



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

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Jayson R.,<sup>1</sup>  
Complainant,

v.

Scott Bessent,  
Secretary,  
Department of the Treasury  
(Interdepartmental Offices),  
Agency.

Appeal No. 2025000049

Agency No. DO-24-1060

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated October 3, 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and Title II of the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff et seq. For the reasons presented below, we **AFFIRM** the Agency's final decision dismissing Complainant's complaint.

**ISSUES PRESENTED**

Whether the Agency's final decision properly dismissed Complainant's formal complaint pursuant to 29 C.F.R. § 1614.107(a)(1) on the grounds that Complainant had previously raised the same claim in EEO counseling and chose not to file a formal complaint at that time.

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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 was an applicant for employment with the Agency.

On December 12, 2023, the Agency's Office of Financial Research (OFR), Departmental Offices (DO) posted a position on USAJobs for a Financial Analyst, Vacancy Announcement #24-DO-120. Complainant applied for this position the day it was posted. Complainant applied as a Schedule A applicant. Complainant, along with several other applicants, was referred to the hiring official for an interview.

On January 8, 2024, Complainant, along with several other applicants, was scheduled for an initial interview with OFR Employee. Complainant's interview with OFR took place on or about January 16, 2024. On or about January 23, 2024, OFR Employee scheduled Complainant and several other applicants for a second interview.

On February 1, 2024, Complainant was notified via email from USAJobs that Vacancy Announcement #24-DO-120 was canceled and no selection had been made for that vacancy announcement.

On February 8, 2024, Complainant contacted an EEO counselor, alleging discrimination based on color, disability, national origin, race, religion, sex, and reprisal (Agency No. DO-23-1100) when, after interviewing for the position of Financial Analyst, Vacancy Announcement #24-DO-120, he was notified on February 1, 2024 that no selections were made from the announcement. He stated he emailed two interviewers with no response. This complaint was assigned Agency No. DO-24-0427. During EEO counseling, Complainant elected no official action be taken. As there was no resolution to his informal EEO complaint, Complainant was issued a Notice of Right to File a Formal Complaint for Agency No. DO-24-0427 on February 29, 2024. The Notice of Right to File defined Complainant's claim as:

The Aggrieved alleged discrimination based on color (White), Disability, National Origin (Russian/Ukrainian), Race (White/Jewish), Religion (Jewish), Reprisal (prior EEO complaints) and Sex when on February 1, 2024 when Aggrieved was denied selection for Financial Analyst, 24-DO-120 with OFR as a Schedule A candidate.

The Notice of Right to File provided that Complainant was "entitled to file a formal EEO discrimination complaint with the Department of the Treasury...The complaint must be filed within fifteen (15) calendar days after receipt of this Notice." The email transmitting the Notice of Right to File also stated "You have fifteen (15) days after today to file a formal complaint" and "The complaint must be filed within fifteen (15) calendar days after this notice".

On July 14, 2024, Complainant again initiated EEO counseling alleging discrimination when he was not selected for the position of Financial Analyst, Vacancy Announcement #24-DO-120. This matter was assigned Agency No. DO-24-1060. Complainant elected Alternative Dispute Resolution, but it was not successful. Thereafter, the Agency issued Complainant a Notice of Right to File on September 17, 2024.

On September 18, 2024, Complainant filed a formal complaint in Agency No. DO-24-1060 alleging that the Agency subjected him to discrimination on the bases of race (White/Jewish), national origin (Eastern European), sex (male), sexual orientation (unspecified) religion (Jewish), color (White), disability (unspecified), protected genetic information (unspecified), and reprisal for prior protected EEO activity, when, on February 1, 2024, Complainant was notified that the position of Financial Analyst, under vacancy announcement 24-DO-120, was cancelled with no selections, precluding Complainant's selection.

The Agency dismissed this claim pursuant to 29 C.F.R. § 1614.107(a)(1) on the grounds that Complainant had previously raised the same non-selection claim in EEO counseling under Agency No. DO-24-0427, received his Notice of Right to File a Formal Complaint in that matter, and chose not to file a formal complaint at that time. Alternatively, the Agency dismissed the complaint pursuant to 29 C.F.R. § 1614.107(a)(2) for untimely EEO counselor contact since Complainant did not initiate EEO counseling within 45 days of being notified of his non-selection. Complainant filed the instant appeal.

