



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

[REDACTED]  
James S.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2024005030

Agency No. 4E-800-0109-24

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated August 2, 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. For the following reasons, we AFFIRM the Agency's decision to dismiss the complaint.

ISSUE PRESENTED

The issue presented is whether the Agency properly dismissed the complaint for untimely EEO contact.

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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 worked as a Custodian at the U.S. Post Office in Denver, Colorado.

On May 1, 2024, Complainant initiated contact with an EEO Counselor. On July 3, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination based on race (African American), color (black), disability (mental), and in reprisal for prior protected EEO activity when beginning in 1990, and on April 2, 1995, after filing and then settling a claim for being physically assaulted by a supervisor, he was denied a chance for career advancement and promotion.

On August 2, 2024, the Agency dismissed Complainant's formal EEO complaint for untimely EEO Counselor contact. The Agency found that Complainant had prior EEO activity and that an EEO poster was on display at his work facility. Therefore, Complainant was deemed to have constructive knowledge of the EEO complaint process and the applicable time limits for filing claims. The Agency did not find any justification for Complainant's nearly three-decade long delay in contacting an EEO Counselor. The instant appeal followed.

### CONTENTIONS ON APPEAL

On appeal, Complainant argues that he was unaware of the time limit for initiating EEO contact because his legal representative failed to properly advise him of applicable deadline. He requests appointment of an attorney and reversal of the Agency's dismissal of his claim.

The Agency did not file a brief or raise any arguments 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. 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

Complaints of discrimination must be brought to the attention of an 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. 29 C.F.R. § 1614.105(a)(1). Our regulation requires the Agency to dismiss complaints that fail to comply with the applicable time limits. 29 C.F.R. § 1614.107(a)(2).

However, we note that EEOC regulation at 29 C.F.R. § 1614.105(a)(2) allows the Agency or the Commission to extend the time limit when the complainant shows that they were not notified of the time limits and were not otherwise aware of them, that they did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence, they were prevented by circumstances beyond their control from contacting the EEO Counselor within the time limits, or for other reasons considered sufficient by the Agency or the Commission.

Here, Complainant acknowledges that he did not initiate EEO contact in a timely manner. However, he attributes the delay to the failure of his representative to inform him about the regulatory time limit to initiate EEO contact. While we are mindful of Complainant's contention, we are unconvinced that Complainant was not notified of the time limit and was not otherwise aware of the deadline. To the contrary, we find that Complainant was constructively aware of the relevant time limit, as the record shows that Complainant filed several EEO complaints prior to the alleged discrimination in 1995. See Dominique N. v. U.S. Postal Serv., EEOC Appeal No. 2023003580 (Nov. 13, 2023) (deeming complainant to have constructive knowledge of the applicable time limit to initiate EEO contact given his prior EEO history), req. for recons. den., EEOC Request No. 2024001528 (June 6, 2024) Moreover, we note that Complainant is responsible for proceeding with the complaint, whether or not he has a representative. 29 C.F.R. § 1614.605(e). Thus, even if Complainant is correct that his former representative failed to inform him of applicable time limits for EEO Counselor contact, we find this inadequate justification for failure to proceed with his complaint.

### 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 5, 2025

Date