



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]

Brenton W.,¹
Complainant,

v.

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

Appeal No. 2025000863

Agency No. 4G-730-0131-24

DECISION

Complainant appeals to the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated September 23, 2024, dismissing his complaint for failure to state a claim. For the following reasons, we AFFIRM the Agency's final decision dismissing the complaint.

ISSUE PRESENTED

Whether the Agency's dismissal of the complaint for failure to state a claim was proper.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Mail Carrier/Carrier Technician, Q-02, at the Agency's Post Office in Oklahoma City, Oklahoma.

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 the Agency identified Complainant's complaint, filed on August 27, 2024, as alleging discrimination based on race (African American), color (black), age (over 40), disability, and in reprisal for prior EEO activity when:

On June 27, 2024, Complainant became aware that the Office of Workers' Compensation Program (OWCP) portal had a nasty letter written by his supervisor (S1) that was posted to his case.

Complainant has not challenged the Agency's framing of his complaint. Complainant claimed that S1 posted an email, dated June 7, 2024, in his OWCP case portal. The record indicates that S1 sent his June 7, 2024 email to a Human Resources Specialist in response to the Human Resources Specialist's email inquiry concerning Complainant's OWCP claim. In that email, S1 stated, in part, that S1 visited Complainant when he was in the hospital; S1 visited him a few more days because other carriers told S1 that Complainant had been acting different and smelled like he had not been taking care of himself; and S1 believed Complainant had no visitors while hospitalized. Complainant indicated that despite S1's statement, he had visitors from his family and relatives and S1 visited him in the hospital trying to obtain the status of his health conditions.

The Agency issued a final decision dismissing the complaint for failure to state a claim, pursuant to 29 C.F.R. § 1614.107(a)(1). Specifically, the Agency stated that Complainant was lodging a collateral attack on the OWCP process. Complainant appeals from the Agency's final decision.

CONTENTIONS ON APPEAL

Complainant contends that the Agency's dismissal of his complaint without investigation was improper. Complainant also raises prior incidents that are not related to the matters at issue. The Agency does not submit any statements in response to Complainant's 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. 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)(1) provides, in relevant part, that the Agency shall dismiss a complaint that fails to state a claim.

Here, Complainant alleged that S1 discriminated against him when S1 uploaded the June 7, 2024, email in his OWCP case portal relating to his OWCP claim. Upon review, we agree with the Agency that the alleged claim amounts to a collateral attack on Complainant's OWCP claim. We note that where a complainant alleges that the agency discriminated in a manner pertaining to the merits of the workers' compensation claim, for example, by submitting paperwork containing allegedly false information, then the complaint does not state a claim. See Pirozzi v. Dep't of the Navy, EEOC Request No. 05970146 (Oct. 23, 1998). Further, the Commission has held that an employee cannot use the EEO complaint process to lodge a collateral attack on another proceeding. See Wills v. Dep't of Def., EEOC Request No. 05970596 (July 30, 1998); Kleinman v. U.S. Postal Serv., EEOC Request No. 05940585 (Sept. 22, 1994); Lingad v. U.S. Postal Serv., EEOC Request No. 05930106 (June 25, 1993). We note that an Agency may dismiss a complaint prior to completing an investigation on the merits of the complaint. Thus, we find that the Agency properly dismissed the complaint for failure to state a claim.

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