



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

[REDACTED]  
Concepcion M.,<sup>1</sup>  
Complainant,

v.

Scott Bessent,  
Secretary,  
Department of the Treasury  
(Internal Revenue Service),  
Agency.

Appeal No. 2025000001

Agency No. IRS-24-0713

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated October 1, 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the reasons presented below, we reverse the Agency's final decision dismissing Complainant's complaint and remand this matter to the Agency for further processing in accordance with the Order below.

---

<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.

### ISSUES PRESENTED

Whether the Agency's final decision properly dismissed Complainant's claims as untimely and/or abandoned, pursuant to 29 C.F.R. § 1614.107(a)(2) and 29 C.F.R. § 1614.107(a)(1).

### BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Supervisory Management & Program Analyst, IR-0343-01, at the Agency's Enterprise Case Management Office, Internal Revenue Service, in Washington, D.C.

On August 1, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination and harassment on the bases of race (Caucasian), national origin (non-Hispanic), color (White), disability (physical), parental status<sup>2</sup>, age (YOB: 1968), and reprisal for prior protected EEO activity. The Agency framed the claims as alleging discrimination, including harassment, when:

1. On April 17, 2024, Complainant's Director (S1) and Project Director (S2) removed Complainant's team and placed it under S1.
2. On an unspecified date, management issued Complainant a Leadership Succession Review (LSR) rating of "Ready Now" rather than "Ready for an Executive."
3. The Agency subjected Complainant to various acts of harassment including, but not limited to, when:
  - a. From June 2022 to the present, S1 and S2 repeatedly changed the scope of Complainant's work, weaponized their subordinates against her, isolated and publicly humiliated her, systematically removed her from program-related meetings, assigned her few guidance roles, and retaliated against her.

The Agency dismissed the entire complainant pursuant to 29 C.F.R. §1614.107(a)(2) for untimely filing of the formal complaint.

---

<sup>2</sup> While Executive Order 13152 (issued on May 2, 2000) provides protection on the basis of parental status, the EEOC does not have jurisdiction over claims of discrimination based on parental status. See Ward B. v. Dep't of Homeland Sec., EEOC Appeal No. 2019004740 (Feb. 20, 2020).

The Agency also dismissed Claim 2 pursuant to 29 C.F.R. §1614.107(a)(1) on the grounds that Complainant had abandoned it by raising it during EEO counseling but omitted it from her formal complaint. Complainant filed the instant appeal.

### CONTENTIONS ON APPEAL

On appeal, Complainant contends there was a misunderstanding of the 15-day timeline within which to file her complaint. Complainant states she provided her response on the 17th day as she was advised that she had 15 days after opening the email containing her Notice of Right to File. She asserts it was not clearly explained to her and that the EEO counselor stated, "it was 15 days from when [Complainant] open it/received it versus 15 days from the date [the EEO counselor] emailed it." Complainant further states she had been out of the office on FMLA leave attending to her mother who was diagnosed with Alzheimer's Dementia and had declined rapidly.

The Agency contends on appeal that Complainant has not provided sufficient justification to warrant tolling of the time limits provided under 29 C.F.R. § 1614.105(d). The Agency asserts Complainant was sufficiently informed of the formal complaint filing procedures when she initialed and digitally signed the Notice of Rights and Responsibilities and again via the Notice of Right to File. The Agency states that delivery of the Notice of Right to File was confirmed through Microsoft Outlook's email delivery system and neither Complainant nor her representative provided a credible explanation as to why the formal complaint was submitted beyond the 15-calendar day deadline.

### 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

### *Untimely Filing of Formal Complaint*

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(c), which states these time limits are subject to waiver, estoppel and equitable tolling. A formal "complaint must be filed within 15 days of receipt of the notice required by § 1614.105 (d), (e) or (f)." (29 C.F.R. § 1614.106(b)).

