



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Terica R.,¹
Complainant,

v.

Michelle King,
Acting Commissioner,
Social Security Administration,
Agency.

Appeal No. 2025000306

Hearing No. 530-2023-00015X

Agency No. HQ-22-0266

DISMISSAL OF APPEAL

Complainant appeals to the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision, dated June 22, 2023, concerning her complaint of unlawful employment discrimination. During the relevant period, Complainant was a part-time Social Insurance Specialist, GS-12, at the Agency's Office of Quality Review in Philadelphia, Pennsylvania.

On April 13, 2022, Complainant filed an equal employment opportunity (EEO) complaint alleging that the Agency subjected her to discrimination based on sex (female), disability (chronic obstructive pulmonary disease, asthma, depression, anxiety, familial hypercholesterolemia), and in reprisal for prior protected EEO activity when:

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.

1. Between late 2020 and the present, Complainant was subjected to harassment in terms of proposal to terminate, time and attendance, personal attacks, false accusations, Weingarten meeting, and work conditions; and
2. On February 22, 2022, she received a proposal to terminate.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). Complainant requested a hearing. Over Complainant's objections, on June 14, 2023, the AJ issued a decision by summary judgment, finding in favor of the Agency on the merits of claim 1, and dismissing claim 2 based on Complainant's election to appeal her termination with the Merit Systems Protection Board (MSPB). On June 22, 2023, the Agency issued a final order fully implementing the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

EEOC Regulation 29 C.F.R. § 1614.402 provides that appeals to the Commission must be filed within 30 calendar days after complainants receive notice of the Agency's decision.

Complainant filed the instant appeal on October 9, 2024,² approximately 15 months after the Agency's final decision was issued. The record reveals that the Agency's decision explicitly informed Complainant of the time limits on her right to appeal. The Agency's decision also included a Certificate of Service indicating that it sent the decision to Complainant and her non-attorney representative via email on June 22, 2023.

² We note that initially, on or around September 24, 2024, Complainant submitted a hearing request to the Hearings Unit of the EEOC's Philadelphia District Office regarding the instant complaint. She also attached a decision issued by the MSPB regarding her termination. An AJ within the Philadelphia Office subsequently emailed Complainant to inform her that she did not have a right to a hearing on her EEO complaint, given the AJ's prior summary judgment decision in favor of the Agency. The Philadelphia AJ told Complainant that Complainant could file appeals of the AJ's summary judgment decision and/or the MSPB decision with the Commission's Office of Federal Operations (OFO). On October 9, 2024, the Philadelphia AJ forwarded her email exchange with Complainant to OFO, which subsequently docketed the instant appeal.

The Commission has held that all complainants must act with due diligence in the pursuit of their claims, or the doctrine of laches may be applied. The doctrine of laches is an equitable remedy under which an individual's failure to diligently pursue their actions could bar their claim. See Kirk v. U.S. Postal Serv., EEOC Appeal No. 0120122190 (Aug. 31, 2012); Smith v. Dep't of Veterans Affs., EEOC Appeal No. 0120101233 (July 8, 2010). In the case at hand, we find that the doctrine of laches is applicable, and that Complainant did not act with due diligence in filing her appeal approximately 15 months after the Agency issued its final decision.

Complainant argues that "the choices" for appealing the final decision were confusing and that the medication she is on makes it hard for her to comprehend "legal jargon." She also claims she did not receive the final decision in the mail until sometime after Labor Day (though she does not specify what year), and it appears that this may be in reference to a final order issued by the MSPB on August 20, 2024, and not the Agency's final decision. Complainant also argues that she called the EEOC for assistance in filing an appeal but that "even most of the office staff was confused about how or where to submit [her] request" and that she simply followed the instructions of the person she spoke to on the phone at the EEOC.

Upon review, we find Complainant fails to offer any adequate justification for the long delay in filing this appeal. First, Complainant does not specify what instructions the unidentified EEOC person(s) told her on the phone. Moreover, it appears that Complainant's purported communication with the EEOC about filing an appeal likely occurred in September or October 2024, in which case the doctrine of laches would still apply. To the extent Complainant claims she was unable to understand the appeal instructions because she takes medication that causes confusion, we find she fails to provide evidence to show that she was so physically or emotionally incapacitated as to be unable to timely file the appeal. See, e.g., Archie G. v. U.S. Postal Serv., EEOC Appeal No. 2020002375 (Nov. 17, 2020) (dismissing appeal as untimely despite complainant's use of narcotic medication).

Accordingly, the appeal is DISMISSED as untimely pursuant to 29 C.F.R. § 1614.403(c).

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 11, 2025

Date