



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

[REDACTED]

Victor S,¹
Complainant,

v.

Dr. Mark T. Esper,
Secretary,
Department of Defense
(Defense Contract Management Agency),
Agency.

Appeal No. 2020003220

Agency No. P8-20-0012

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated March 11, 2020, 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., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Quality Assurance Specialist at the Agency's Western Region facility in New Orleans, Louisiana.

On February 7, 2020, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination and a hostile work environment/harassment on the bases of disability (mental) and age when:

1. Around April 10, 2019 to June 2019, Complainant's first-line supervisor (Supervisor1) subjected him to harassment (hostile work environment when:
 - a. Around April 10, 2019, an unknown employee took a photograph of

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 asleep and sent it to Supervisor1's cellular telephone and he, in turn, took the photo and showed it to other employee; and

- b. In June 2019, during Complainant's performance discussion, Supervisor1 flinched at Complainant, as if he were going to hit Complainant.
2. On April 10, 2019, Supervisor1 moved Complainant to a different work area and assigned him additional duties.
3. In June 2019, Supervisor1 included negative comments in Complainant's performance appraisal which did not accurately describe his performance.

The Agency dismissed complaint, pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely EEO counselor contact. The instant appeal followed.

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination should be brought to the attention of the Equal Employment Opportunity 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.

EEOC Regulation 29 C.F.R. § 1614.105(a)(2) provides that the agency or the Commission shall extend the time limits when the individual shows that he was not notified of the time limits and was not otherwise aware of them, that he did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence he was prevented by circumstances beyond his control from contacting the Counselor within the time limits, or for other reasons considered sufficient by the agency or the Commission.

The events, as alleged, occurred between April and June 2019. In dismissing the complaint, the Agency found that Complainant did not contact an EEO Counselor until November 4, 2019, which is more than 45 days after the occurrence of the alleged events. However, on appeal, Complainant argues that the time limit should be extended because he was given false information from the Union President, the Agency person of contact (Contact1) had been retired for 5 years, and he had lacked guidance as to proceeding with his claim.

The record shows that, on June 14, 2019, Complainant emailed a Union representative, seeking assistance with alleged "medical discrimination" and a hostile work environment. On June 27, 2019, Complainant sent an email to Contact1 requesting to file an EEO complaint. Having received no response, Complainant sent follow up emails to Contact1 on July 8, 2019 and October 8, 2019. On October 11, 2019, Complainant sent an email to the Union representative stating that he had not received a response to his emails and that Contact1 was not in the Agency's address book. On November 4, 2019, Complainant sent an email to the Agency's EEO mailbox.

On November 5, 2019, the EEO mailbox sent Complainant an email indicating that Contact1 had been retired for over 5 years and that the “360 page” contains the current information for the EEO Director, contact information, and instructions for filing a complaint.

We find the record is sufficient to conclude that Complainant was notified and aware of the time applicable time limit. We note that the record includes pictures of bulletin boards located near Complainant’s work area that provide notice of the applicable time limits. Complainant also acknowledged taking No Fear Act training and his actions in contacting his Union representative establish that he knew of the discriminatory matters at issue. However, although instructions for contacting an EEO Counselor were readily available to Complainant on its intranet, Complainant did not locate the contact information and email the proper mailbox until November 4, 2019, over four months after he sent his initial email to the incorrect email address. Therefore, we find that Complainant did not act diligently in pursuit of his complaint and he has failed to provide sufficient reasons to extend the time limit.

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

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0620)

The Commission may, in its discretion, reconsider this appellate decision if the complainant or the agency submits a written request that contains arguments or evidence that 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 for reconsideration must be filed with EEOC’s Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration**. A party shall have **twenty (20) calendar days** from receipt of another party’s request for reconsideration within 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).

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at

<https://publicportal.eeoc.gov/Portal/Login.aspx>.

Alternatively, complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, complainant’s request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless complainant files his or her request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted together with the 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

October 7, 2020

Date