



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

[REDACTED]
Mike G.,¹
Complainant,

v.

Robert Wilkie,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2019004798

Agency No. 200P-0691-2019102043

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated May 17, 2019, dismissing his 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

Complainant worked as a Supervisory Financial Program Administrator at the Agency's Greater Los Angeles Health Care Service in West Los Angeles, California. In a letter dated July 24, 2015, Complainant resigned from his Agency position, citing "negative treatment [he is] receiving by upper management." Complainant's resignation effectuated October 5, 2015.

On February 19, 2019, Complainant initiated equal employment opportunity (EEO) contact alleging that the Agency discriminated against him based on disability (hearing impairment and stroke-related brain injury) when, on September 15, 2015, management forced him to resign due to hostile work environment harassment.² The EEO Counselor stated that Complainant was unable to detail harassing incidents citing memory loss.

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 The record shows, on July 23, 2015, Complainant contacted the Agency's Resolution Support Center but did not engage counseling. Subsequently, on April 2, 2018, Complainant contacted the

On March 14, 2019, Complainant filed a formal EEO complaint alleging, between July 14, 2015 and October 5, 2015, the Agency subjected him to harassment on the basis of disability. Complainant alleged management issued him a letter of admonishment, yelled at him on different occasions, excluded him from office hiring, micromanaged his daily tasks, and forced him to resign.

On May 17, 2019, the Agency issued a final decision dismissing Complainant's complaint pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely EEO Counselor contact. The Agency stated, on July 23, 2015, Complainant contacted Resolution Support but did not seek counseling, and, on April 2, 2018, Complainant inquired about EEO counseling regarding his forced resignation with the Office of Resolution Management, but did not follow up. The Agency noted that Complainant was aware of his rights as he attended "Prevention of Workplace Harassment/No Fear" training on February 4, 2013 and February 6, 2015. The Agency stated that Complainant did not provide extenuating circumstances that warrant waiver of the statutory timeframes. The Agency stated that Complainant did not diligently pursue his rights and there was no medical justification for a three-year delay.

The instant appeal from Complainant followed. Complainant provided medical documentation referencing a stroke in June 2016.

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination be brought to the attention of an EEO Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) days of the effective date of the action.

The record discloses that the most recent alleged discriminatory event (Complainant's resignation) was effective October 5, 2015, but Complainant did not initiate contact with an EEO Counselor until February 19, 2019, which is well beyond the forty-five (45) day limitation period. The record shows that Complainant contacted EEO on July 23, 2015, which is about the date he submitted his resignation, but does not show that he exhibited an intent to begin the EEO process. See Cristantiello v. Dep't of the Army, EEOC Appeal No. 01992817 (December 19, 2000), Cox v. Dep't of Housing and Urban Development, EEOC Request No. 05980083 (July 30, 1998); Allen v. United States Postal Service, EEOC Request No. 05950933 (July 8, 1996). It also shows that he contacted EEO on April 2, 2018, but that date would still be outside of the 45-day statutory timeframe. Complainant provided medical documentation of a stroke in June 2016, which is about eight months following the effective date of his resignation and prior alleged harassment.

Office of Resolution Management (ORM) regarding forced resignation, was informed of statutory timeframes, but did not follow-up so ORM closed the inquiry.

The Commission has consistently held that a complainant must act with due diligence in the pursuit of his claim or the doctrine of laches may apply. See Becker v. United States Postal Service, EEOC Appeal No. 01A45028 (November 18, 2004) (finding that the doctrine of laches applied when complainant waited over two years from the date of the alleged discriminatory events before contacting an EEO Counselor); O'Dell v. Dep't of Health and Human Services, EEOC Request No. 05901130 (December 27, 1990). The doctrine of laches is an equitable remedy under which an individual's failure to pursue diligently his course of action could bar his claim. That is the case here. We find, on appeal, Complainant has presented no persuasive arguments or evidence warranting an extension of the time limit for initiating EEO Counselor contact.

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is **AFFIRMED**.

STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the 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; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 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). 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).

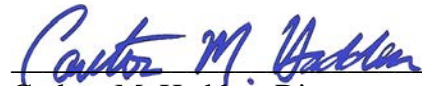
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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 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

August 10, 2020
Date