



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

[REDACTED]
Stephany K.,¹
Complainant,

v.

Todd B. Hunter,
Acting Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2025000822

Agency No. 20DR-20M1-2025-161503

DECISION

Complainant appeals to the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated November 21, 2024, dismissing her complaint for untimely EEO Counselor contact. For the following reasons, we AFFIRM the Agency's final decision dismissing the complaint.

ISSUES PRESENTED

Whether the Agency's dismissal of the complaint for untimely EEO Counselor contact was proper.

BACKGROUND

At the time of events giving rise to this complaint, Complainant was an applicant for employment at the Agency.

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.

The record indicates that on October 8, 2024, Complainant contacted an EEO Counselor alleging discrimination when on September 11, 2024, she received notification from management rescinding her job offer. Specifically, Complainant indicated that in April 2024, she was referred, interviewed, and was selected for a GS-7 Legal Administrative Specialist (Contact Representative) position from vacancy announcement DHA-12110751-23-CB.

Unable to resolve the matter informally, Complainant filed her formal complaint on November 5, 2024. Therein, Complainant alleged discrimination based on disability when on September 11, 2024, her offer of employment was rescinded. Complainant indicated that she, as an applicant for employment, was previously offered a GS-5-7 Legal Administrative Specialist (Contact Representative) position at the Agency's Phoenix Regional Benefits Office in Arizona.

The record indicates that on April 2, 2024, the Agency issued a letter to Complainant rescinding her tentative offer of employment to the GS-7 Legal Administrative Specialist position at the Agency's Veterans Benefits Administration in Tempe, Arizona, under vacancy announcement DHA-12110751-23-CB based on information obtained during the pre-employment suitability process. The record also indicates that the Agency's September 11, 2024, rescission notice to Complainant concerned a different vacancy announcement DHA-11597760-22-CB for a GS-5-7 Legal Administrative Specialist position anywhere in the U.S. (remote job).

The Agency issued a final decision dismissing the complaint due to untimely EEO Counselor contact, pursuant to 29 C.F.R. § 1614.107(a)(2). The Agency stated that the alleged incident occurred on April 2, 2024, when Complainant was issued the subject rescission letter for her tentative offer under vacancy announcement DHA-12110751-23-CB, but she did not contact an EEO Counselor until October 8, 2024, which was beyond the 45-day time limit set by the regulations. Complainant appeals from the Agency's decision.

CONTENTIONS ON APPEAL

Complainant admits that she mistakenly alleged a wrong job announcement number in her complaint because she applied to two different job announcements for the same position.

Complainant also admits that she did not contact an EEO Counselor within the 45-day time limit, i.e., regarding the April 2, 2024, rescission, because her then lawyer advised her not to file an EEO complaint at that time.²

The Agency contends that Complainant's arguments on appeal do not provide a justifiable explanation for her untimely EEO Counselor contact.

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. Dep't of the Treasury, EEOC Request No. 05970077 (Mar. 13, 1997). Thus, all reasonable inferences that may be drawn from the complaint's allegations must be made in favor of the complainant.

ANALYSIS

EEOC Regulation 29 C.F.R. § 1614.107(a)(2) provides, in relevant part, that the Agency shall dismiss a complaint that fails to comply with the applicable time limits contained in 29 C.F.R. § 1614.105. EEOC Regulation 29 C.F.R. §1614.105(a)(1) requires that complaints of discrimination be brought to the attention of the EEO Counselor within 45 days of the alleged discriminatory event, or the effective date of an alleged discriminatory personnel action.

The record indicates that on April 2, 2024, Complainant was issued an Agency letter rescinding her tentative offer of employment to the GS-7 Legal Administrative Specialist position with the Agency's Veterans Benefits Administration in Arizona. Complainant did not contact an EEO Counselor regarding the alleged incident until October 8, 2024, which was beyond the 45-day time limit set by the regulations. On appeal, Complainant admits that she contacted the EEO Counselor in an untimely manner based on her attorney's advice not to file an EEO complaint at the time of the incident.

² On February 1, 2025, Complainant submitted an untimely statement that we will not consider. See 29 C.F.R. § 1614.403(d).

Upon review, we find that Complainant fails to provide sufficient justification to warrant an extension of the applicable time limit for contacting an EEO Counselor. Therefore, we find that the Agency properly dismissed the complaint for untimely EEO Counselor contact. 29 C.F.R. § 1614.107(a)(2).

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:



Carlton M. Hadden, Director
Office of Federal Operations

February 5, 2025

Date