#### CONTENTIONS ON APPEAL

On appeal, Complainant initially filed a brief in which he asserted that his EEO counselor contact was timely because he initiated EEO counseling within 45 days of his non-selection.

He noted that although he chose not to file a formal complaint initially, the EEO counseling he initiated on July 14, 2025 pertains to the same non-selection and management official as his EEO counseling initiated on February 8, 2024, and therefore should be considered a continuation of the earlier process. Second, Complainant contends he did not abandon his claim and that the case law cited by the Agency pertains to situations where a complainant files a formal complaint but omits certain claims from counseling. Complainant further contends that the Agency's failure to notify him in July 2025 that his prior claim had been abandoned or that he was subject to the 15-day time limit for filing a formal complaint and instead engaging in mediation with him undermined the basis for dismissal. Last, Complainant raised concerns about the processing of his complaint, suggesting these issues may reflect a deeper bias within the Agency.

Complainant subsequently submitted an amended appeal and a response to the Agency's brief opposing his appeal. These focus primarily on the merits of Complainant's complaint. However, Complainant also raises that his complaint was improperly dismissed because his claim is part of an ongoing pattern of systemic discrimination and that the Agency improperly considered his claim individually rather than recognizing it as part of a broader pattern of harassment and discrimination.

The Agency contends on appeal that the complaint was properly dismissed for untimely filing because it was filed more than 15 days after Complainant received his Notice of Right to File a Formal Complaint on February 29, 2024. The Agency contends that while Complainant's Formal Complaint was filed within 15 days of the September 17, 2024 Notice of Right to File, that Notice followed from Complainant's July 14, 2024 counselor contact, which was itself untimely since Complainant was notified of his nonselection on February 1, 2024, more than 45 days earlier. The Agency further states that Complainant allegations about alternative dispute resolution are irrelevant to the question of timeliness of the instant complaint.

#### 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

Complainant admits on appeal that Agency No. DO-24-0427 and Agency No. DO-24-1060 involve the same non-selection and management official.

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)).

Complainant was issued a Notice of Right to File in Agency No. DO-24-0427 on February 29, 2024. Complainant admits that he received the Notice of Right to File on that day. (Complaint File, p. 105). However, he states that he did not file a formal complaint at that time as he "feared damaging relationships with my professors without evidence." Id. We do not find this to be sufficient evidence to toll the time limits as there is no reason Complainant's professors needed to be involved in the EEO process. Therefore, to the extent the instant complaint in Agency No. DO-24-1060 is viewed as arising out of Complainant's EEO counselor contact in Agency No. DO-24-0427, it was not timely filed.

EEOC Regulation 29 C.F.R. §1614.105(a)(1) provides that an aggrieved person must initiate contact with an EEO Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) days of the effective date of the action. 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. See 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.

To the extent Complainant is alleging the instant complaint arises out of his July 14, 2024 EEO counselor contact in Agency No. DO-24-1060, such contact is untimely. The record is clear that Complainant was notified of his nonselection for the position of Financial Analyst, Vacancy Announcement #24-DO-120 on February 1, 2024, and that he suspected discrimination was involved in his nonselection for the position of Financial Analyst, Vacancy Announcement #24-DO-120 as early as February 8, 2024 (when he contacted an EEO counselor in Agency No. DO-24-0497 regarding nonselection for this vacancy announcement). However, he did not contact an EEO counselor until over five months later, on July 14, 2024. Therefore, his EEO counselor contact in Agency No. DO-24-1060 is untimely.

We are not persuaded by Complainant's argument that this nonselection should be considered as part of an ongoing pattern of harassment and discrimination, although Complainant provides a great deal of detail on appeal about other nonselections. While we are sympathetic to Complainant's frustration over this, a fair reading of the EEO Counselor's Report and his formal complaint do not substantiate that he was raising an ongoing pattern of discrimination or harassment. Those documents mention only a single position/vacancy announcement number and do not include others dates from which one could conclude Complainant was raising more than one nonselection or ongoing discrimination and harassment. As such, we find the Agency properly dismissed the complaint.

To the extent Complainant raises new issues on appeal (i.e., disclosure of his disability, conduct during mediation, other claims of nonselection, etc.), these claims were not previously raised by Complainant as part of this matter and are not currently before the Commission. Complainant is advised that if he wants to pursue any additional claims, he should contact an EEO Counselor.

### CONCLUSION

Based on the foregoing, we AFFIRM 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

March 4, 2025

Date