



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

[REDACTED]
Harvey D.,¹
Complainant,

v.

Mark Averill,
Acting Secretary,
Department of the Army,
Agency.

Appeal No. 2024005029

Agency No. AREUBENEL24MAY002039

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's August 8, 2024, decision dismissing his complaint of unlawful employment discrimination in violation of the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, we AFFIRM the Agency's decision to dismiss the complaint.

ISSUE PRESENTED

Whether the Agency correctly dismissed the complaint for untimely filing of the formal complaint.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an Operations Specialist, GS-11, at U.S. Army Garrison (USAG) Benelux in Chievres, Belgium.

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.

On August 5, 2013, Complainant initiated EEO Counselor contact. Informal efforts to resolve his concerns were unsuccessful. On June 14, 2024, the Agency issued Complainant the requisite Notice of Right to File a Formal Complaint (Notice), informing him that he had 15 days from the date of receipt of the Notice to file a formal complaint.

The following month, Complainant filed a formal complaint on July 25, 2024, alleging that the Agency subjected him to discrimination based on his age (over 40) when the Supervisory Plans and Operations Specialist did not select him for the GS-0301-12, Operations Manager position at USAG Benelux Directorate of Plans, Training, Mobilization, and Security, in Chierves, Belgium.

On August 8, 2024, the Agency issued a final decision dismissing the complaint. In its decision, the Agency noted that Complainant indicated in his formal complaint that while he received the Notice on June 19, 2024, he did not access it until June 26, 2024. Complainant's complaint was ultimately submitted to the Agency's EEO office on July 25, 2024. Based on these dates, the Agency dismissed the formal complaint pursuant to 29 C.F.R. § 1614.107(a)(2) on the grounds that it was not timely filed within the 15-day time limit specified in of 29 C.F.R. § 1614.106(b). The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant addresses the merits of his complaint but does not address the Agency's procedural dismissal. In response, the Agency requests that the Commission affirm its procedural dismissal.

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. Dep't of the Treas., 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(f), 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 record demonstrates that the Notice clearly stated that Complainant had 15 days to file a formal complaint. Complainant's formal complaint was filed on July 25, 2024, more than 15 days after receipt of the Notice. Complainant does not dispute this timeline on appeal, nor does he provide an adequate justification to warrant an extension of the time limit for filing the formal complaint.

CONCLUSION

The Agency's final decision dismissing the formal complaint for untimeliness 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 13, 2025
Date