 6, 2017, his request for a reasonable accommodation was denied; and
2. On or about November 6, 2017, he was forced to resign and or/medically retire from the Agency.

### CONTENTIONS ON APPEAL

On appeal, Complainant contends that he had no knowledge of the EEOC prior to filing the instant 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. § 1614.105(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 a 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.

EEOC Regulations provide that the agency or the Commission shall extend the time limits when the individual shows that he was not notified of the time limits and was not otherwise aware of them, that he did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence he was prevented by circumstances beyond his control from contacting the Counselor within the time limits, or for other reasons considered sufficient by the agency or the Commission.

The alleged discriminatory events occurred on November 6, 2017, but Complainant did not initiate contact with an EEO Counselor until April 18, 2024, which is well beyond the forty-five (45) day limitation period. On appeal, Complainant contends that because he had no knowledge of the EEOC during the relevant time period, his untimely EEO Counselor contact should be excused. However, in support of his formal complaint, Complainant provided the Agency with a copy of an email dated December 28, 2020, that Complainant received from the Agency's Office of Inspector General Hotline. Therein, the Agency is responding to an inquiry from Complainant regarding a "personnel matter" at the Agency's Southern Nevada Healthcare System. In applying the reasonable suspicion theory discussed above, we find that Complainant had a reasonable suspicion of discrimination at least as early as December 2020, when he reached out to the Agency's OIG hotline. However, Complainant waited four more years before contacting an EEO Counselor on April 18, 2024 regarding his concerns.

The Commission has consistently held that a complainant must pursue claims with due diligence, or the doctrine of laches may apply. Becker v. U.S. Postal Serv., EEOC Appeal No. 01A45028 (Nov. 18, 2004) (finding that the doctrine of laches applied because complainant waited more than two years from the date of the alleged discriminatory events before contacting an EEO Counselor). In the instant matter, Complainant contacted an EEO Counselor seven years after Complainant's 45-day window for making timely EEO Counselor contact closed. Therefore, under the doctrine of laches, we must dismiss the complaint in its entirety for untimely EEO Counselor contact in accordance with 29 C.F.R. § 1614.107(a)(2). See Corie E. v. Dep't of Veterans Affairs, EEOC Appeal No. 2023000437 (Mar. 23, 2023) (the Commission finding Complainant's untimely EEO contact four years after the last discriminatory action mandated dismissal under the doctrine of laches).

### CONCLUSION

The Agency's final decision dismissing the formal complaint is AFFIRMED for the reasons set forth herein.

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

January 8, 2025

Date