



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

[REDACTED]
Carrol V.,¹
Complainant,

v.

Janet Petro,
Acting Administrator,
National Aeronautics and Space Administration,
Agency.

Appeal No. 2024005277

Agency No. NCN-24-KSC-00061

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated September 10, 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.

ISSUE PRESENTED

Whether the Agency properly dismissed Complainant's complaint 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 Aerospace Technologist (AST), Engineering Program Management, GS-0801-14 in the Agency's Exploration Research & Technology Programs in Kennedy Space Center, Florida.

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.

On August 6, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of religion (Christian) and in reprisal for prior protected EEO activity when, on May 9, 2024, Complainant was not selected for the position of AST, Technical Management, GS-0801-15, advertised under Vacancy Announcement No. KSC-23-IMP-12108604-SH.

The Agency dismissed the complaint on the grounds Complainant failed to timely contact an EEO counselor. The Agency noted that the 45th day following Complainant's notice of non-selection was Sunday, June 23, 2024, which was then extended to Monday June 24, 2024. However, Complainant did not initiate contact with an EEO counselor until June 25, 2024, one day late.

The Agency also rejected Complainant's argument that he did not reasonably suspect discrimination until June 24, 2024, when the Selecting Official told Complainant that the selection at issue was based on "group harmony." The Agency noted that Complainant had completed multiple trainings that would have made him aware of the applicable deadlines. Further, Complainant had been given the "group harmony" rationale with respect to previous non-selections, as early as November 2023. Thus, the Agency found no reason to extend or toll the 45-day EEO contact period.

The instant appeal followed.

CONTENTIONS ON APPEAL

In a statement on appeal, Complainant maintains that he could not have suspected discriminatory motives until June 24, 2024. Complainant further argues that the Agency has the burden, which it cannot carry, of demonstrating untimeliness.

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 (Mar. 13, 1997).

Thus, all reasonable inferences that may be drawn from the complaint's allegations must be made in favor of the complainant.

ANALYSIS

The record discloses that the alleged discriminatory event occurred on May 9, 2024, but Complainant did not initiate contact with an EEO Counselor until June 25, 2024, which is beyond the 45-day limitation period. The Commission has long held that, in most cases, a non-selection notice date is the reasonable date to suspect discrimination. See Cedric K. v. Dept. of Defense, EEOC Appeal No. 2021003101 (Sept. 9, 2021); Griffin v. Sel. Svc. Sys., EEOC Appeal No. 01952978 (Jun. 18, 1996) citing Bracken v. U.S. Postal Serv., EEOC Request No. 05900065 (Mar. 29, 1990). We find nothing in the circumstances presented by this case to deviate from this general rule.

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 20, 2025

Date