



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

[REDACTED]

Ian C,¹
Complainant,

v.

Dr. Mark T. Esper,
Secretary,
Department of Defense,
Agency.

Appeal No. 2020004702

Agency No. 2020-WHSPFPA-056

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated July 24, 2020, 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.

BACKGROUND

During the period at issue, Complainant worked as a Police Officer, AD-0083-09 at the Agency's Washington Headquarters Services in Washington, DC.

On April 4, 2020, Complainant initiated EEO Counselor contact. Informal efforts at resolution were not successful.

On May 19, 2020, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination based on race (African-American) and color (brown) when he learned on July 2, 2019, that he was not selected for the position of Criminal Investigator, GL-1811-07, pursuant to vacancy number ST-104235519-19-AB.

On July 24, 2020, the Agency issued the instant final decision. The Agency dismissed the formal complaint for untimely EEO Counselor contact 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.

The Agency determined that Complainant's initial contact of an EEO Counselor on April 4, 2020, regarding his July 2, 2019 non-selection was beyond time limitations established by EEOC regulations. This 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. The Commission has adopted a "reasonable suspicion" standard (as opposed to a "supportive facts" standard) to determine when the forty-five (45) day limitation period is triggered. See Howard v. Department of the Navy, EEOC Request No. 05970852 (February 11, 1999). Thus, the time limitation is not triggered until a complainant reasonably suspects discrimination, but before all the facts that support a charge of discrimination have become apparent.

EEOC regulations provide 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 record reflects that on April 29, 2019, Complainant interviewed for the Criminal Investigator position, and received a notice dated July 2, 2019, that he was not selected for the position. In the narrative attached to Complainant's formal complaint, Complainant indicates that following notification that he was not-selected for the position, he was disappointed, believing that he had answered interview questions correctly. Complainant further indicates that he was "curious about [his] non-selection, so in September 2019, [he] reached out to human resources ...to inquire about [his] placement or ranking relative to the selectees." Complainant states that because the disposition letter he received on July 2, 2019, did not provide any reason that he was not selected for the position, he "decided to pursue a different route to fill...gaps and inconsistencies."

Complainant requested information through the Freedom of Information Act in December 2019 and on February 20, 2020, he received information indicating that he was ranked 6th out of 34 candidates interviewed for the position. Complainant contends that he only developed a reasonable suspicion of discrimination when he learned of his ranking among the candidate pool.

We are not persuaded by Complainant's contention that he only recently developed a suspicion of discrimination. Although Complainant contends that he only suspected discrimination regarding his non-selection in February 2020, his own complaint statement indicates that he was "curious about his non-selection," and found "inconsistencies and gaps" regarding his non-selection as early as September of 2019.

The record discloses that the alleged discriminatory event occurred on July 2, 2019, but Complainant did not initiate contact with an EEO Counselor until April 4, 2020, which is beyond the forty-five (45) day limitation period. On appeal, Complainant has presented no persuasive arguments or evidence warranting an extension of the time limit for initiating EEO Counselor contact.

The Agency's final decision dismissing the formal complaint is **AFFIRMED** for the reasons discussed above.

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).**

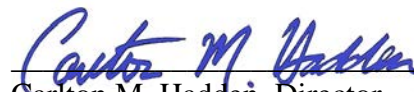
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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 19, 2020
Date