



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

████████████████████
Brad M.,¹
Complainant,

v.

Merrick B. Garland,
Attorney General,
Department of Justice
(Federal Bureau of Prisons),
Agency.

Appeal No. 2025001011

Agency No. BOP-2021-02598

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) concerning his equal employment opportunity (EEO) complaint of unlawful employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, we REMAND the matter to the Agency to issue a final decision.

ISSUES PRESENTED

- (1) Whether the Commission has jurisdiction over Complainant's appeal.
- (2) Whether the Agency issued a final decision in accordance with 29 C.F.R. § 1614.110(b).

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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Food Service Administrator at the Agency's Metropolitan Corrections Center in Chicago, Illinois.

On August 22, 2021, Complainant filed a formal complaint alleging (as defined by the Agency in its acceptance letter) that the Agency subjected him to discrimination on the bases of sex (male/non-sexual harassment), disability (physical/mental), sexual orientation, parental status, and in reprisal for prior protected EEO activity in relation to the following:

From March 30, 2021, through June 17, 2021, Complainant was subjected to discrimination and harassment in the form of unwelcome comments, excessive text messages, and intimidation when the following incidents allegedly occurred:

1. On March 30, 2021, he submitted a grievance to the Associate Warden and did not receive a response.
2. On April 2, 2021, his evaluation was lowered, and his workload increased; and
3. On June 17, 2021, the Associate Warden instructed him to report to the Training Center.

The Agency completed the investigation into Complainant's complaint and sent Complainant a copy of the report of investigation, notifying him of his right to request a hearing before an EEOC Administrative Judge or to request a final Agency decision. Complainant sent his request for a final Agency decision to an EEO Specialist on May 9, 2022, and the Agency acknowledged Complainant's request four days later on May 13, 2022. To date, however, more 2.5 years later, there is no indication that the Agency has issued a final decision on Complainant's complaint.

Complainant filed an appeal with the Commission on December 29, 2023. In his brief in support of the appeal, Complainant requested a default judgment against the Agency due to the Agency's long delay in issuing a final decision. The Agency filed a brief opposing the appeal, acknowledging that the Agency had not yet issued a final decision but arguing that Complainant's appeal was procedurally deficient and should be dismissed as prematurely filed. On August 26, 2024, the Commission issued a decision dismissing Complainant's appeal. Brad M. v. Dep't of Just., EEOC Appeal No. 2024001817 (Aug. 26, 2024).

The prior decision found that Complainant's appeal was not yet properly before the Commission and was premature. The prior decision stated that the Agency should issue a final decision on the matter and then Complainant could file a new appeal with the Commission if he was dissatisfied with the outcome, but the prior decision did not order the Agency do so.

On September 20, 2024, Complainant, again through counsel, contacted the Commission in response to the issuance of the prior decision. As a result, the Commission docketed the instant appeal.

CONTENTIONS ON APPEAL

Complainant requests sanctions against the Agency for its refusal to issue a final Agency decision as requested by Complainant in May 2022. The Agency has not submitted a statement regarding the instant appeal.

ANALYSIS

EEOC Regulation 29 C.F.R. § 1614.110(b) provides, in relevant part, that the agency shall issue a final agency decision within 60 days of receiving notification that a complainant has requested an immediate decision from the agency. It has been over two years since the Agency should have issued a final decision in this case per our regulations. We find that the prior decision closed the appeal as premature and yet the Agency has still given no indication that it has issued a final decision or any reason why it has not issued a decision.

Given the specific circumstances of this case, we determine that the most appropriate action is to instruct the Agency to issue its final decision on the complaint in accordance with the Order herein. Upon receipt of the Agency's decision, Complainant may refile an appeal and raise any concerns regarding the Agency's delay in issuing a final decision, as well as his arguments concerning the merits of his claim of discrimination.

CONCLUSION

We REMAND the complaint to the Agency for further action in compliance with the Order herein.

ORDER

Within 30 days of the date this decision is issued, the Agency shall issue a final decision on the complaint pursuant to 29 C.F.R. § 1614.110(b). The decision shall contain appropriate appeal rights to this Commission. A copy of the Agency's final decision must be sent to Complainant and to the Commission as set forth herein in the section entitled "Implementation of the Commission's Decision."

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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 (R0124)

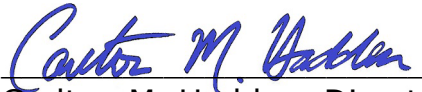
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. 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. **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

December 30, 2024

Date