



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Lakia L.,¹
Complainant,

v.

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

Appeal No. 2024004894

Agency No. 200P-691-2024-157591

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated August 13, 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. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the reasons presented below, we affirm in part and reverse and remand in part the Agency's final decision.

ISSUES PRESENTED

Whether the Agency's final decision properly dismissed Complainant's formal complaint on the grounds of untimely filing 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 SCI Coordinator, GS-12, at the Agency's West Los Angeles VA Medical Center facility in Los Angeles, California.

On July 4, 2024, Complainant filed a formal complaint alleging that the Agency subjected Complainant to discrimination and a hostile work environment on the bases of disability (unspecified) and reprisal for prior protected EEO activity when:

- a) since January 2024, CRC Program Coordinator has accused Complainant of not communicating with her;
- b) on February 27, 2024, CRC Program Coordinator failed to inform Complainant that a VA contract with Courtyard Plaza had been terminated;
- c) on April 8, 2024, Complainant was reassigned under CRC Program Coordinator's supervision;
- d) on April 10, 2024, Local Reasonable Accommodation Coordinator (LRAC), refused to have a reasonable accommodation interactive meeting with Complainant and Supervisor;
- e) on May 1, 2024, Social Worker 2 asked CRC Program Coordinator to meet with Complainant every two weeks despite complainant not being placed on a performance improvement plan (PIP) or complainant having any disciplinary action [taken against Complainant];
- f) on May 1, 2024, Social Worker 2 issued Complainant a letter of expectation;
- g) on or about March 13, 2024, CRC Program Coordinator reported to Social Worker 1 that Complainant was incorrectly doing suicide assessments;
- h) on March 28, 2024, Local Reasonable Accommodation Coordinator changed the decision making official (DMO) for Complainant's reasonable accommodation (RA) request from Supervisor to Social Worker 1 (who was part of Complainant's current EEO complaint);
- i) on March 28, 2024, Nurse Manager stated to Complainant, "Maybe this is not a good fit for you" and "Maybe you need to look for a job elsewhere;"

and to include the following discrete events:

1. On February 27, 2024, CRC Program Coordinator directed complainant to report to Courtyard Plaza knowing there was a COVID-19 outbreak, in the department, in which CRC Program Coordinator ignored complainant's approved RA.
2. On March 12, 2024, complainant was issued a notice involuntary reassignment letter.
3. Since May 1, 2024, Complainant was forced to meet with CRC Program Coordinator every two weeks.
4. On unspecified dates, Complainant was assigned undesirable work assignments.

The complaint also included a claim that on an unspecified date, Complainant became aware that Social Worker 1 had stated in Complainant's [prior EEO complaint (case no. 200P-691-2022-144658)] report of investigation (ROI) that Social Worker 1 was in the midst of writing a memo to have the interim supervisor, Supervisor, [become the] permanent supervisor, until Social Worker 1 was notified that Complainant had filed an EEO complaint against Social Worker 1.

The complaint also included matters not raised in counseling:

- (a) on July 29, 2024, an unknown person sent Complainant harassing and threatening voicemail messages;
- (b) on unspecified dates, Complainant has been required to work past Complainant's [tour of duty] (TOD); and
- (c) on unspecified dates, Complainant was not paid overtime (O/T) for working past TOD.

The Agency dismissed the entire complaint pursuant to 29 C.F.R § 1614.107(a)(2) for untimely filing of her formal complaint. The Agency found that Complainant received her Notice of Right to File a Formal Complaint on June 18, 2024, but did not file her formal complaint within 15 days of receipt. Instead, Complainant filed her formal complaint one day late on July 4, 2024.

The Agency also dismissed the claim regarding Social Worker 1's statements in a prior EEO matter pursuant to 29 C.F.R. §1614.107(a)(1) for failure to state a claim, finding that there is an absolute litigation privilege that bars complaints over statements and testimony provided in administrative and judicial proceedings.

Regarding the claims raised for the first time in the complaint (and not raised in counseling), the Agency found that these were not like or related to and could not have grown out of the issues counseled and identified in the formal complaint. However, the Agency returned these issues to counseling for processing as a separate complaint.

