



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

[REDACTED]
Dewitt L,¹
Complainant,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service
(Capital Metro Area),
Agency.

Appeal No. 2020000439

Agency No. 4K-210-0098-19

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated August 8, 2019, dismissing a formal complaint of unlawful employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

BACKGROUND

During the period at issue, Complainant worked as a Lead Sales Service Associate, Grade PS-07, at the Agency's College Estates Post Office in Frederick, Maryland.

On July 22, 2019, Complainant filed the instant formal complaint, claiming unlawful employment discrimination based on disability.

On August 8, 2019, the Agency issued a final decision. The Agency determined that the formal complaint was comprised solely of the following four claims:

- 1) On March 8, 2019, the Supervisor Customer Services (SCS) did not speak to Complainant in the same manner as spoken to his co-workers;

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.

- 2) On April 6, 2019, the SCS did not acknowledge Complainant;
- 3) On April 16, 2019, the SCS placed Complainant's thirty-year service award on Complainant's desk and did not congratulate him in the presence of his peers; and
- 4) On April 24, 2019, the SCS allowed Complainant's co-worker to train in the morning. However, she had previously instructed Complainant to train in the evenings.

On August 8, 2019, the Agency issued a final decision dismissing the complaint pursuant to 29 C.F.R. § 1614.107(a)(1). The Agency reasoned that Complainant failed to state a justiciable discrimination claim.

The instant appeal followed. On appeal, Complainant contended that the Agency's dismissal decision failed to consider other instances of discrimination that Complainant had raised during his initial contact with the EEO Counselor. Complainant stated that the hearing SCS would only communicate with him via email. He accused the SCS of denying him break times whereas the SCS was permissive when his coworkers took breaks. According to Complainant, the SCS aggressively monitored his number and duration of bathroom breaks but did not do so with Complainant's co-workers. Complainant also alleged that the SCS conducted surveillance on him with a web cam in a manner that targeted him alone, whereas Complainant's co-workers were not placed under such intense scrutiny. Additionally, Complainant stated the SCS wrongfully denied him leave he had requested in order to attend to health issues (kidney stones and sciatica). Complainant further stated the SCS denied his reasonable accommodation request for the Agency to schedule ASL interpreter temporary presence at the College Estates Post Office.

The record contains a hand-written copy of an Information for Pre-Complaint Counseling form, which provides a chronological annotation of the matters addressed above.

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. §1614.107(a)(1) provides for the dismissal of a complaint which fails to state a claim within the meaning of 29 C.F.R. §1614.103. To establish standing initially under 29 C.F.R. §1614.103, a complainant must be either an employee or an applicant for employment of the agency against which the allegations of discrimination are raised. In addition, the claims must concern an employment policy or practice which affects the individual in his or her capacity as an employee or applicant for employment. An agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that agency because of race, color, religion, sex, national origin, age or disabling condition. 29 C.F.R. §1614.103; §1614.106(a). The Commission's Federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Department of the Air Force, EEOC Request No. 05931049 (April 21, 1994).

Upon review, the Commission finds that Complainant's complaint was improperly dismissed pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim. A fair reading of Complainant's hand-written narrative, referenced above, that accompanied his initial EEO Counselor contact, shows that Complainant had raised a variety of justiciable matters which were not confined exclusively to the four matters identified in the formal complaint, and Complainant asserts on appeal that his complaint was more expansive than identified by the Agency. By alleging a pattern of harassment, Complainant has stated a cognizable claim under the EEOC regulations. See Cervantes v. USPS, EEOC Request No. 05930303 (November 12, 1993).

CONCLUSION

The Agency's final decision dismissing the formal complaint is REVERSED. WE REMAND this matter to the Agency for further processing in accordance with the ORDER below.

ORDER (E0618)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall acknowledge to Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of Complainant's request for a hearing, a copy of complainant's request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

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. 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 Complainant and his representative.

If the Agency does not comply with the Commission's order, Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). 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. 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, 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 Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** 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 (M0617)

The Commission may, in its discretion, reconsider the decision in this case if Complainant or the Agency submits a written request containing arguments or evidence which 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 to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in which to submit a brief or statement in opposition. 29 C.F.R. § 1614.405; EEO Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Ch. 9 § VII.B (Aug. 5, 2015). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). 39 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party. Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. 29 C.F.R. § 1614.604(c).

COMPLAINANT’S RIGHT TO FILE A CIVIL ACTION (R0610)

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 his or her 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

February 20, 2020

Date