



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Noah W,¹
Complainant,

v.

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

Appeal No. 2024005009

Agency No. 4B-150-0110-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated August 15, 2024, dismissing a formal 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 set forth below, we AFFIRM the Agency's final decision dismissing Complainant's complaint.

ISSUE PRESENTED

Whether the Agency's final decision properly dismissed Complainant's formal complaint as untimely filed 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

During the period at issue, Complainant worked as a Postmaster at the Agency's Post Office in Acme, Pennsylvania.

On June 4, 2024, Complainant requested pre-complaint processing. Informal efforts at resolution were not successful.²

On August 1, 2024, Complainant filed a formal EEO complaint alleging that the Agency subjected him to discrimination based on reprisal for prior protected activity.

On August 15, 2024, the Agency issued a final decision. The Agency found that the formal complaint was comprised of the following claims:

1. On January 11, 2024, you became aware of a slanderous statement management made about you;
2. On February 15, 2024, you were issued a Proposed Letter of Warning in lieu of a 14 Day Suspension; and
3. On a date not specified, management did not respond to your request for an investigation into the Proposed Letter of Warning.

The Agency dismissed the formal EEO complaint pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely EEO Counselor contact. Specifically, the Agency determined that Complainant initiated EEO Counselor contact on June 14, 2024, which the Agency found was more than forty-five days after the alleged discriminatory events occurred.

The instant appeal followed.

² In its final decision, the Agency identified "June **14**, 2024" as the date of initial EEO contact. The EEO Counselor's Report, however, expressly makes reference to June 4, 2024, as the initial EEO contact date. This ten-day disparity, however, does not affect our disposition of this case.

CONTENTIONS ON APPEAL

On appeal, Complainant has provided neither a brief nor a statement outlining a legal basis for overturning the Agency's final decision that the complaint was untimely filed. Complainant argues, however, that he was unable to timely initiate EEO counseling due to illness.

The Agency provides no response 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

EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination should be brought to the attention of the Equal Employment Opportunity Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within forty-five (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 forty-five (45) day limitation period is triggered. See Howard v. Dep't of the Navy, EEOC Request No. 05970852 (Feb. 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.

EEOC regulations provide that the Agency or the Commission shall extend the time limits when the individual shows that he was not notified of the time limits and was not otherwise aware of them, that he did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence he was prevented by circumstances beyond his control from contacting the Counselor within the

time limits, or for other reasons considered sufficient by the Agency or the Commission. 29 C.F.R. § 1614.105(a)(2).

The record discloses that the alleged discriminatory events occurred on January 11, 2024 and February 15, 2024, but Complainant did not initiate contact with an EEO Counselor until June 4, 2024, well beyond the 45-day limitation period.

In his appeal, Complainant did not claim that he was unaware of the time limit for contacting an EEO Counselor and the record contains an affidavit from an Agency official, reflecting that an EEO poster is appropriately displayed at his facility, with the appropriate timelines identified for pursuing the EEO complaint process. It is unclear why Complainant waited approximately 5 months to initiate EEO Counselor contact, in June 2024. Complainant does not deny that the Agency made available information regarding the 45-day deadline. In addition, we did not find it credible that Complainant who had worked for the Agency for a number of years, and been promoted to a management position, a Postmaster, did not know the time limits for contacting an EEO Counselor. Further, Complainant has prior EEO history and are deemed to have received EEO counseling and been informed of the applicable time frames.

Moreover, Complainant concedes that he initiated EEO contact regarding the claims after the 45-day statutory filing period had elapsed. To justify the delay, Complainant argues that that the EEO Counselor told him, once he learned of the purportedly slanderous statement by Agency management, that he had to file a new complaint. Complainant expressly states that "there is so much more that has happened to me and that I have been diagnosed with PTSD [Post-Traumatic Stress Syndrome]..."

While there are instances where illness may lead to an extension of the filing period, we have consistently held, in cases involving physical or mental health difficulties, that an extension is warranted only when an individual is so incapacitated by his condition that he is unable to meet the regulatory time limits. See Davis v. U.S. Postal Serv., EEOC Request No. 05980475 (Aug. 6, 1998); Crear v. U.S. Postal Serv., EEOC Request No. 05920700 (Oct. 29, 1992). Here, Complainant provides no corroborative evidence that his illness was so extreme that he was incapacitated and therefore unable to file within the regulatory period.

Complainant has not presented any persuasive arguments or evidence warranting an extension of the time limit for initiating EEO Counselor contact. 29 C.F.R. § 1614.105(a)(2). Therefore, the Agency properly dismissed such claims for untimely EEO Counselor contact.

CONCLUSION

The Agency's final decision dismissing the formal complaint for the reason discussed above is AFFIRMED.

Because we affirm the Agency's final decision for the reason discussed above, we find it unnecessary to address alternative dismissal grounds.

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