



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

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Jermaine I,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2025000112

Agency No. 4G-350-0354-23

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated January 16, 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 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 pursuant to 29 C.F.R. § 1614.107(a)(2), due to untimely EEO counselor contact and untimely filing of the formal complaint.

**ISSUES PRESENTED**

Whether the Agency's final decision properly dismissed Complainant's formal complaint for untimely EEO counselor contact and untimely filing the formal complaint.

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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 Postmaster at the Agency's Athens Post Office in Athens, Alabama.

On December 27, 2023, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of disability (unspecified), age (YOB 1964), and reprisal (prior protected EEO activity) when:

1. On May 10, 2023, Complainant was involuntarily moved from his PS Form 50 level EAS-22 Postmaster position and assigned to work at a lower-level EAS-20 post office.

The Agency issued a final decision dismissing the complaint pursuant to 29 C.F.R. § 1614.107(a)(2), due to untimely EEO counselor contact and untimely filing the formal complaint.

Complainant filed the instant appeal.

### CONTENTIONS ON APPEAL

Complainant did not submit any arguments or evidence in support of his appeal. The Agency did not submit a brief in response to the 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*

EEOC Regulation 29 C.F.R. § 1614.107(a)(2) states, in pertinent part, that the Agency shall dismiss a complaint for failure to comply with the applicable time limits. EEOC Regulation 29 C.F.R. § 1614.105(a)(1) provides, that complaints of discrimination must be brought to the attention of an EEO 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. Time limits are subject to waiver, estoppel, or equitable tolling. 29 C.F.R. § 1614.604(f).

Complainant first contacted an EEO Counselor on August 10, 2023. Thus, any claim occurring prior to June 26, 2023 (45 days before August 10, 2023) is untimely. The alleged discriminatory event occurred in May 2023, and was untimely raised with an EEO counselor. On appeal, Complainant has presented no persuasive arguments or evidence warranting an extension of the time limit for initiating EEO Counselor contact. Therefore, the Commission finds the Agency properly dismissed the complaint for untimely EEO counselor contact.

### *Timeliness of Formal Complaint*

EEOC Regulation 29 C.F.R. § 1614.107(a)(2) states, in pertinent part, that an agency shall dismiss a complaint for failure to comply with the applicable time limits. EEOC Regulation 29 C.F.R. § 1614.106(b) requires a complainant to file a formal complaint within fifteen days of receiving notice of the right to do so. Time limits are subject to waiver, estoppel, or equitable tolling. 29 C.F.R. § 1614.604(f).

Based on the Signature confirmation and Track and Confirm information in the record, Complainant received the Notice of Right to File an Individual Complaint of Discrimination (Notice) at his address of record on September 9, 2023. The Notice stated Complainant had to file a formal complaint within 15 calendar days of receiving the Notice. The Notice clearly stated the complaint should be mailed to the Agency's EEO office (at the address provided). Despite the specific instructions given in the Notice as to the appropriate agency address to file his complaint, Complainant mailed his complaint to the EEOC's Office of Federal Operations (OFO) on September 13, 2023.

The formal complaint contains a date stamp indicating it was received by the Agency on December 27, 2023.

The Commission has previously held that when provided with the proper address, filing at the wrong address does not constitute a proper filing. See Carmen V., v. United States Postal Service, EEOC Appeal No. 0120150609 (Mar. 17, 2016) (formal complaint untimely when sent to wrong address despite receipt of proper instructions); Pacheco v. United States Postal Service, EEOC Request No. 05930700 (Sept. 10, 1993) (appeal untimely when sent to wrong address).

There is no evidence that Complainant filed his formal complaint with the Agency at any time before the Agency's receipt of the formal complaint on December 27, 2023. Accordingly, we find that Complainant did not file his formal complaint with the Agency until December 27, 2023, which is well beyond the 15-day limitation period. On appeal, Complainant has not offered any justification to warrant an extension of the time limit for filing the complaint. Therefore, we find the Agency properly dismissed the complaint for failing to timely file the formal complaint.

#### 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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

January 13, 2025  
Date