



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

[REDACTED]
Stefan H.,¹
Complainant,

v.

Kristi Noem,
Secretary,
Department of Homeland Security
(Transportation Security Administration),
Agency.

Appeal No. 2024005043

Agency No. HS-TSA-01324-2024

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated August 14, 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 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

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

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

At the time of events giving rise to this complaint, Complainant worked as a Transportation Security Officer (TSO) at the Agency's Southwest Florida International Airport facility in Fort Myers, Florida.

On April 12, 2024, Complainant initiated contact with an EEO Counselor. On May 10, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination based on race (Caucasian), color (white), age (over 40), and in reprisal for prior protected EEO activity when:

1. In December 2023, a management official told Complainant, "[I]et's wait and see how it plays out"; and
2. On February 26, 2024, management did not select Complainant as a primary member with the National Advisory Council (NAC).

In his formal complaint and accompanying attachments, Complainant explained that on or about August 2023, he applied for membership in the NAC and was interviewed on or about November 2023. According to Complainant, he disclosed at the time of the interview, that he was one of the individuals who complained to internal investigators about financial irregularities and mismanagement of American Federation of Government Employees (AFGE) union dues and disbursements. Complainant explained that he was subsequently removed from his position as Vice President by AFGE National Management and allegedly retaliated against by the union. Complainant informed the NAC Program Manager that he felt that it was a conflict of interest for AFGE to be involved in the NAC selection process, to which, the NAC Program Manager responded, "[I]et's wait and see how it plays out." Complainant was ultimately not selected to be a member of the NAC. According to Complainant, he did not reasonably suspect discrimination until he received emails on March 14 and March 19, 2024, from the Deputy Assistant Administrator and Deputy Chief Counsel, who raised the question of discrimination regarding the selection process, and over his objection, advised him to pursue an EEO complaint.

On August 14, 2024, the Agency dismissed Complainant's formal EEO complaint for untimely EEO contact. The Agency found that Complainant had undergone EEO training and that he had prior EEO activity. 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 adequate justification for Complainant's failure to contact an EEO Counselor within 45 days of the alleged discrimination. Complainant subsequently filed the instant appeal.

CONTENTIONS ON APPEAL

On appeal, Complainant reiterates that he did not have reason to suspect discrimination until he received emails on March 14 and March 19, 2024, from the Deputy Assistant Administrator and Deputy Chief Counsel, advising him of his right to pursue an EEO claim. Therefore, he argues, that his April 12, 2024, contact with an EEO Counselor was within the 45-day limitation period that began to run on March 19, 2024. Further, Complainant argues that the Agency acted with "dirty hands" because they suggested that Complainant pursue an EEO claim but are now preventing Complainant from engaging in discovery.

The Agency opposes Complainant's appeal and argues that Complainant missed the deadline for initiating EEO Counselor contact by one day. Complainant had enough information to form a reasonable suspicion on February 26, 2024, the date he was notified of his non-selection as a primary member of the National Advisory Council, and the limitation period began to run on that date. According to the Agency, the record shows that Complainant had undergone numerous EEO-related online training courses, demonstrating that he was aware of the applicable deadlines. Finally, the Agency argues that neither the Deputy Assistant Administrator nor the Deputy Chief Counsel advised Complainant to file an EEO complaint. Citing to the Deputy Assistant Administrator's email on page 39 of the Complaint File, the Agency emphasizes that the Deputy Assistant Administrator simply stated, "if you believe you have been subjected to unlawful discrimination, harassment, or retaliation and wish to initiate an informal EEO complaint, you must contact TSA's Civil Rights, Equity, Access, and Inclusion Division within 45 days of the discriminatory event." The Agency argues that Complainant's response to this email, stating that he did not want to pursue an EEO claim, undercuts Complainant's argument that he became aware of discrimination through emails with the Deputy Assistant Administrator.

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.

Having reviewed the record, we find that Complainant's claim was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(2) for untimely EEO Counselor contact. Here, the record reveals that Complainant alleged that he was subjected to discriminatory non-selection on February 26, 2024. However, he did not initiate contact with an EEO Counselor until April 12, 2024, which is one day beyond the 45-day limitation period.

While Complainant concedes that he did initiate EEO contact within 45 days of his non-selection, he argues that the 45-day limitation period did not begin to run until he received emails on March 14 and March 19, 2024, from the Deputy Assistant Administrator and Deputy Chief Counsel, who raised the question of discrimination regarding the selection process, and over his objection, advised him to pursue an EEO complaint. He argues that he did not reasonably suspect discrimination until then. However, we find this argument lacks support in fact or law.

Contrary to Complainant's assertion, the record reveals that on March 14, 2024, the Deputy Assistant Administrator, in response to Complainant's concerns about improper conflict of interest and union influence, informed Complainant of his right to pursue the EEO process. We ultimately agree with the Agency that nothing in the record suggests that either the Assistant Administrator and Deputy Chief Counsel advised Complainant that he may have been subjected to discrimination and encouraged him to file an EEO complaint. As the record fails to corroborate Complainant's contention that he did not reasonably suspect discrimination until he received the emails from the Deputy Assistant Administrator and Deputy Chief Counsel, we affirm the Agency's dismissal of Complainant's formal complaint pursuant to § 1614.107(a)(2).

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)

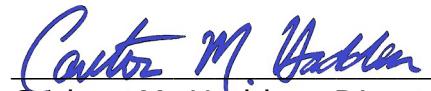
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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, **filling 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 6, 2025

Date