



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

[REDACTED]
Juli Z.,¹
Petitioner,

v.

Martin J. O'Malley,
Commissioner,
Social Security Administration,
Agency.

Petition No. 2025000864

MSPB No. SF-0353-23-0468-I-1

DECISION

Petitioner filed a petition with the Equal Employment Opportunity Commission (EEOC or Commission) seeking review of a Final Order issued by the Merit Systems Protection Board (MSPB or Board) concerning her appeal in MSPB No. SF-0353-23-0468-I-1. For the reasons that follow, we DENY consideration of Petitioner's petition.

ISSUE PRESENTED

Whether the Commission has jurisdiction to review Petitioner's petition.

BACKGROUND

During the relevant period, Petitioner worked as a Contract Representative, GS-0962-08, at the Agency's Pomona Valley District Office in Pomona, California. In 1996, Petitioner filed a workers' compensation claim for an on-the-job injury. In the years that followed, Petitioner had several recurrences for which she also filed workers' compensation claims.

¹ This case has been randomly assigned a pseudonym which will replace Petitioner's name when the decision is published to non-parties and the Commission's website.

By 2011, Petitioner was totally disabled due to her injuries and filed another workers' compensation claim for the recurrence beginning in May 2011. After that time, Petitioner was on indefinite leave without pay. On December 6, 2012, Petitioner's supervisor proposed Petitioner's removal from the Agency for inability to maintain regular attendance, as it did not appear that Petitioner would return to work in the foreseeable future. Prior to a decision being made on her removal, however, Petitioner elected to retire, effective December 31, 2012. Petitioner continued to receive workers' compensation benefits until November 2022.

In May 2023 (more than ten years after she retired), Petitioner filed an appeal with the MSPB, claiming that her retirement was involuntary and that her absence from the Agency beginning in May 2011 constituted a constructive suspension (MSPB No. SF-0752-23-0410-I-1). Petitioner later amended her MSPB appeal to also include a claim that the Agency failed to restore or did not properly restore Petitioner to duty following her workers' compensation claims. Because a restoration appeal involved a different basis for Board jurisdiction, the MSPB docketed a new appeal for that claim (MSPB No. SF-0353-23-0468-I-1), which is the subject of the instant petition. In both MSPB appeals, Petitioner alleged that the Agency discriminated against her based on disability (carpal tunnel syndrome and various shoulder injuries) when it did not properly accommodate her, leading to reinjury.

Regarding Petitioner's claims in MSPB No. SF-0752-23-0410-I-1, an MSPB Administrative Judge (AJ) issued an initial decision on July 3, 2023, dismissing Petitioner's appeal for lack of Board jurisdiction. The MSPB AJ found that Petitioner failed to make non-frivolous claims that her retirement was involuntary or that she was constructively suspended. After the initial decision became final, Petitioner sought review of the MSPB AJ's decision with the EEOC. In Jacki A. v. Social Security Administration, EEOC Petition No. 2024001192 (Mar. 14, 2024), the Commission denied consideration of Petitioner's petition, since the MSPB did not make a determination on Petitioner's allegations of discrimination. The Commission found it had no jurisdiction to review the petition and therefore determined that the matter would proceed as a "non-mixed" case. In a notice to the parties, the Commission advised the Agency that it was required to process Petitioner's allegations of discrimination, pursuant to 29 C.F.R. § 1614.302(b).

In line with the notice in Jacki A., the Agency notified Petitioner of the right to contact an equal employment opportunity (EEO) Counselor and to file an EEO complaint. On August 4, 2024, Petitioner filed an EEO complaint (Agency No. SF-24-0543-SSA) with the following claims:

1. Whether the Agency failed to provide Petitioner with a reasonable accommodation based on disability (physical) from July 23, 1996, until December 31, 2012; and
2. Whether the Agency subjected Petitioner to disparate treatment based on disability (physical) when, on December 31, 2012, management forced Petitioner to retire.

The Agency dismissed the complaint for untimely EEO Counselor contact, pursuant to 29 C.F.R. § 1614.107(a)(2). Petitioner appealed the dismissal to the Commission, and the appeal is currently pending at EEOC Appeal No. 2025000423.

As to Petitioner's restoration appeal in MSPB No. SF-0353-23-0468-I-1, the subject of the instant petition, the MSPB AJ issued an Initial Decision on July 31, 2023, also dismissing the appeal for lack of Board jurisdiction. The MSPB AJ determined that Petitioner's allegations involved claims of wrongdoing by the Agency when it did not fully honor her medical restrictions when she returned to duty, which led to further injury. The MSPB AJ found that Petitioner failed to allege a denial of restoration that came within the Board's narrow jurisdiction in a restoration to duty appeal. Petitioner sought review of the MSPB AJ's Initial Decision before the full Board. On October 7, 2024, the MSPB issued a Final Order summarily affirming the MSPB AJ's dismissal of the appeal. The instant petition followed.

CONTENTIONS IN PETITION

In her petition, Petitioner argues that she raised claims of employment discrimination against the Agency in MSPB No. SF-0353-23-0468-I-1 that were not adjudicated by the MSPB due to the Board's lack of jurisdiction. Petitioner therefore argues that her claims of discrimination are no longer "mixed," and she requests that we remand the matter to the Agency for processing as an unmixed EEO complaint.

The Agency did not submit any statement opposing the petition.

ANALYSIS

EEOC Regulations provide that the Commission has jurisdiction over mixed case appeals and complaints on which the MSPB has issued a decision that makes determinations on allegations of discrimination. 29 C.F.R. § 1614.303 et seq. However, when the MSPB, as it did here, denies jurisdiction, the Commission has held that there is little point in continuing to view the matter as a "mixed case" as defined by 29 C.F.R. § 1614.302(a), because the MSPB did not address any matters within the Commission's jurisdiction. Therefore, the Commission finds that it has no jurisdiction to review Petitioner's petition.

Because Petitioner raised claims of discrimination before the MSPB, this matter would ordinarily be considered a "non-mixed" case and be processed accordingly. See Schmitt v. Dep't of Transp., EEOC Appeal No. 01902126 (July 9, 1990); Phillips v. Dep't of the Army, EEOC Request No. 05900883 (October 12, 1990); 29 C.F.R. § 1614.302(c)(2)(i), (ii). We note, however, that EEOC Regulation 29 C.F.R. § 1614.107(a)(1) provides that a complaint shall be dismissed if it states the same claim that is pending before or has been decided by the agency or Commission. As described above, the record indicates that Petitioner filed an EEO complaint regarding the same allegations of disability discrimination and failure to accommodate during the relevant time period. We therefore find there is no need for the Agency to further process Petitioner's claims of discrimination because such claims were adjudicated in Agency No. SF-24-0543-SSA (and are currently pending before the Commission in EEOC Appeal No. 2025000423), and there is nothing remaining for the Agency to process.

CONCLUSION

Consequently, we DENY consideration of the petition.

PETITIONER'S RIGHT TO FILE A CIVIL ACTION (W0124)

This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court, based on the decision of the Merit Systems Protection Board, **within thirty (30) calendar days** of 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.

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

December 18, 2024

Date