



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Cristen T,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2024004993

Agency No. 1F741020224

**DECISION**

Complainant timely appealed with the Equal Employment Opportunity Commission ("EEOC" or "Commission") from the Agency's August 20, 2024 dismissal of 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. For the reasons presented below, the Commission **AFFIRMS** the Agency's Final Decision dismissing Complainant's complaint.

**ISSUES PRESENTED**

Whether the Agency properly dismissed Complainant's formal complaint for failure to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1).

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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 was employed by the Agency as a Mail Processing Clerk, PS-06, for the Agency's Los Angeles Network Distribution Center in Los Angeles, California.

On July 29, 2024, Complainant filed a Formal EEO Complaint alleging that the Agency subjected her to discrimination on the bases of race (Hispanic), national origin (Hispanic/Latino), and color. The Agency framed Complainant's claims as follows:

1. On February 18, 2024, Complainant was issued a Notice of Removal for Violation of Last Chance Agreement and the person accountable for Complainant's Last Chance Agreement was recently terminated due to tampering with her husband's clock rings. Complainant alleged she was falsely issued the Notice of Removal and Management falsely processed her resignation form.
2. On March 25, 2024, Management did not comply with a union grievance settlement which allowed Complainant to return to work.

#### *Timeline of Events*

On July 31, 2023, Complainant received a Notice of Removal ("NOR"). Complainant subsequently filed a grievance challenging the NOR (Grievance No. 1F 21C-1F-D 23394764).

On September 8, 2023, Complainant initiated "EEO Complaint 1" (Agency Case No. 1F741040523) alleging that she was subjected to discrimination when: on September 7, 2023, the Agency terminated her employment. On December 5, 2024, Complainant entered into a binding EEO settlement agreement, wherein she agreed to withdraw EEO Complaint 1 and resign from the Agency. The Agency processed Complainant's resignation on or about February 16, 2022.

On March 15, 2024, Complainant was notified that the Agency and Union resolved Grievance No. 1F 21C-1F-D 23394764, in a Step 3 Decision where the Agency agreed to reduce the July 31, 2023, NOR to a 14-day suspension. However, on March 27, 2024, a revised Step 3 Decision was

issued, rendering Grievance No. 1F 21C-1F-D 23394764 moot due to the December 5, 2023, EEO settlement agreement.

On March 18, 2024, Complainant filed a Formal EEO Complaint, "EEO Complaint 2" (Agency Case No. 1F741007524), alleging, in relevant part, that she was subjected to discrimination when: (1) On July 31, 2023, she was issued a NOR and was escorted from the building on September 7, 2023; and (2) On December 6, 2023, the Agency denied her request to rescind her signature on the December 5, 2023 EEO Settlement Agreement and on February 16, 2024, she was officially separated.

On April 8, 2024, the Agency dismissed EEO Complaint 2 for failure to state a claim, because, among other things, Complainant already raised the same claim in EEO Complaint 1, which she agreed to withdraw. Complainant filed an appeal with the Commission.<sup>2</sup>

On April 17, 2024, while EEO Complaint 2 was pending appeal before the Commission, Complainant initiated EEO contact for the instant complaint.

The Agency dismissed Claims 1 and 2 pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim. The Agency reasoned that Complainant's allegation in Claim 1 is based on the same fact patten as the removal allegation Complainant raised in EEO Complaint 1. The Agency reasoned that Claim 2 was an impermissible collateral attack on another administrative proceeding. In the alternative, the Agency dismissed Claim 1 for untimely EEO Contact pursuant to 29 C.F.R. § 1614.107(a)(2).

The instant appeal followed.

### CONTENTIONS ON APPEAL

Neither party field a brief or statement regarding 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

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<sup>2</sup> Cristin T. v. United States Postal Serv., EEOC Appeal No. 2024003162 (Oct. 9, 2024) (affirming agency dismissal for failure to state a claim).

