



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

[REDACTED]
Lawrence L.,¹
Complainant,

v.

Douglas A. Collins,
Secretary,
Department of Veterans Affairs (VA),
Agency.

Appeal No. 2024004968

Agency No. 200I-672-2024-159103

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated August 9, 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 Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

ISSUES PRESENTED

Whether the Agency's final decision properly dismissed Complainant's formal complaint pursuant to 29 C.F.R. § 1614.107.

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 was not an Agency employee or applicant for employment.² On May 4, 2024, Complainant initiated equal employment opportunity (EEO) contact. On August 6, 2024, Complainant filed a formal EEO complaint requesting, in pertinent part: "That [the Agency] protect and guarantee all the Constitutional Rights of the Veteran and suspend the scheme of using its Members to violate the Laws."

Specifically, Complainant stated, on May 15, 2008, the United States Postal Service (Postal Service) granted him an offer of employment for an Agency position and gave him a Non-VA form to be completed by his primary care physician ("Primary Physician"). Complainant stated, the next day, he submitted the Non-VA form to the VA Caribbean Healthcare System (VACHS) to be completed by Primary Physician. Complainant alleged that a secondary physician ("Secondary Physician"), whom he does not know, completed the Non-VA form on May 22, 2008, and assessed Complainant's work restrictions with false information. Complainant alleged that VACHS covered up the dishonest assessment by Secondary Physician, violating his constitutional rights. Complainant alleged that he was unable to attain employment with the Postal Service, and the Agency canceled his contract early because he pursued the violation of his constitutional rights.³

² In the record, Complainant stated that he worked as a Program Support Assistant, GS-303-S, in the Psychiatry Service at VACHS from March 11, 2015 to October 17, 2015 and November 10, 2016 to May 31, 2017.

³ The Commission database reveals several appeals for Complainant against the Postal Service. Pertinently, EEOC Appeal No. 0120111464 pertains to an October 27, 2010 EEO complaint alleging the Postal Service discriminated against Complainant based on disability and age by utilizing false information to justify his termination. EEOC Appeal No. 0120130064 pertains to a July 27, 2012 EEO complaint in which Complainant alleged the Postal Service discriminated against him based on race, disability, age, and reprisal when, in 2008, it denied him employment with the Agency. The Agency procedurally dismissed both matters stating that Complainant filed a civil action in a United States District Court on the same claims.

On August 9, 2024, the Agency issued a final decision (FAD) dismissing Complainant's formal complaint. The FAD stated that Complainant alleged, between May 22, 2008 and July 24, 2017, VA employees subjected Complainant to harassment. The FAD stated that Complainant's complaint failed to fall within the purview of EEO laws and regulations. The FAD reiterated that Complainant was not an employee of the Agency or an applicant for employment with the Agency. The FAD stated that Complainant's allegations are about his status as a veteran and VA services, rather than Agency employment. Also, the FAD stated that Complainant did not act with due diligence in pursuing his complaint. The instant appeal from Complainant followed.

CONTENTIONS ON APPEAL

On appeal, Complainant submitted a substantial brief requesting "Due Process in Law" and seeking clarification of what occurred regarding Secondary Physician's false assessment. The Agency did not make 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

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).

Summarily, Complainant alleged that he had a job offer with another agency, the Postal Service, which required him to obtain completed medical documentation from his primary doctor. Complainant stated that he is a veteran and his doctor, Primary Physician, was with the VACHS. Complainant stated that he requested medical documentation and another physician with whom he is not familiar, Secondary Physician, completed his medical documentation with false information. As a result, the Postal Service terminated his employment, and the VA has covered up Secondary Physician's actions. Based on the record and appeals previously before us, Complainant has pursued this matter for some time. In addition, the record reveals Complainant filed a civil action on the same matter. We find, pursuant to 29 C.F.R. § 1614.101(a), the aforementioned claim is not within the purview of EEOC Regulations.

To the extent that Complainant is alleging that the Agency, the VA, canceled his employment contract (in October 2015 or May 2017) because he continued to pursue the Non-VA medical documentation matter, we find that such matters are barred by the doctrine of laches. Complainant initiated EEO contact on May 4, 2024 for those matters that occurred seven or more years earlier.

The Commission has consistently held that a Complainant must act with due diligence in the pursuit of his claim, or the doctrine of laches may apply. See Becker v. United States Postal Service, EEOC Appeal No. 01A45028 (November 18, 2004) (finding that the doctrine of laches applied when complainant waited over two years from the date of the alleged discriminatory events before contacting an EEO Counselor)(citing O'Dell v. Dep't of Health and Human Services, EEOC Request No. 05901130 (December 27, 1990)). The doctrine of laches is an equitable remedy under which an individual's failure to pursue diligently his course of action could bar his claim.

CONCLUSION

Accordingly, 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).

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 24, 2025

Date