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

[redacted]
Shalon C,[1]
Complainant,

v.

Todd Hunter,
Acting Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2024004836

Agency No. 2004-512-2024-159207

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated August 5, 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 following reasons, we affirm the Agency's dismissal.

ISSUES PRESENTED

Whether the Agency properly dismissed Complainant's complaint for untimely EEO contact pursuant to 29 C.F.R. § 1614.107(a)(2).

BACKGROUND

During the relevant time, Complainant worked as a Sleep Technologist GS-8, at the Agency's Neurology Department, Division of Sleep Medicine, in Baltimore, Maryland.

[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.

On June 4, 2024, Complainant initiated EEO Counselor contact. Informal efforts at resolution were not successful.

On July 8, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on sex (female) when:

1. On December 22, 2023, Supervisor charged Complainant with sick leave abuse for calling out 5 times over a 1-year time frame.

2. On April 3, 2024, Director of the Division of Sleep Medicine denied Complainant's request to work overtime to cover any shifts for a co-worker who was out for an extended period of time.

On August 5, 2024, the Agency issued a final decision dismissing the complaint. The Agency dismissed the formal complaint pursuant to 29 C.F.R. § 1614.107(a)(2) for untimely EEO Counselor contact. The Agency found Complainant contacted an EEO Counselor well beyond the 45-day time limitation and failed to provide justification for the delay.

Complainant filed the instant appeal.

CONTENTIONS ON APPEAL

On appeal, Complainant submits copies of emails, as early as May 29, 2024, as proof she made timely EEO contact. The May 29, 2024 email was sent to an EEO Manager and outlined Complainant's concerns in Claims 1 and 2 as well as her desire to file a "discrimination charge." Complainant requests the Commission accept this earlier date to establish timely EEO contact.

In opposition to the appeal, the Agency stated Complainant failed to provide any proof of timely EEO Counselor contact and Complainant was aware of EEO time limitation from training as recently as December 2023.

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 Agency dismissed the complaint for untimely EEO Counselor contact. 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. § 1614.105(a)(1) requires that complaints of discrimination be brought to the attention of an EEO 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 long adopted a "reasonable suspicion" standard to determine when the forty-five (45) day limitation period is triggered. See Howard v. Department of the Navy, EEOC Request No. 05970852 (February 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.

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).

Here, we look to the most recent discriminatory event to determine timeliness of EEO contact. The record discloses that the most recent alleged discriminatory event occurred on Wednesday, April 3, 2024, as evidenced by the email Complainant included where Director informed Complainant that overtime would not be granted. Complainant had until Saturday, May 18, 2024, which would make the last date for Complainant to timely contact an EEO Counselor Monday, May 20, 2024, which is the next business day. However, Complainant did not initiate contact with an EEO Counselor until June 4, 2024, which is beyond the forty-five (45) day limitation period.

On appeal, Complainant asserts she made EEO contact on April 17, 2024 by contacting her union representative and included emails to support her claim of timely EEO contact. However, a review of Complainant's documents submitted on appeal show emails starting as early as May 29, 2024 (not April 17, 2024) stating her intentions to file a discrimination claim. To the extent Complainant alleges she initiated EEO contact prior to June 4, 2024, we find Complainant still fails to establish timely contact, because May 29, 2024, is still beyond the 45-day time limitation as detailed above. We find Complainant has presented no persuasive arguments or evidence warranting an extension of the time limit for initiating EEO Counselor contact. Accordingly, the Agency properly dismissed her complaint for untimely EEO contact pursuant to 29 C.F.R. § 1614.107(a)(2).

CONCLUSION

The Agency's final decision dismissing Complainant's formal complaint for the reason discussed above 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

February 6, 2025
Date