



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

[REDACTED]
Sherman K,¹
Complainant,

v.

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

Appeal No. 2024004790

Agency No. 4G-770-0229-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 19, 2024, dismissing his 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. 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.

ISSUE PRESENTED

Whether the Agency's final decision properly dismissed Complainant's formal complaint for untimely filing.

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 Rural Carrier at the Agency's Montgomery Post Office in Montgomery, Texas.

On July 1, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination and harassment on the bases of race (African American), national origin (not specified), sex (male), religion (Christianity), color (skin color), and reprisal (prior grievance activity and participating in EEO activity) when:

- 1) In December 2020, Complainant's supervisor physically assaulted Complainant when she grabbed and pulled his left arm;
- 2) In 2020, August 2021, and December 2021 through May 2024, Complainant and other African American employees were given the less desirable assignments and forced to carry extra splits;
- 3) In 2020, August 2021, and December 2021 through May 2024, Complainant was assigned to dangerous delivery routes where he was shot at, called racial slurs, chased by customers, and driven off the road;
- 4) In August 2021, and September 2021, management failed to comply with his grievance settlements which awarded him pay for overtime and allowed early departures;
- 5) Beginning in December 2021, through May 2024, Complainant's supervisor continually threatened his job, subjected him to derogatory remarks, used racial slurs referring to him as "boy", manipulated job assignments, and expressed a disdain for his race and sex;
- 6) In February 2024, through May 2024, his supervisor manipulated job assignments to prevent Complainant from securing a permanent route;
- 7) On March 29, 2024, Complainant was issued a Notice of Removal for Unacceptable Conduct;²
- 8) On an unspecified date, Complainant's supervisor revoked his previously granted Sundays off which he requested to attend church; and,
- 9) On an unspecified date, Complainant was placed off the clock.

² The Agency's final decision found the record showed the Notice of Removal issued on March 29, 2024, for Unacceptable Conduct was reduced to a Letter of Warning via the Step 1 Grievance Process on April 25, 2024.

On July 19, 2024, the Agency issued a final decision dismissing the formal complaint pursuant to 29 C.F.R. § 1614.107(a)(2), finding that Complainant had not complied with the applicable time limits for filing his formal complaint.

The Agency also dismissed Claim 4 for failure to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1), reasoning the matter was a collateral attack on the proceedings of another forum.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant argues that he timely filed his formal complaint via fax and certified mail.

The Agency did not submit any arguments on 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

Timeliness of Formal Complaint

EEOC Regulation 29 C.F.R. § 1614.107(a)(2) states, in pertinent part, that an agency shall dismiss a complaint for failure to comply with the applicable time limits. These time limits are subject to waiver, estoppel, or equitable tolling. 29 C.F.R. § 1614.604(f). EEOC Regulation 29 C.F.R. § 1614.106(b) requires a complainant to file a formal complaint within 15 days of receiving notice of the right to file the formal EEO complaint.

A document shall be deemed timely if it is delivered in person or postmarked before the expiration of the applicable filing period, or in the absence of a legible postmark, if it is received by mail within five days of the expiration of the applicable filing period. 29 C.F.R. § 1614.604(b).

The Agency noted in order to be timely filed, Complainant would have needed to have mailed his complaint by June 25, 2024. The record showed the envelope containing Complainant's formal complaint had a postmark of July 1, 2024. Therefore, Complainant filed his formal complaint 21 days after he received the Notice on June 10, 2024.

In the instant case, the Agency mailed Complainant the Notice of Right to File a Formal Complaint (hereafter Notice) to Complainant's address of record. The record shows that Complainant received the Notice on June 10, 2024. The Notice clearly stated Complainant had to file a formal complaint with the Agency at the address provided within 15 calendar days of receiving the Notice. Therefore, Complainant had to file his formal complaint by June 25, 2024 (15 calendar days from June 10, 2024) in order for his complaint to be considered timely filed. Despite the specific instructions given in the notice regarding the 15-day limitation period, the envelope containing Complainant's formal complaint was postmarked July 1, 2024.

Accordingly, we find that Complainant did not file his formal complaint with the Agency until July 1, 2024, which is past the 15-day limitation period. On appeal, Complainant has not offered any justification to warrant an extension of the time limit for filing the complaint. Therefore, we find that the Agency properly dismissed the complaint for untimely filing his formal complaint.

Since the Commission affirms the Agency's final decision dismissing the formal complaint for the reason discussed above, we will not address alternative dismissal grounds.

CONCLUSION

Accordingly, 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).

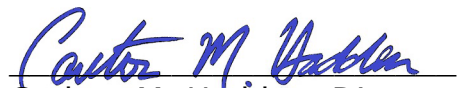
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0124)

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

January 13, 2025

Date