



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Wilfredo B,¹
Complainant,

v.

William Kilbride,
Chair,
Tennessee Valley Authority,
Agency.

Appeal No. 2024004811

Agency No. TVA-2024-0018

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 26, 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. Upon review, the Commission finds that Complainant's complaint was properly dismissed due to untimely EEO counselor contact.

ISSUES PRESENTED

Whether the Agency properly dismissed the formal complaint for untimely EEO counselor contact 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

At the time of events giving rise to this complaint, Complainant worked as a Electrical Engineer, Design (PSO) SR II at the Agency's facility in Chattanooga, Tennessee.

On June 6, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of race (African American), disability (heart attack in January 2023), and age (1958) when he was terminated in November 2023.

On July 26, 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 contacting an EEO Counselor.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant argues that he first contacted the EEOC in December 2023 and received a follow-up from the EEO counselor on February 21, 2024.

The Agency requests the Commission affirm the Agency's final decision dismissing Complainant's complaint because Complainant failed to timely contact an EEO counselor.

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. Complaints of discrimination should be brought to the attention of the Equal Employment Opportunity Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action. 29 C.F.R. § 1614.105(a)(1).

The Agency determined the date of the discriminatory action was November 4, 2023, when Complainant's termination was effective and concluded Complainant's initial EEO counselor contact on February 9, 2024, was untimely because it was beyond the 45-day limitation period.

The Commission has consistently held that where, as here, there is an issue of timeliness, the agency always bears the burden of obtaining sufficient information to support a reasoned determination. Williams v. Dep't of Defense, EEOC Request No. 05920506 (Aug. 25, 1992). It is incumbent upon the EEO Counselor to inquire into the reasons for the delay when a complainant initiates counseling beyond the applicable time limit. See Stout v. U.S. Postal Serv., EEOC Appeal No. 01993203 (Apr. 20, 2000) Young v. U.S. Postal Serv., EEOC Request No. 05870263 (Jan. 20, 1988)

In the instant case, the EEO Counselor's Report states that during the counseling session held on February 21, 2024, the EEO Counselor discussed with Complainant his untimely counselor contact. The EEO Counselor explained to Complainant that he had a right to justify why he did not timely initiate EEO counselor contact, and that Complainant should submit any justification immediately. The record shows Complainant failed to provide any evidence or statements that justified Complainant waiting until February 9, 2024, to initiate EEO contact.

On appeal, Complainant submitted a copy of an email he sent on August 26, 2024, to the EEO office in response to the Agency's final decision dismissing his complaint. In the email, Complainant wrote that he first contacted the EEOC in December of 2023, and that the EEO counselor followed up with Complainant on February 21, 2024.

Aside from this one email, which lacks any specificity as to who Complainant contacted and on what date, the record does not support an inference that Complainant initiated EEO contact in December 2023, with the intent to initiate the EEO process. Furthermore, in his formal complaint, Complainant listed February 9, 2024, as the date he initiated EEO counselor contact.

Accordingly, we find that Complainant contacted an EEO counselor beyond the 45-day limitation period. On appeal, Complainant has not offered any justification to warrant an extension of the time limit for contacting an EEO counselor. Therefore, we find that the Agency properly dismissed the complaint.

CONCLUSION

Accordingly, we AFFIRM, for the reasons set forth herein, the Agency's final decision dismissing Complainant's complaint.

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 6, 2025

Date