



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

[REDACTED]
Cameron M.,¹
Complainant,

v.

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

Appeal No. 2024005056

Agency No. 1F-941-0109-24

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. For the following reasons, we AFFIRM, in part, the Agency's decision to dismiss the complaint and REMAND, in part, the matter for further processing.

ISSUES PRESENTED

Whether the Agency properly dismissed Complainant's formal complaint for untimely contact with an EEO Counselor and for stating the same claims that are pending before or have been decided by the Agency or the Commission.

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 Laborer/Custodian at the Agency's San Jose Processing and Distribution Center in San Jose, California.

Believing that he had been subjected to discrimination, Complainant initiated EEO counseling on April 16, 2024. On July 16, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the basis of race (African American) when:

1. In November 2023, December 2023, and on January 18, 2024, management delayed his opportunity to take Exam 955 to become a mechanic.
2. On March 14, 2024, management delayed his opportunity to take Exam 955 to become a mechanic.

The Agency subsequently dismissed claim 1, pursuant to 29 C.F.R. § 1614.107(a)(2), finding that pre-complaint processing occurred over 45 days after the issue alleged to be discriminatory. In dismissing the claim, the Agency explained that Complainant did not claim that he was unaware of the time limit for contacting an EEO Counselor and the record contained an affidavit attesting to the fact that the EEO poster was appropriately displayed at his facility. The Agency concluded that Complainant was deemed to have constructive knowledge of the EEO complaint process and the applicable time periods for filing claims because he previously engaged in EEO activity.

The Agency also dismissed both claims, pursuant to 29 C.F.R. § 1614.107(a)(1), finding that Complainant previously raised the claims in another complaint, which Complainant ultimately withdrew.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that he received incorrect information regarding the grievance and EEO processes. Complainant states that the Agency does not have information about the EEO process posted as stated in the dismissal notice. The Agency did not respond.

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

Claim 1

EEOC Regulation 29 C.F.R. § 1614.107(a)(2) states, in pertinent part, that the Agency shall dismiss a complaint for failure to comply with the applicable time limits. EEOC Regulation 29 C.F.R. § 1614.105(a)(1) provides, that 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 forty-five days of the effective date of the action. EEOC Regulation 29 C.F.R. § 1614.105(a)(2) allows the Agency or the Commission to extend the time limit if the complainant can establish that they were not aware of the time limit, that complainant did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence complainant was prevented by circumstances beyond their control from contacting the EEO Counselor within the time limit, or for other reasons considered sufficient by the Agency or Commission.

Here, the record shows that the last alleged discriminatory event in claim 1 occurred on January 18, 2024, but Complainant did not initiate contact with an EEO Counselor until April 16, 2024, which is beyond the 45-day limitation period. Although Complainant asserts that the Agency did not appropriately display an EEO poster at his work facility as represented by a supervisor in an affidavit, we note that Complainant previously filed an EEO complaint and therefore would have been aware of the time limits for raising claims.

Upon review, the Commission finds that claim 1 was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely EEO Counselor contact.² We therefore affirm the Agency's dismissal of claim 1.

Claim 2

The regulation set forth under 29 C.F.R. § 1614.107(a)(1) provides for the dismissal of a complaint that states the same claim that is pending before or has been decided by the Commission or the Agency. To be dismissed as the "same claim," the present formal complaint and prior complaint must have involved identical matters. The Commission has consistently held that in order for a formal complaint to be dismissed as identical, the elements of the complaint must be identical to the elements of the prior complaint in time, place, incident, and parties. See Jackson v. U.S. Postal Serv., EEOC Appeal No. 01955890 (Apr. 5, 1996). Identifying new evidence to support a claim previously raised with an agency or the Commission, or arguing a different theory of law, does not create a new claim. See Doleshal v. Dep't of Health and Human Servs., EEOC Appeal No. 01A40020 (Jul. 29, 2004).

It is the burden of the Agency to provide evidence or proof to substantiate its final decision. See Complainant v. Dep't of Com., EEOC Appeal No. 0120142525 (Nov. 25, 2014) quoting Marshall v. Dep't of the Navy, EEOC Request No. 05910685 (Sept. 6, 1991).

Here, the Agency did not provide sufficient evidence to support a dismissal for failure to state a claim under 29 C.F.R. § 1614.107(a)(1) for claim 2. The Agency bases its dismissal on the existence of a prior EEO complaint filed by Complainant containing "identical claims" as the instant complaint. Yet, the Agency proffers no documentation, such as counseling or formal complaint documents articulating the claims in this prior EEO complaint. Ericson v. Department of the Army, EEOC Request No. 05920623 (January 14, 1993), (the agency has the burden of providing evidence and/or proof to support its final decisions). Therefore, we find that the Agency improperly dismissed claim 2.

² Although the Agency also dismissed claim 1 for stating the same claim that was addressed in a prior complaint, the Commission need not address this additional ground for dismissal as Claim 1 is already dismissed for untimely EEO contact.

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is AFFIRMED regarding claim 1 and REVERSED regarding claim 2.

ORDER

The Agency is ordered to process the remanded claim in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to the Complainant that it has received the remanded claim **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, or a copy of the final agency decision ("FAD") if Complainant does not request a hearing

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a).

The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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 (T0124)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. 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 on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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 6, 2025

Date