



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

[REDACTED]
Von E.,¹
Petitioner,

v.

Deb A. Haaland,
Secretary,
Department of the Interior
(National Park Service),
Agency.

Petition No. 2024005079

MSPB No. DE-0842-23-0237-I-1

DECISION

On August 13, 2024, Petitioner filed a petition with the Equal Employment Opportunity Commission (EEOC or Commission) asking for review of a Final Order issued by the Merit Systems Protection Board (MSPB). For the reasons that follow, we DENY consideration of the petition.

ISSUES PRESENTED

The issues presented are whether the petition is timely; and whether the Commission has jurisdiction to review the petition.

BACKGROUND

At the time of events giving rise to this complaint, Petitioner worked as a Biological Science Technician at the Agency's Glacier National Park in West

¹ This case has been randomly assigned a pseudonym which will replace Petitioner's name when the decision is published to non-parties and the Commission's website.

Glacier, Montana. Petitioner filed an appeal with the MSPB challenging the Agency's denial of his claim for firefighter enhanced retirement benefits.

On December 8, 2023, an MSPB Administrative Judge (AJ) issued an Initial Decision affirming the Agency's action. The AJ noted that Petitioner signed a Statement of Understanding on September 4, 2003, regarding his lack of enhanced firefighter retirement benefits, and he did not make his formal request until December 19, 2022. The Agency denied Petitioner's request as untimely because employees are required to make such requests within six (6) months of starting a position.

The AJ found that Petitioner failed to prove that he was unaware of his status or otherwise prevented from making a formal request within six (6) months. Petitioner filed his written request more than 19 years after he started his position, and he asserted that he was never told about a time limit. However, the AJ determined that being "never told" about the time limit was insufficient because ignorance of a deadline is immaterial. The AJ concluded by affirming the Agency's action.

The Initial Decision noted that it would become final on January 12, 2024, unless a petition for review was filed by that date. There is no indication that Petitioner filed a petition for review before the full MSPB.

The instant petition followed.

CONTENTIONS ON PETITION

In his petition before the Commission, Petitioner asserts that the basis for his action was a violation of merit systems principles of "equal pay/benefits for work of equal value." He contends that this was raised as a mixed-case complaint,² but that the MSPB's decision "does not mention it," and only dealt with the timeliness issue.

The Agency opposes the petition as untimely and for lack of jurisdiction. The Agency asserts that the petition should be dismissed because petitions to the Commission must be filed within 30 days of receipt of a final decision.

² A mixed-case complaint is a complaint of employment discrimination filed with a federal agency, related to or stemming from an action that can be appealed to the MSPB. 29 C.F.R. § 1614.302(a)(1).

Here, the petition was filed on August 13, 2024, approximately eight months after the Initial Decision became final in January 2024.

In addition, Petitioner did not file a mixed-case complaint, and the Commission does not have jurisdiction. The Agency contends that Petitioner never made a bona fide claim of discrimination, and his assertion regarding equal pay was somehow meant to transform his case into a mixed-case complaint, but his generalized grievance does not open the door for the Commission to review the matter. As such, the Agency requests that the petition be dismissed.

STANDARD OF REVIEW

EEOC Regulations provide that the Commission has jurisdiction over mixed case complaints on which the MSPB has issued a decision that makes determinations on allegations of discrimination. 29 C.F.R. § 1614.303 et seq. The Commission must determine whether the decision of the MSPB with respect to the allegation of discrimination constitutes a correct interpretation of any applicable law, rule, regulation, or policy directive, and is supported by the evidence in the record as a whole. 29 C.F.R. § 1614.305(c).

ANALYSIS

Timeliness of Petition

As an initial matter, the Agency requests dismissal of the petition as untimely because it was filed in August 2024, approximately eight months after the Initial Decision became final in January 2024. EEOC regulations provide that a petition must be filed with the Commission either within 30 days of receipt of the final decision of the MSPB or within 30 days of when the decision of a MSPB field office becomes final. 29 C.F.R. § 1614.303(c).

In this case, the Commission docketed the instant petition on August 13, 2024. However, this was in response to Petitioner's inquiry for a status update. Petitioner also provided copies of his documents, including his supporting arguments addressed to the Commission dated February 5, 2024, and evidence of a package delivery to the correct zip code on February 7, 2024. Since Petitioner provided some evidence to support that he sent his petition within 30 days of January 12, 2024, we will exercise our discretion and consider his petition timely.

Jurisdiction

The MSPB AJ found that the Agency correctly dismissed Petitioner's challenge of his lack of firefighter enhanced retirement benefits as untimely. It is undisputed that the MSPB only addressed timeliness, and the Commission has no jurisdiction over these types of procedural determinations by the MSPB. The MSPB's decision did not address any matters within the Commission's jurisdiction, and as such, we have no jurisdiction to review the instant petition.

Consequently, we DENY consideration of the petition for review.

PETITIONER'S RIGHT TO FILE A CIVIL ACTION (W0124)

This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court, based on the decision of the Merit Systems Protection Board, **within thirty (30) calendar days** of 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.

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

November 26, 2024

Date