



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

[REDACTED]  
Sunday S.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2024004850

Agency No. 4E-900-0186-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated August 8, 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., 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. For the reasons below, we AFFIRM the Agency's decision.

ISSUES PRESENTED

Whether the Agency's final decision (FAD) properly dismissed Complainant's formal equal employment opportunity (EEO) complaint pursuant to 29 C.F.R. § 1614.107(a).

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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.

### BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Letter Carrier at the Agency's Hawthorne Post Office located in Hawthorne, California. On April 20, 2024, Complainant initiated EEO contact alleging that the Agency subjected her to discrimination on the bases of race (Asian), national origin (Vietnamese), sex (female), color (yellow), disability (Bilateral Carpel Tunnel Syndrome), age (DOB: March 20, 1973), and reprisal for prior protected EEO activity (prior complaints<sup>2</sup>) when management, on March 6, 2024, harassed and retaliated against Complainant, which forced her to apply for disability retirement; forced Complainant to apply for disability retirement, which resulted in a constructive discharge after she suffered years of harassment and retaliation from management due to her physical disabilities; and contacted the Department of Labor (DOL) to terminate Complainant's Office of Workers' Compensation Program (OWCP) benefits which caused her stress and forced a constructive discharge.

On July 20, 2024, Complainant filed a formal EEO complaint alleging that the Agency subjected her to discrimination based on race, national origin, sex, color, disability, age, and reprisal when:

1. since November 18, 2012, management harassed Complainant and failed to provide her with reasonable accommodation;
2. on or about April 8, 2024, due to the Agency's failure to provide reasonable accommodation or a modified job within Complainant's restrictions, Complainant proceeded with involuntary retirement - constructive discharge;
3. on April 9, 2024, Complainant alleged that she became aware her disability retirement was approved effective March 6, 2024; and
4. on an unspecified date, Complainant alleged that management provided false information controverting Complainant's benefits to get her benefits terminated with the DOL OWCP.

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<sup>2</sup> The record reveals Complainant filed six formal EEO complaints with initial EEO contact dates of November 8, 2011, August 27, 2021, October 7, 2022, January 17, 2024, April 2, 2024, and July 20, 2024.

The Agency issued a FAD dismissing Complainant's EEO complaint pursuant to 29 C.F.R. § 1614.107(a). Specifically, the Agency stated, for claim (1), Complainant initiated EEO contact in an untimely manner. The Agency stated that Complainant alleges harassment dating back to November 2012 and initiated EEO contact on April 25, 2024. Regarding claims (1), (2), and (4), the FAD stated that the incidents involve the same claims that have been addressed by the Agency. The FAD stated that the matters were initiated on January 17, 2024, in a complaint docketed as Agency No. 4E-900-0116-24<sup>3</sup>, which was settled by agreement dated April 8, 2024. For claims (3) and (4), the Agency stated that Complainant lodged a collateral attack on the OWCP process and the incidents alleged fail to state a claim. The instant appeal from Complainant followed.

#### CONTENTIONS ON APPEAL

On appeal, Complainant stated that the Agency mischaracterized her claims in the FAD.

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<sup>3</sup> The record contains an icomplaints summary for Agency No. 4E-900-0116-24 stating that Complainant alleged that the Agency discriminated against her when, since December 8, 2022, management denied Complainant's reasonable accommodation and she had to apply for disability retirement involuntarily.

The record contains a settlement agreement, dated April 8, 2024, regarding Agency No. 4E-900-0116-24. The agreement stated, in pertinent part:

4. This Agreement is a global settlement of all Complainant's pending MSPB appeals, EEOC complaints, grievances, and any and all claims which have or could have been asserted by the Complainant as of the date of signing of this agreement. . . .

6. The Employee shall accept disability retirement and payments through the Office of Personnel Management (OPM).

7. The Employee understands that the Agency must notify OWCP of the award of disability retirement from OPM.

Complainant stated that she alleged harassment from November 2012 to March 2024; including involuntary retirement on March 2024, denial of reasonable accommodation by failing to engage in the interactive process to locate a position that met her medical restrictions, and management providing false information to DOL for Complainant's OWCP claim to terminate her benefits. Complainant stated that she was able to make a claim for involuntary retirement once she learned of its approval. Further, Complainant stated that her April 8, 2024 settlement agreement does not prevent her from alleging future constructive discharge, and the April effective date for retirement could render the agreement void for lack of consideration.

The Agency did not provide substantive comment 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

We find the crux of Complainant's claims as stated on appeal are the same as those identified as claims (1) through (4) in the FAD.

#### *States the Same Claim*

"[T]he agency shall dismiss an entire complaint: (1) That . . . states the same claim that is pending before or has been decided by the agency or Commission." 29 C.F.R. § 1614.107(a)(1). We dismiss Complainant's allegations (1) and (2) pursuant to 29 C.F.R. § 1614.107(a)(1) for stating the same claim previously raised in her prior complaint and addressed by her April 2024 settlement agreement with the Agency.

In the complaint identified as Agency No. 4E-900-0116-24, Complainant alleged that the Agency discriminated against her when, since December 8, 2022, management denied Complainant's reasonable accommodation and she had to apply for disability retirement involuntarily. Further, the settlement agreement, dated April 8, 2024, for Agency No. 4E-900-0116-24 stated, in pertinent part:

This Agreement is a global settlement of all Complainant's pending MSPB appeals, EEOC complaints, grievances, and any and all claims which have or could have been asserted by the Complainant as of the date of signing of this agreement.

As such, the instant allegation is appropriately dismissed for stating the same claim that has previously been addressed by the Agency, including by the aforementioned April 8, 2024 settlement agreement.

*Failure to State a Claim*

The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that an agency shall dismiss a complaint that fails to state a claim. An agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that agency because of race, color, religion, sex, national origin, age, disabling condition, genetic information, or reprisal. 29 C.F.R. §§ 1614.103, .106(a). The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (April 21, 1994).

For claims (3) and (4), respectively, Complainant alleged that she became aware of her March 6, 2024 disability retirement on April 9, 2024, and, on an unspecified date, management provided false information controverting her DOL OWCP benefits seeking to terminate them.

The Commission has held that an employee cannot use the EEO complaint process to lodge a collateral attack on another proceeding. See Wills v. Dep't of Defense, EEOC Request No. 05970596 (July 30, 1998); Kleinman v. U.S. Postal Service, EEOC Request No. 05940585 (September 22, 1994); Lingad v. U.S. Postal Service, EEOC Request No. 05930106 (June 25, 1993).

A claim that can be characterized as a collateral attack, by definition, involves a challenge to another forum's proceeding, such as the grievance process, an internal investigation, or the workers' compensation process. See Fisher v. Dep't of Defense, EEOC Request No. 05931059 (July 15, 1994).

The proper forum for Complainant to have raised concerns about disability retirement are with the Office of Personnel Management, and challenges to actions which involve her OWCP claim is with DOL. It is inappropriate to attempt to use an EEO complaint to collaterally attack processing concerns and decisions made during those respective processes.

After careful consideration of the circumstances herein, we find that claims (3) and (4) were properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim.

#### CONCLUSION

We AFFIRM the final agency decision dismissing all four claims.

#### 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 20, 2025  
Date