



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Cecille W.,¹
Complainant,

v.

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

Appeal No. 2024005174

Agency No. 4E-913-0085-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated August 20, 2024, dismissing her 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 Title II of the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff et seq. Upon review, the Commission finds that Complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely EEO Counselor contact.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Part Time Flexible Clerk, PS-06 at the Post Office in Chowchilla, California. On July 23, 2024, Complainant filed a formal complaint alleging that the

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.

Agency subjected her to discrimination on the bases of race, sex, reprisal, and genetic information when:

1. In October 2023, Complainant's start-time was changed from 10:00 a.m. to 5:00 a.m.;
2. Between October 2023 and February 16, 2024, management called Complainant into the office on a daily basis, followed her, disciplined her for things she did not do, and attempted to sabotage her work;
3. Between October 2023 and February 16, 2024, the union failed to file grievances on Complainant's behalf;
4. In or about April 2023, or May 1, 2023, the Postmaster asked Complainant if she was going to be late tomorrow and Complainant replied, "if I am not late you will have to buy lunch for everybody" and the Postmaster replied, "if you are late, you owe me a belly dance;" and
5. On January 19, 2024, Complainant was issued a notice of removal.

The Agency dismissed the complaint after determining that Complainant had initially contacted an EEO Counselor more than 45 days after the alleged discriminatory incidents. Alternatively, the Agency dismissed claims (1) and (4) for stating the same claims previously raised in another complaint and claim (3) for failure to state a claim. The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that she was unaware that there was a time limit on a "verbal sexual assault." Complainant states that she did not report it earlier because she thought that by telling her union representative about it, something would be done.

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 Treasury, 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

An aggrieved person must initiate contact with a Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within 45 days of the effective date of the action. 29 C.F.R. § 1614.105(a)(1). The record demonstrates that the most recent alleged discriminatory event occurred on February 16, 2024.² Complainant therefore had until Monday April 1, 2024 to contact an EEO Counselor. She did not EEO contact until May 7, 2024, 36 days beyond the regulatory timeframe.

The Commission has adopted a "reasonable suspicion" standard (as opposed to a "supportive facts" standard) to determine when the forty-five (45) day limitation period is triggered. Carrol L. v. Dep't of Veterans Affairs, EEOC Appeal No. 2024004758 (Jan. 8, 2025) citing Howard v. Dep't of the Navy, EEOC Request No. 05970852 (Feb. 11, 1999). Thus, the time limitation is not triggered until a complainant reasonably suspects discrimination, but before all the facts that support a charge of discrimination have become apparent.

The agency or the Commission shall extend the 45-day time limit in paragraph (a)(1) of this section when the individual shows that he or she was not notified of the time limits and was not otherwise aware of them, that he or she did not know and reasonably should not have been known that the discriminatory matter or personnel action occurred, that despite due diligence he or she was prevented by circumstances beyond his or her control from contacting the counselor within the time limits, or for other reasons considered sufficient by the agency or the Commission. 29 C.F.R. § 1614.105(a)(2). In addition, the time limits in Part 1614, including the 45-day time limit for contacting an EEO Counselor are subject to waiver, estoppel and equitable tolling. 29 C.F.R. § 1614.604(f).

² According to a PS-Form 50 in the record, Complainant's last day in pay status was February 16, 2024.

On appeal, Complainant has presented no persuasive arguments or evidence that would justify an extension of the time limit for initiating EEO Counselor contact on any of the regulatory grounds listed above. Due to the fact that she had engaged in previous EEO activity and the record shows that EEO posters were prominently displayed at the Chowchilla Post Office, she was aware of the time limit for initiating EEO contact. Further, she should have had reasonable suspicion of discrimination on January 19, 2024, the day she was given her notice of removal. Ultimately, we find that the Agency's decision dismissing the complaint for untimely EEO counselor contact was proper. We therefore need not address any of the alternative grounds for dismissal set forth by the Agency in its final decision.

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:



Carlton M. Hadden, Director
Office of Federal Operations

February 11, 2025

Date