Complainant filed the instant appeal.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that technical errors from the Agency's Office of Resolution Management, Diversity & Inclusion (ORMDI) constituted prejudice to Complainant's EEO case and right to due process. Complainant included emails between Complainant and Agency EEO staff in which Agency staff emailed Complainant on June 25, 2025 stating "I'm forwarding the Notice of Right to file as requested." Complainant also included the same-day reply in which Complainant advised Agency staff "you send me this in error. The form 4979 is ANOTHER complaint's EEO case but NOT mine". On June 26, 2024, Agency EEO staff replies to Complainant apologizing "for the error of you receiving someone else's information." On June 27, 2024, Complainant again requests the Agency resend the Notice of Right to File.

The Agency did not file a brief or statement in connection with this 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 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(c), which states these time limits are subject to waiver, estoppel and equitable tolling. A formal "complaint must be filed within 15 days of receipt of the notice required by § 1614.105 (d), (e) or (f)." (29 C.F.R. § 1614.106(b)).

Here, the Agency's final decision dismissing the complaint states that "on June 10, 2024, [...Complainant] was mailed via United Parcel Service (UPS) the Notice of Right to File (NORTF) a Discrimination Complaint, which [Complainant] received on June 18, 2024." The Agency further noted that Complainant filed the formal complaint on July 4, 2024, a day after the filing deadline of July 3, 2024.

However, the documentation submitted by Complainant on appeal calls into question whether Complainant received the correct Notice of Right to File or instead a Notice for another complainant. It appears Complainant was asking for the Notice of Right to File to be sent on June 25, 2024 and then advising Agency EEO staff that they had again sent the wrong complainant's Notice.

Further, the record contains a UPS "Proof of Delivery" showing that the Notice of Right to File was delivered on June 18, 2024 to "Granada Hills, CA, US" and received by "adele." Although not the exact same scenario as in this case, the Commission has repeatedly found that a U.S. Postal Service's Track and Confirm print-out listing only a Complainant's state, city, and zip code without any further details of the address is not sufficient to establish actual receipt. See Complainant v. U.S. Postal Serv., EEOC Request No. 0520140487 (Jan. 29, 2015); Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120141540 (June 27, 2014); Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120140438 (Mar. 6, 2014); Couch v. Dep't of Energy, EEOC Appeal No. 0120131136 (Aug. 13, 2013); King v. U.S. Postal Serv., EEOC Appeal No. 0120120457 (Jan. 11, 2013).

Where, as here, there is an issue of timeliness, "[a]n agency always bears the burden of obtaining sufficient information to support a reasoned determination as to timeliness." Guy v. Dep't of Energy, EEOC Request No. 05930703 (January 4, 1994) (quoting Williams v. Dep't of Defense, EEOC Request No. 05920506 (August 25, 1992)). In addition, in Ericson v. Dep't of the Army, EEOC Request No. 05920623 (January 14, 1993), the

Commission stated that “the agency has the burden of providing evidence and/or proof to support its final decisions.” See also Gens v. Dep’t of Defense, EEOC Request No. 05910837 (January 31, 1992). We find that based on the record before us, the Agency has not met its burden to show that Complainant received the correct Notice of Right to File on June 18, 2024 and therefore the Agency has not shown that the formal complaint filing on July 4, 2024 was untimely.

We do find the Agency properly dismissed the claim regarding statements made in an affidavit for a prior EEO complaint. As noted by the Agency, the Commission has long held that “[a]n absolute privilege is provided for statements made as part of a judicial or administrative proceeding.” McBride v. Dep’t of Justice, EEOC Appeal No. 07A00010 (Jan. 16, 2001).

We also do not take issue with the Agency separately remanding the claims that were not counseled for their own EEO counseling.

CONCLUSION

Based on the foregoing, AFFIRM the dismissal of the claim regarding statements made in an affidavit for a prior EEO complaint. We REVERSE the Agency's dismissal of the remaining claims, and we REMAND these claims to the Agency for further processing in accordance with the ORDER below.

ORDER (E0224)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant’s request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, or a copy of the final agency decision ("FAD") if Complainant does not request a hearing.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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 (R0124)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. 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. **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 10, 2025

Date