



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

[REDACTED]
Kenny C,¹
Complainant,

v.

Gary Washington,
Acting Secretary,
Department of Agriculture
(Food Safety and Inspection Service),
Agency.

Appeal No. 2024004845²

Agency No. FSIS-2022-00192³

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated August 27, 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. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

ISSUES PRESENTED

Whether the Agency properly procedurally dismissed Complainant's complaint.

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.

² EEOC dismissed a duplicate appeal that had been docketed as 2024005008.

³ At one point, the Agency Number was incorrectly listed as "FSIS-2024-154684."

BACKGROUND

During the period at issue, Complainant worked as an Intermittent Food Inspector (Slaughter), Grade GS-5, at Griggstown Quail Farm in Princeton, New Jersey.

On January 25, 2022, Complainant contacted an Agency EEO Counselor, but informal efforts to resolve the matter were unsuccessful.

On March 17, 2022, the Agency's EEO Specialist emailed Complainant notice that if he wished to file a formal complaint, then "it must be in writing, signed, and filed within fifteen (15) calendar days after receipt of this notice."

On July 10, 2024, Complainant contacted the Agency to inquire about the status of his EEO matter. The EEO Specialist informed Complainant that his formal complaint had not been received.

According to Complainant's mail tracking record, on July 18, 2024, the Agency received Complainant's formal complaint alleging that the Agency subjected him to discrimination on the bases of sex (male), religion (Jewish), and age (not specified). Therein, Complainant asserted several claims that included denial of work hours, multiple non-selections, and various instances of verbal and physical sexual harassment.

On August 27, 2024, the Agency dismissed Complainant's complaint pursuant to 29 C.F.R. § 1614.107(a)(2), for his untimely filing of the formal complaint.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant maintained that he had sent his formal complaint timely in 2022 via regular mail. In response to an Agency questionnaire regarding his formal complaint, Complainant stated he had filed his claim on March 25, 2022, using regular mail without additional tracking because the EEO Specialist had advised him that this would be sufficient. He further argued that the Agency had not proven that it did not receive his formal complaint in 2022. Complainant additionally accused the Agency of denying him due process and of covering-up his former supervisors' malfeasance and mistreatment.

The Agency responded by opposing Complainant's appeal. The Agency contended that its notice advised that Complainant had to file his formal complaint no later than April 6, 2022, but he had unreasonably delayed filing until more than two years after he had received the notice. As such, the Agency cited EEOC decisions in support of its position that Complainant's formal complaint was time-barred by the equitable doctrine of laches.

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. § 1614.107(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. 1614.106(b) requires a complainant to file a formal complaint within fifteen days of receiving notice of the right to do so. 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).

The record discloses that Complainant acknowledged that he had received the notice of right to file a formal complaint on March 22, 2022. Although the notice indicated that Complainant had to file a formal complaint within fifteen calendar days of its receipt, the only evidence of filing, Complainant's tracking confirmation, shows that the Agency did not receive his formal complaint until July 18, 2024, which is years beyond the applicable limitation period. On appeal, Complainant has provided insufficient evidence that he filed his formal complaint timely on 2022. Furthermore, we find that he has not offered adequate justification to warrant an waiver of the time limit for filing his formal complaint.

Moreover, we concur with the Agency, in that Complainant's claim is barred by the doctrine of laches. The Commission has consistently held that a complainant must act with due diligence in the pursuit of his claims, or the doctrine of laches may apply. The doctrine of laches is an equitable remedy under which an individual's failure to diligently pursue his course of action could bar his claims. Becker v. U.S. Postal Serv., EEOC Appeal No. 01A45028 (Nov. 18, 2004). Here, Complainant provided no explanation of why he waited for over two years to inquire into the status of his formal complaint. It follows that Complainant's failure to act with due diligence bars his claims.

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.

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 28, 2025

Date