



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

████████████████████  
Ranae P.,<sup>1</sup>  
Complainant,

v.

Megan J. Brennan,  
Postmaster General,  
United States Postal Service  
(Great Lakes Area),  
Agency.

Appeal No. 2020000538

Agency No. 4J-606-0093-19

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated August 12, 2019, dismissing a formal complaint of unlawful employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended.

BACKGROUND

During the period at issue, Complainant worked as a City Carrier, grade Q-01, at the Agency's Irving Park Station in Chicago, Illinois.

On July 25, 2019, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on sex (female and pregnancy) when:

1. beginning January 2019, Complainant was verbally intimidated about bathroom breaks;
2. on January 19, 2019, Complainant was not permitted to work for two weeks;

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<sup>1</sup> 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.

3. on February 15, 2019, Complainant was sent to work at another station until June 28, 2019;
4. beginning on March 5, 2019, Complainant was not permitted to work and charged Leave Without Pay (LWOP);
5. on March 29, 2019, Complainant's Light Duty request was denied, and she was not permitted to work;
6. on May 16, 2019, Complainant received a letter from Unemployment Office saying the Agency had informed them she had quit;
7. on June 10, 2019, Complainant was informed she was scheduled for an investigative interview;
8. on June 11, 2019, Complainant was informed her medical file was lost and her American Health Insurance Portability and Accountability Act (HIPAA) rights were violated; and
9. since April 9, 2019, management had frequently entered time for Complainant.

The Agency dismissed Complainant's formal complaint in its entirety as untimely filed under 29 C.F.R. § 1614.106(b), which requires that a complainant file the formal complaint within fifteen calendar days after receipt of the notice of right to file a formal complaint. According to the Agency, Complainant received the notice of right to file on July 9, 2019, but failed to file her formal complaint until July 26, 2019, two days beyond the 15-day limitation period.

Additionally, the Agency asserted that Claim 6 and Claim 8 failed to state a claim under 29 C.F.R. § 1614.107(a)(1). The Agency dismissed Claim 6 as an improper collateral attack on the unemployment compensation process. The Agency dismissed Claim 8 because it alleged a violation of the Health Insurance Portability and Accountability Act (HIPAA) 42 U.S.C. § 1320d-6 or alleged a violation of the Privacy Act, 5 U.S.C. 552a(g). The Agency stated that Commission lacks jurisdiction over such HIPAA or Privacy Act claims. Regarding Claim 8, Complainant expressly stated in the formal complaint that the Agency action "violates HIPPA privacy laws."

The instant appeal followed. Through her attorney, Complainant contested the Agency's grounds for dismissal.

## ANALYSIS AND FINDINGS

### *Dismissal for Untimely Filed Complaint: All Claims*

EEOC Regulation 29 C.F.R. §1614.107(a)(2) states an agency shall dismiss a complaint that fails to comply with applicable time limits. EEOC Regulation 29 § C.F.R. 1614.106(b) requires a complainant to file a formal complaint within fifteen days of receiving notice of the right to do so. The Agency dismissed Complainant's formal complaint for untimely EEO filing under 29 C.F.R. § 1614.604.

The record clearly indicates that Complaint received the notice of right to file a formal complaint on July 9, 2019. However, the envelope in which the formal complaint was mailed to the Agency contains an illegible postmark.<sup>2</sup> A formal complaint is deemed timely if it is received or postmarked before the expiration of the applicable filing period, or in the absence of a legible postmark, if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604(b).

We have consistently held that the Agency bears the burden to prove its final dismissal decisions. Ericson v. Dep't of the Army, EEOC Request No. 05920623 (Jan. 14, 1993). The Agency always must present sufficient evidence to support its determination of untimeliness. Guy v. Dep't of Energy, EEOC Request No. 05930703 (Jan. 4, 1994). Based upon the record before us, the Agency failed to do so here. In the present matter, the Agency's administrative record included an incomplete image of the envelope purported to contain Complainant's formal complaint. Therefore, we find the Agency has failed to carry its evidentiary burden of proving the instant formal complaint was filed untimely on July 26, 2019.

### *Failure to State a Claim: Alternative Dismissal Grounds Claims 6 and 8*

However, the Agency properly dismissed Claims 6 and 8 for failure to state a claim in accordance with 29 C.F.R. § 1614.107(a)(1). We concur with the Agency that Complainant's Claim 6 was an impermissible collateral attack on the unemployment compensation adjudicatory process. We have long held raising collateral attacks on non-EEO administrative proceedings using the EEO process fails to state a claim. Estrada v. Dep't of Agric., EEOC Appeal No. 0120071677 (May 17, 2007), *request for recons. denied*, EEOC Request No. 0520070724 (Nov. 5, 2007) *citing* Wills v. Dep't of Def., EEOC Request No. 05970596 (July 30, 1998).

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<sup>2</sup> The record submitted by the Agency on appeal contains a copy of the envelope in which the formal complaint was submitted. The right portion of the copy is cut off without showing the envelope in its entirety. As a result, the postmark date is missing from the copy submitted.

The U.S. Department of Labor, Office of Workers' Compensation Programs (OWCP), not this Commission was where Complainant may challenge notice that she had received regarding her eligibility for unemployment benefits.

Regarding Claim 8, we also find the Agency properly dismissed it for failure to state a claim. Even if the Agency had mishandled Complainant's medical records in a manner that violated her rights under the Privacy Act or HIPAA, the EEO complaint process has no jurisdiction over such complaints. We note that the Commission has previously determined that matters concerning HIPAA and the Privacy Act are not within the regulations enforced by the Commission. Grove v. U.S. Postal Serv., EEOC Appeal No. 0120110456 (Jan. 5, 2012); Price v. U.S. Postal Serv., EEOC Appeal No. 0120111033 (Dec. 8, 2011).

### CONCLUSION

Based upon the foregoing, EEOC AFFIRMS the Agency dismissal of Claims 6 and 8, for failure to state a claim, in accordance with 29 C.F.R. § 1614.107(a)(1).

The Agency's final decision dismissing Claims 1-5, 7 and 9, is REVERSED. Those claims are REMANDED to the Agency for further processing in accordance with this decision and 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 the 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 her 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). 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. 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. See 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). 29 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 (T0610)

This decision affirms the Agency's final decision in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. 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 on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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. 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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

February 14, 2020

Date