



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

[REDACTED]
Cleotilde G,¹
Complainant,

v.

Terence Emmert,
Acting Secretary,
Department of the Navy,
Agency.

Appeal No. 2025000131

Agency No. 24-62241-00994

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated September 3, 2024, dismissing a formal complaint of unlawful employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the reasons set forth herein, 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 on the grounds it was untimely filed.

BACKGROUND

During the period at issue, Complainant worked as a Human Resources Assistant at the Agency's Operational Support Center in Las Vegas, Nevada.

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 July 25, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the basis of disability. Complainant submitted a statement, with her formal complaint, acknowledging that her formal complaint was untimely filed. Revised Complaint File at 43.² In this statement, Complainant also asserted that she had transportation and financial issues. Id.

The Agency's final decision dismissed Complainant's formal complaint on the grounds it was untimely filed. The Agency reasoned that Complainant received the Notice of Right to File a Formal Complaint (Notice) on June 13, 2024. However, Complainant did not file her formal complaint until July 25, 2024, outside of the applicable time limit. The Agency further found that Complainant did not provide sufficient justification to extend the applicable time limit. Revised Complaint File at 3.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant requests that we reverse the Agency's final decision dismissing her complaint. Complainant acknowledges that she did not timely file her formal complaint and asserts that it was due to "life altering situations." Complainant states that she was under a great deal of "stress mentally, physically, and emotionally." Complainant references various events such as losing her medication, which she asserts left her unable to focus. In addition, among other things, Complainant also states that a family member died.

In response, the Agency requests that we affirm its final decision dismissing Complainant's complaint. The Agency asserts that Complainant has not provided sufficient justification to extend the applicable time limit. In addition, the Agency states that Complainant did not provide any medical documentation indicating that she was so incapacitated, during the period at issue, that she was unable to timely file her formal complaint.

² Our citations to the Revised Complaint File reference the page number of the pdf document before us on 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

We find that the Agency properly dismissed Complainant's formal complaint on the grounds it was untimely filed. The record discloses that Complainant received the Notice on June 13, 2024, via Department of Defense Secure Access File Exchange (DoD SAFE). Revised Complaint File at 39. Although the Notice indicated that Complainant had to file a formal complaint within fifteen (15) calendar days of its receipt, Complainant did not file her formal complaint until July 25, 2024, which is beyond the limitation period. Revised Complaint File at 27, 40.

Complainant has not offered sufficient justification to extend the applicable time limit. We acknowledge, on appeal, Complainant, sets forth that she has been under a great deal of physical and mental stress. When a complainant claims that a physical condition prevents her from meeting a particular filing deadline, we have held that in order to justify an untimely filing the complainant must be so incapacitated by the condition as to render her physically unable to make a timely filing. See Zelmer v. U.S. Postal Serv., EEOC Request No. 05890164 (March 8, 1989). The same is true regarding claims of incapacity related to psychiatric or psychological conditions. See Crear v. U.S. Postal Serv., EEOC Request No. 05920700 (April 15, 1992). The record does not contain medical documentation indicating that Complainant was so incapacitated during the applicable time period to prevent her from filing the instant complaint.

CONCLUSION

Accordingly, for the reasons set forth herein, 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 5, 2025

Date