When complainant designates an attorney as representative, service of all official documents shall be made on the attorney and the complainant, but timeframes for receipt of the materials shall be computed from the time of receipt by the attorney. 29 C.F.R. 1614.605(d). The complainant is responsible for proceeding with the complaint whether or not he or she has designated a representative. 29 C.F.R. § 1614.605(e).

Here, the record reflects that Complainant designated an attorney representative during informal EEO counseling. (Complaint File, p. 54). On July 15, 2024, the EEO counselor emailed Complainant at her work email address (which Complainant provided during informal counseling) and Complainant's attorney representative at her email address (also provided during informal counseling) stating "The informal complaint is closed. Attached is a copy of the Notice of Right to File. You have 15 calendar days upon receipt of the notice to file your complaint with the Office of Civil Rights and EEO (OCRE)." (Complaint File, p. 58). The attached Notice of Right to File also states that "The complaint must be filed within fifteen (15) calendar days after receipt of this Notice." (Complaint File, p. 57). The record contains an email delivery receipt showing that Complainant received the Notice of Right to File on July 15, 2024. (Complaint File, p. 60). However, there is no such receipt or other evidence in the file showing when Complainant's attorney representative received the Notice of Right to File. Since timeframes for receipt of the materials shall be computed from the time of receipt by the attorney, we are unable to determine whether Complainant's *pro se* filing of the formal complaint on August 1, 2024, was timely.

Where, as here, there is an issue of timeliness, "[a]n agency always bears the burden of obtaining sufficient information to support a reasoned determination as to timeliness."

Guy v. Dep't of Energy, EEOC Request No. 05930703 (January 4, 1994) (quoting Williams v. Dep't of Defense, EEOC Request No. 05920506 (August 25, 1992)). In addition, in Ericson v. Dep't of the Army, EEOC Request No. 05920623 (January 14, 1993), the Commission stated that "the agency has the burden of providing evidence and/or proof to support its final decisions." See also Gens v. Dep't of Defense, EEOC Request No. 05910837 (Jan. 31, 1992). We find the Agency has not met its burden here.

### *Abandonment of Claim 2*

The Agency also dismissed Claim 2 pursuant to 29 C.F.R. § 1614.107(a)(1) on the grounds that Complainant had abandoned it. The record reflects that during EEO counseling, Complainant alleged harassment and discrimination. Among other issues, she stated that she had been discriminated against with respect to her Leadership Succession Review (LSR) and felt her LSR rating should be changed from "Ready Now" to "Ready for an Executive." (Complaint File, p. 53). A review of the formal complaint shows no mention of any LSR, review, and/or rating. However, Complainant alleged consistent discrimination since June 2022. (Complaint File, p. 81). A fair reading of the both the EEO Counselor's Report and the formal complaint makes clear that Complainant has alleged an ongoing pattern of discrimination and harassment of which claims 1 and 2 were specific instances of harassment.

The Commission has routinely held that where a complainant raises a matter at counseling but later does not include that issue in the formal complaint, they cannot resurrect it later during processing or file another complaint concerning the abandoned claim. See, e.g., Maricela P. v. Dep't of Veterans Affairs, EEOC Appeal No. 2024001948 (June 26, 2024). However, the Commission has also found that the Agency wrongfully dismissed claims on the grounds of abandonment where Complainant had fairly alleged an ongoing pattern of harassment and such "abandoned" claims fell within that pattern. See Detra S. v. Dep't of Veteran's Affairs, EEOC Appeal No. 2021004619 (Jan. 13, 2022); Verna G. v. Dep't of Veteran's Affairs, EEOC Appeal No. 2024002476 (Aug. 27, 2024). Based on the record before us, we find the Agency improperly dismissed Claim 2 on the grounds that it had been abandoned.

### CONCLUSION

Based on the foregoing, we REVERSE the Agency's final decision dismissing Complainant's complaint, and we REMAND this matter to the Agency for further processing in accordance with the ORDER below.

ORDER (E0224)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to the Complainant that it has received the remanded claims **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 (R0124)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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 filed your appeal with the Commission. 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. **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 26, 2025  
Date