



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Russel D,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2024005279

Agency No. 4G-330-0393-24

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated September 5, 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. Upon review, the Commission finds that Complainant's complaint was properly dismissed for failure to state a claim and untimely EEO counselor contact.

**ISSUES PRESENTED**

Whether the Agency's final decision properly dismissed Complainant's formal complaint pursuant to 29 C.F.R. § 1614.107(a)(1) and 29 C.F.R. § 1614.107(a)(2).

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<sup>1</sup> 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 Letter Carrier at the Agency's Flagler Post Office facility in Miami, Florida.

On August 18, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of national origin<sup>2</sup> (Hispanic/Latino), color (White), age (YOB 1982), and reprisal (Prior Protected EEO Activity) when:

1. On March 5, 2024, Complainant was placed on Emergency Placement (EP)/Suspended; and,
2. On May 21, 2024, while performing Complainant's duties as a union steward, a manger refused to follow a union/management agreement to provide union stewards the Leave Book upon request. Complainant also alleged the manager threatened to call her husband.

On September 5, 2024, the Agency issued a final decision dismissing Complainant's complaint for several procedural issues. The Agency dismissed Claim 1 pursuant to 29 C.F.R. § 1614.107(a)(2) for untimely EEO counselor contact, finding Complainant's request for pre-complaint counseling was made over 45 days after the issue alleged event. The Agency dismissed Claim 2 pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim. The Agency specifically noted that Complainant's challenge of the union agreement involves a collateral attack on the forum of another proceeding, the Agency's negotiated grievance process, and thus fails to state a claim. The Agency concluded this matter was outside the purview of EEOC regulations.

The instant appeal followed.

### CONTENTIONS ON APPEAL

On appeal, Complainant, through counsel, argues that the Agency's improperly dismissed claim 1 because Complainant was alleging a pattern of discriminatory treatment by his supervisor.

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<sup>2</sup> In his formal complaint, Complainant alleged Race (Hispanic/Latino), however, the proper protected basis is National Origin, as Hispanic/Latino is an ethnicity and not a racial classification.

Regarding claim 2, Complainant argues that the denial of access to records was discriminatory and, from Complainant's perspective, was not actionable through the collective bargaining process, especially since there was a threat of physical violence.

The Agency did not file a brief or any arguments concerning this appeal.

### 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. Department 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

#### *Timeliness of EEO Counselor Contact – Claim 1*

The regulation set forth at 29 C.F.R. § 1614.107(a)(2) provides, in relevant part, that an agency shall dismiss a complaint that fails to comply with the applicable time limits, unless the agency extends the time limits in accordance with 29 C.F.R. § 1614.604(f), which states these time limits are subject to waiver, estoppel and equitable tolling. Complaints of discrimination should be brought to the attention of the Equal Employment Opportunity 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).

Upon review, the Commission finds that Claim 1, as a discrete act of disparate treatment, was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely EEO Counselor contact. Complainant was placed on Emergency Placement on March 5, 2024, but Complainant did not initiate contact with an EEO counselor until June 13, 2024, which is beyond the applicable 45-day limitation period. On appeal, Complainant has not offered sufficient justification to warrant an extension of the time limit for contacting an EEO counselor.

### *Failure to State a Claim - Claim 2*

The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that an Agency shall dismiss a complaint that fails to state a claim. An agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that agency because of race, color, religion, sex, national origin, age or disabling condition. 29 C.F.R. §§ 1614.103, 1614.106(a).

The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (April 21, 1994).

Upon review of the record, we find Claim 2 was properly dismissed for failure to state a claim. The Commission has held that an employee cannot use the EEO complaint process to lodge a collateral attack on another proceeding. See Hannon v. Dep't of the Treasury, EEOC Appeal No. 05A01149 (May 8, 2003); Wills v. Dep't of Def., EEOC Request No. 05970596 (July 30, 1998); Kleinman v. U.S. Postal Serv., EEOC Request No. 05940585 (Sept. 22, 1994). Here, Complainant's complaint and arguments on appeal concern claims relating to Complainant's job duties as Union Steward and his treatment regarding union affairs. Complainant should raise his concerns with the grievance process itself, and not through the EEO process. See Wills v. Dep't of Defense, EEOC Request No. 05970596 (July 30, 1998).

### CONCLUSION

Accordingly, we AFFIRM, for the reasons set forth herein, the Agency's final decision dismissing Complainant's complaint.

### 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