



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

[REDACTED]

Soila R.,¹
Complainant,

v.

Wilbur L. Ross, Jr.,
Secretary,
Department of Commerce
(Bureau of the Census),
Agency.

Appeal No. 2020003939

Agency No. 63202000407D

DECISION

Complainant timely appealed to the Equal Employment Opportunity Commission (“EEOC” or “Commission”) from the Agency’s decision dated June 4, 2020, dismissing 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 an Investigation Analyst, GS-12, in the Agency’s Field Division at the Philadelphia Regional Census Center, located in Philadelphia, Pennsylvania.

On April 22, 2020, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the basis of race (African-American) and reprisal for engaging in prior protected activity when, on or about January 10, 2020, she was not selected for Recruiter Supervisor and Area Manager positions to which she had applied.

The Agency dismissed Complainant’s complaint for untimely filing of her formal complaint, pursuant to 29 C.F.R. § 1614.107(a)(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.

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. §1614.106(b) requires the filing of a written complaint with the agency that allegedly discriminated against the complainant within fifteen (15) calendar days after the date of receipt of the Notice of Right to File an Individual Complaint required by 29 C.F.R. §1614.105(d), (e), or (f). A 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). This time limit is subject to waiver, estoppel, and equitable tolling. 29 C.F.R. §1614.604(c).

Where, as here, there is an issue of timeliness, “[a]n agency always bears the burden of obtaining sufficient information to support a reasoned determination as to timeliness.” Guy v. Dep’t of Energy, EEOC Request No. 05930703 (Jan. 4, 1994) (quoting Williams v. Dep’t of Defense, EEOC Request No. 05920506 (Aug. 25, 1992)). In instances of untimely filing, the Agency must not only demonstrate that the complainant received Notice, but that the Notice clearly informed the complainant of the 15 day deadline to file. See Paoletti v. United States Postal Serv., EEOC Request No. 05950259 (Aug. 17, 1995).

The Agency established that Complainant was aware of the 15-day limitation period to file her formal complaint. The Agency demonstrated that Complainant received the NORF by email on March 31, 2020, supporting a filing deadline of April 15, 2020. The record establishes that Complainant sent a response email to the Agency confirming her receipt of the NORF on March 31, 2020.² Complainant’s response also notified the Agency that she would complete and submit the materials it provided with the NORF by April 1, 2020. Complainant’s Formal Complaint was signed and dated by Complainant on April 1, 2020, as were the related EEO documents she submitted.

However, the Agency has not provided any evidence to support an April 22, 2020 filing date, which it claims was the date it received Complainant’s formal complaint. We remind the Agency that filing dates are determined by the date of mailing, not the date of receipt. To establish that Complainant’s formal complaint was untimely, the Agency must provide evidence that she sent it after the April 15, 2020 deadline. The record is devoid of any evidence of a filing date, such as a copy of an envelope with postage evincing the mailing date.

Given the Agency’s inability to meet its evidentiary burden, we find its dismissal of Complainant’s complaint for untimely filing under 29 C.F.R. § 1614.107(a)(2) was improper.

² The Agency does not explain why it issued the NORF by email yet required Complainant to hand-deliver or mail her formal complaint.

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is **REVERSED** and the complaint is hereby **REMANDED** for further processing based on the following Order.

ORDER (E0618)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108. 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)

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. See 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 the Complainant and his/her representative.

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 (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 (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

October 7, 2020
Date