



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

[REDACTED]
Vernita L,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service,
Agency.

Appeal No. 2024005007

Agency No. 1F-641-0146-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated August 12, 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. Upon review, the Commission finds that Complainant's complaint was properly dismissed for untimely EEO Counselor contact.

ISSUES PRESENTED

Whether the Agency correctly dismissed Complainant's complaint for untimely contact with an EEO counselor pursuant to 29 C.F.R. § 1614.107(a)(2).

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Supervisor, Distribution Operations at the Agency's Des Moines Network

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.

Distribution Center (NDC) facility in Omaha, NE. On July 16, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of race (African-American), color (Black), age (57), and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 when:

1. On February 1, 2024, Complainant was informed she was not selected for the position of Manager, Distribution Operations.

The Agency dismissed the Complainant's complaint for untimely EEO counselor contact, pursuant to 29 C.F.R. § 1614.107(a)(2). The Agency concluded that the Complainant contacted the EEO counselor until April 5, 2024, which was sixty-four (64) days after she was not selected for the position at issue.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant concedes that she did not contact an EEO Counselor until April 5, 2024. She claims she understood the forty-five days were business days, not calendar days. She claims she lacked access to the automated system and was unable to access her login information from her previous EEO complaints. She also makes arguments concerning the merits of her complaint.

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

EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination be brought to the attention of the EEO counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action. The Commission has adopted a “reasonable suspicion” standard (as opposed to a “supportive facts” standard) to determine when the 45-day limitation period is triggered. See Howard v. Department of the Navy, EEOC Request No. 05970852 (February 11, 1999). Thus, the time limitation is not triggered until a complainant reasonably suspects discrimination, but before all the facts that support a charge of discrimination have become apparent.

Complainant was notified of her nonselection on February 1, 2024. This is the date she reasonably suspected discrimination. However, she did not initiate contact with an EEO Counselor until April 5, 2024, which is more than forty-five (45) days later. Furthermore, we note that Complainant stated on her formal EEO complaint that she had filed prior EEO complaints. Despite her claim of being ignorant of the calendar day specification of the policy, Complainant had constructive notice of the required time limit due to her previous EEO complaint. See Cecile S. v U.S. Postal Serv., EEOC Appeal No. 0120161104 (Apr. 9, 2016) (affirming Agency’s dismissal for untimely EEO Counselor contact where complainant had prior experience in EEO complaint process and thus failed to rebut presumption that she was aware of relevant time limitations); Marcel V. v. U.S. Postal Serv., EEOC Appeal No. 2019000094 (“Complainant acknowledged that he had filed at least two prior EEO complaints. As such, he did not rebut the presumption that he was aware of the applicable time limit.”)

On appeal, Complainant has presented no persuasive arguments or evidence warranting an extension of the time limit for initiating EEO Counselor contact. Therefore, we conclude that the Agency properly dismissed Complainant’s complaint for untimely EEO Counselor contact.

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:



Carlton M. Hadden, Director
Office of Federal Operations

February 10, 2025

Date