



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

[REDACTED]
Nida R,¹
Complainant,

v.

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

Appeal No. 2020000864

Agency No. 4K230012319

DECISION

Complainant timely appealed with the Equal Employment Opportunity Commission (“EEOC” or “Commission”) from the Agency's September 20, 2019, dismissal of her 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Rural Carrier Associate at the Chester, Virginia Post Office.

On August 3, 2019, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the basis of color (light skin) when, on or about May 1, 2019, she became aware that her transfer request was classified as a resignation by Management.²

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 During EEO counseling, Complainant identified the date of the alleged discriminatory act as May 1, 2019, yet it is listed in her Formal Complaint as May 22, 2019 (also the date of initial EEO contact), and April 25, 2019 in the grievance documents. Complainant’s appeal includes an April 24, 2019 letter she sent to the Union, which states that she became aware of alleged discriminatory act from an email, without providing the date she received the email.

On February 1, 2019, Complainant met with the Postmaster (“PM”) and attempted to hand her a written request for an immediate transfer to the Agency’s Post Office in Henderson, Nevada. In the request, Complainant explained that she sought the transfer because of a family situation, and that she planned to leave Virginia on February 3, 2019. PM would not accept Complainant’s written request, instead providing her with a blank resignation form, which Complainant did not fill out. The next day, on the advice of her Union steward, Complainant gave the transfer request to a supervisor, who said she would provide it to PM.

Complainant relocated, and, believing her transfer had been processed, waited to be placed on the roster at the Henderson, Nevada Post Office. Throughout this time, Complainant maintained contact with the Chester, Virginia Post Office, and regularly checked in with the Henderson, Nevada Post Office and the Agency’s Las Vegas, Nevada Human Resources Office (“HR”) about the status of her transfer. On or about April 24, 2019, HR notified Complainant that PM had submitted the form for her resignation on February 1, 2019. Complainant notified her Union steward, and a grievance was filed.

On May 1, 2019, the matter was resolved in a grievance settlement agreement (“the Agreement”). In relevant part, the Agreement provided: “Management will fill out PS 2574 [request for a transfer] and send it through immediately. If there is a loss of wages because of this Management error, Management will also fix it and send [Complainant] what she is owed. Make whole.”

Complainant references the grievance in her formal complaint, but explains that she feels she should be compensated from the time she left Chester, Virginia through June 2019, because PM “knew the transfer would never happen.” Complainant alleges that PM did the same thing on other occasions, and that she “did not feel [PM] should remain in a position to do this to someone else.” Additionally, Complainant submitted documentation to support that she experienced emotional pain and suffering as a result of the alleged discrimination.

The Agency dismissed Complainant’s complaint, pursuant to 29 C.F.R. § 1614.107(a)(5), finding that the May 1, 2019 Agreement rendered Complainant’s allegation moot.

The instant appeal followed.

ANALYSIS AND FINDINGS

The regulation set forth at 29 C.F.R. § 1614.107(a)(5) provides for the dismissal of a complaint when the issues raised have become moot. To determine whether the issues raised in a complaint are moot, the factfinder must ascertain whether: (1) it can be said with assurance that there is no reasonable expectation that the alleged violation will recur; and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged discrimination. See County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979); Kuo v. Dep’t of the Navy, EEOC Request No. 05970343 (Jul. 10, 1998). When such circumstances exist, no relief is available and no need for a determination of the rights of the parties is presented.

Here, we find no reasonable expectation that the alleged violation will reoccur because Complainant is no longer working at the Chester, Virginia Post Office. However, the Agency has not shown that interim relief or events have completely and irrevocably eradicated the effects of the alleged discrimination, therefore, Complainant's claim is not moot.

Unlike many other federal agencies, the Postal Service is not subject to 5 U.S.C. § 7121(d), so its employees are not obligated to make an election between pursuing their claim through the negotiated grievance process or the EEO complaint process. 29 C.F.R. § 1614.301(c). Therefore, Complainant was entitled to challenge her termination under both the grievance process and the EEO complaint process. The settlement of her grievance resolved her rights under the collective bargaining agreement. However, unless explicitly stated in the settlement agreement, her right to pursue her claim through the EEO complaint process, including all remedies available under that process, was not waived.

Here, the terms of the Agreement do not preclude Complainant from raising the same matter in an EEO complaint which, if successful, would allow her to recover proven compensatory damages in addition to lost wages. The instant complaint expressly seeks damages to recover medical expenses and to compensate for emotional pain and suffering arising from the alleged discrimination. Therefore, it cannot be said that the grievance settlement rendered her EEO complaint moot because there was no resolution of her claim for compensatory damages for expenses arising from the alleged discriminatory act.

Accordingly, the Agency's final decision dismissing Complainant's complaint is **REVERSED**, and the complaint is **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 the 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 the 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)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report **within thirty (30) calendar days** of the completion of all ordered corrective action. The report shall be in the digital format required by the Commission, and submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. 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 (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 (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

August 27, 2020
Date