



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

[REDACTED]
Tasia C.,¹
Complainant,

v.

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

Appeal No. 2020000820

Agency No. 4C-400-0047-19

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated September 23, 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, 42 U.S.C. § 2000e et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

BACKGROUND

During the period at, Complainant worked a Postmaster, EAS-22, at the General Mail Facility in Bowling Green, Kentucky.

On August 29, 2019, Complainant filed a formal complaint alleging the Agency subjected her to discrimination based on race, sex, and age when, on May 15, 2019, during a Step B meeting, concerning a Letter of Warning (LOW) issued on April 12, 2019, the District Manager questioned Complainant about failure to follow instructions, and subsequently, he upheld the LOW.

In an extensive narrative in the formal complaint, Complainant stated in pertinent part that the original charge of the LOW was unsatisfactory performance. However, after “the appeal at step 1 was denied, the reason for the LOW was changed at step 2 and listed as failure to follow instructions.”

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.

Complainant asserted that the sole reason such a change was “made from step 1 to step 2” was management’s realization that it had erred, and that this error “was brought out in step 1....”

The Agency dismissed the formal complaint for failing to state a claim, under 29 C.F.R. § 1614.107(a)(1). Specifically, the Agency determined his claims constituted collateral attacks on the grievance process mandated under the Agency’s collective bargaining agreement with Complainant’s union. The Agency further explained that Complainant had filed a separate EEO claim alleging she had been subjected to discrimination through the Agency’s issuance of the Letter of Warning.

On appeal, Complainant reasserts that the LOW was improperly upheld after the charge against her was revised from unsatisfactory job performance to failure to follow instructions. Complainant also argued that the Agency had misstated the bases of her claim. Complainant clarified that her allegations were based on racial discrimination as well as sex and age.

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).

The Agency properly dismissed the instant complaint for failure to state a claim in accordance with 29 C.F.R. § 1614.107(a)(1). Here, Complainant has improperly challenged the outcome of a Step B grievance adjudication through this EEO discrimination complaint process. Raising collateral attacks on step proceedings under a collective bargaining agreement using the EEO process fails to state a claim. Estrada v. Dep’t of Agric., EEOC Appeal No. 0120071677 (May 17, 2007), *req. for recons. den.*, EEOC Request No. 0520070724 (Nov. 5, 2007) citing Wills v. Dep’t of Def., EEOC Request No. 05970596 (July 30, 1998). The proper forum for Complainant to challenge the Agency's denial of her Step B grievance was within that separate grievance process itself.

CONCLUSION

We AFFIRM the Agency final dismissal of Complainant's complaint for failure to state a claim.

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. See 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, EEOC. 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 Federal Sector EEO Portal (FedSEP). See 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. See 29 C.F.R. § 1614.604(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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 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 EEOC.** 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

January 24, 2020

Date