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

#### *Same Claim*

EEOC Regulation 29 C.F.R. § 1614.107(a)(1) provides for the dismissal of a complaint that states the same claim that is pending before or has been decided by the Commission or the Agency. To be dismissed as the "same claim," the present formal complaint and prior complaint must have involved identical matters. The Commission has consistently held that in order for a formal complaint to be dismissed as identical, the elements of the complaint must be identical to the elements of the prior complaint in time, place, incident, and parties. See Madelaine G. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120160836 (Apr. 11, 2016) citing Jackson v. United States Postal Serv., EEOC Appeal No. 01955890 (Apr. 5, 1996).

Claim 1 was properly dismissed for stating the same claim that was raised in EEO Complaint 1 (Agency Case No. 1F741040523) and EEO Complaint 2 (Agency Case No. 1F741007524). Although Claim 1 references February 18, 2024 as the alleged date of discrimination, the alleged discriminatory act, NOR for violating a last chance agreement, concerns the same time, place, incident, and parties as the NOR and removal alleged in EEO Complaint 1 and EEO Complaint 2.

We note that identifying new evidence to support a claim previously raised with the agency or the commission, or arguing a different theory of law, does not create a new claim. Nathan S. v. United States Postal Serv., EEOC Appeal No. 2022001051 (May 2, 2022) citations omitted. Unlike Complainant's prior EEO complaints, Claim 1 includes new information about the responsible management official that, if true, potentially undermines this individual's credibility, and, by extension, the accuracy of the NOR underlying Complainant's removal. Nevertheless, this new information ultimately does not "fundamentally change the nature of the claim" Complainant previously raised in EEO Complaint 1 and EEO Complaint 2 regarding the NOR and her subsequent separation from the Agency.

Complainant v. United States Postal Serv., EEOC Appeal No. 0120132933 (Jan. 14, 2014).

As Claim 1 fails to state a claim, it is not necessary to address the Agency's alternate grounds for dismissal, untimely EEO contact 29 C.F.R. §1614.107(a)(2).

#### *Collateral Attack*

The regulation set forth at 29 CF.R. § 1614.107(a)(1) provides, in relevant part, that an Agency shall dismiss a complaint that fails to state a claim. The Commission has generally held that complaints involving other administrative proceedings, including those involving negotiated grievance processes, do not state a claim within the meaning of its regulations. See Lingad v. United States Postal Serv., EEOC Request No. 05930106 (Jun. 23, 1994).

For instance, "an employee may not use the EEO process to obtain compliance with a grievance settlement." Harlan P. v. United States Postal Serv., EEOC Appeal No. 0120170928 (Apr. 18, 2017), citing Complainant v. Dep't of Homeland Sec., EEOC Appeal No. 0120142347 (Nov. 5, 2014) (allegation that the Agency would not comply with a grievance decision constituted a collateral attack and failed to state a claim); see also, Alden G. v. United States Postal Serv., EEOC Appeal No. 2022000542 (Mar. 14, 2022) (noting that although employees of the United States Postal Service may raise the same issue in an EEO complaint and through the grievance process, a challenge to an agency's compliance with a settlement agreement arrived at through the grievance process fails to state a claim) other citations omitted.

Complainant's assertion in Claim 2, that "Management did not comply with a union grievance settlement which allowed Complainant to return to work" is essentially asking the Commission to interpret and enforce an agreement reached through the grievance process. Earlie C. v. United States Postal Serv., EEOC Appeal No. 2024004399 (March 13, 2024). The parties to the settlement agreement at issue are the Agency and the Union (acting on Complainant's behalf). Moreover, the agreement was reached through a grievance arbitration process provided in the Collective Bargaining Agreement between the Agency and the Union. If Complainant believes the Agency is in breach of this agreement, she should raise her concerns within the grievance process itself, not through the EEO process. Earlie C. citing Wills v. Dep't of Def., EEOC Req. No. 05970596 (July 30, 1998).

### 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

February 4, 2025

Date