



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Mose R.,¹
Complainant,

v.

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

Appeal No. 2024004875

Agency No. 1C-331-0441-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated August 14, 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. For the reasons set forth herein, we AFFIRM the Agency's final decision dismissing Complainant's complaint.

ISSUES PRESENTED

Whether the Agency's final decision properly dismissed Complainant's complaint for failure to state a claim.

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 Complainant contacted an Agency EEO Counselor and filed the instant EEO complaint, he was neither an employee of, nor an applicant for employment with, the Agency. Instead, Complainant was working for a private sector employer, O'Reilly Auto Parts. Complainant previously worked for the Agency, but he was granted disability retirement effective November 26, 2010.²

On July 20, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination based on race (African-American), sex (male), color (Black), disability, age (59), and in reprisal for prior protected EEO activity (prior EEO cases).

In its final decision, the Agency determined that Complainant's complaint was comprised of the following claim:

On June 24, 2023, [Complainant was] give a poor performance rating from his private sector employer, O'Reilly Auto Parts.³

The Agency dismissed Complainant's complaint for failure to state a claim reasoning that during the period at issue Complainant was not an employee of the Agency and did not have standing to file a complaint with the Agency.

The Agency also dismissed Complainant's complaint on the alternate grounds of abuse of process. The Agency reasoned that "[t]he record shows that [Complainant's] entire complaint is identical to multiple previous complaints in multiple forums. There is no evidence in the record to suggest that any controlling facts or legal principles have changed significantly since the respective agencies rendered the aforementioned decisions, and there are no other circumstances that would warrant an exception to the normal rules of preclusion. [Complainant] continue[s] to file EEO complaints raising the same issues that have been decided by the Commission." Final Agency Decision at 3.

² Commission records for one of Complainant's prior EEO cases contains a Notice of Personnel Action form reflecting that Complainant's disability retirement was effective November 26, 2010. EEOC Appeal No. 2024004220 (Dec. 16, 2024).

³ According to the EEO Counselor's Report, Complainant stated he also filed a complaint against his private sector employer.

CONTENTIONS ON APPEAL

On appeal, Complainant asserts that the Agency, in 2010, illegally caused him to retire pursuant to a fraudulent settlement agreement.

The Agency did not submit a statement or brief in opposition to Complainant's 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

The issue here is whether the Agency properly dismissed Complainant's complaint for failure to state a claim on the basis that Complainant lacked standing because he was not its employee. EEOC Regulation 29 C.F.R. § 1614.103(a) provides that complaints of discrimination shall be processed in accordance with Part 1614 of the EEOC Regulations. EEOC Regulation 29 C.F.R. § 1614.103(c) provides that within covered departments, agencies, units, Part 1614 applies to employees and applicants for employment.

In Serita B. v. Dep't of the Army, EEOC Appeal No. 0120150846 (Nov. 10, 2016), the Commission reaffirmed its longstanding position on "joint employers" and noted that it is found in numerous sources. See, e.g., EEOC Compliance Manual Section 2, "Threshold Issues," Section 2-III(B)(1)(a)(iii)(b) (May 1, 2000) (Compliance Manual); EEOC Enforcement Guidance: Application of EEO Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms (Dec. 3, 1997) (Enforcement Guidance), "Coverage Issues," Question 2; Ma v. Dep't of Health and Human Services, EEOC Appeal Nos. 01962389 & 01962390

(May 29, 1998). We reiterate the analysis set forth in those decisions and guidance documents in this decision.

The term “joint employer” refers to two or more employers that each exercise sufficient control of an individual to qualify as the worker's employer. Compliance Manual, Section 2- III(B)(1)(a)(iii)(b).

To determine whether the Agency has the right to exercise sufficient control, EEOC considers factors derived from common law principles of agency. See Enforcement Guidance, “Coverage Issues,” at Question 2. EEOC considers, inter alia, the Agency's right to control when, where, and how the worker performs the job; the right to assign additional projects to the worker; whether the work is performed on Agency premises; whether the Agency provides the tools, material, and equipment to perform the job; the duration of the relationship between the Agency and the worker; whether the Agency controls the worker's schedule; and whether the Agency can discharge the worker. Compliance Manual, Section 2 - III(A)(1) (citing Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 323-24 (1992)); EEOC v. Skanska USA Bldg., Inc., 550 F. App'x 253, 256 (6th Cir. 2013) (“Entities are joint employers if they ‘share or codetermine those matters governing essential terms and conditions of employment’”) (quoting Carrier Corp. v. NLRB, 768 F.2d 778, 781 (6th Cir. 1985); see also Ma, EEOC Appeal Nos. 01962389 & 01962390.

In the instant matter, Complainant has not alleged any facts to suggest that the Agency was a joint employer with O’Reilly Auto Parts during the events at issue in the current complaint. Moreover, the Commission’s Office of Federal Operations (OFO) has previously addressed the issue of whether the Agency could be deemed a joint employer of Complainant’s current private sector employer, O’Reilly Auto Parts and affirmed the Agency’s dismissal for lack of standing. Regarding Complainant’s assertion, on appeal, that the Agency illegally retired him in 2010, OFO also previously addressed this matter and found it was barred by the doctrine of laches. Complainant v USPS, EEOC Appeal No. 2024004220 (December 16, 2024).

Because we affirm the Agency’s dismissal on the grounds set forth herein, we need not address the Agency’s alternate grounds of dismissal for abuse of process.

However, we caution Complainant that continuing to file new complaints on the matters addressed herein and which have been previously decided could result in a finding of abuse of process.⁴

CONCLUSION

For the reasons set forth herein, we AFFIRM 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).

⁴ Complainant filed multiple prior complaints alleging that he was terminated by the Agency and/or alleging various incidents involving his current private sector employer, O'Reilly Auto Parts, which were dismissed by OFO. EEOC Appeal No. 2024004220 (Dec. 16, 2024); EEOC Appeal No. 2023002891 (July 26, 2023), req. for recons. den., EEOC Request No. 2023004896 (April 10, 2024); EEOC Appeal No. 2023000710 (Feb. 22, 2023). req. for recons. den., EEOC Request No. 2023002394 (Aug. 7, 2023)

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

December 30, 2024
Date