



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

[REDACTED]
Priscila F.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Great Lakes Area),
Agency.

Appeal No. 2020005145

Agency No. 4J-604-0054-20

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated April 22, 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., and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

BACKGROUND

During the period at issue, Complainant worked as a Clerk at the Agency's Bolingbrook Post Office in Bolingbrook, Illinois.

On April 7, 2020, Complainant filed a formal complaint. As summarized by the Agency, Complainant claimed that she was discriminated against based on race and disability when:

1. on December 23, 2019, Complainant was not accommodated per her medical restrictions when she was not permitted to return to work; and
2. on December 28, 2019, Complainant returned to work and was instructed to sign paperwork stating that she could be terminated if she injured herself again.

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 dismissed the formal complaint, pursuant to 29 C.F.R. § 1614.107(a)(2), finding that the formal complaint was untimely filed. The Agency reasoned that Complainant received the Notice of Right to File a Formal Complaint (Notice) on March 20, 2020. The Agency found, however, that Complainant did not file her formal complaint until April 7, 2020, which it found to be one day beyond the 15-day filing period.

The Agency also dismissed claim 2, pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim, finding that Complainant was not aggrieved.

The instant appeal followed.

ANALYSIS AND FINDINGS

Untimely Formal Complaint

The regulation set forth at 29 C.F.R. § 1614.107(a)(2) states, in pertinent part, that an Agency shall dismiss a complaint which fails to comply with the applicable time limits contained in 29 C.F.R. § 1614.106, which, in turn, requires the filing of a formal complaint within fifteen (15) days of receiving notice of the right to do so.

Here, we find that Complainant's formal complaint was untimely by one day. The United States Postal Service tracking confirmation provided in the record reflects that Complainant received the Notice at her address of record and signed that she received the Notice on March 20, 2020. Therefore, Complainant had 15 days, or until April 6, 2020, to timely file her formal complaint. However, Complainant filed her formal complaint on April 7, 2020, one day beyond the filing deadline as indicated by the postmark date on the envelope containing Complainant's formal complaint.

Complainant does not dispute on appeal that that her formal complaint was filed untimely. Rather, Complainant provides documentation reflecting why she was unable to timely file her formal complaint by April 6, 2020. Complainant submits a note from her doctor indicating that she was serving a 14-day home quarantine from March 24, 2020 through April 7, 2020 due exposure to the coronavirus. As such, she asserts she was unable to leave her home to mail her complaint. Based on these specific circumstances, we find adequate justification excusing Complainant's brief delay in filing her formal complaint. See 29 C.F.R. § 1614.604(c).

We reverse the Agency's dismissal of the formal complaint, pursuant to 29 C.F.R. § 1614.107(a)(2), for an untimely filed formal complaint.

Failure to State a Claim – Claim 2

A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the complainant cannot prove a set of facts in support of the claim which would entitle the complainant to relief. The trier of fact must consider all of the alleged discriminatory incidents, and considering them together in the light most favorable to the complainant, determine whether they are sufficient to state a claim. Cobb v. Dep't of the Treasury, EEOC Request No. 05970077 (Mar. 13, 1997).

Here, we also find that Claim 2 was improperly dismissed, pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim. While the Agency has fragmented the complaint into two separate claims, a fair reading of the complaint shows that Claims 1 and 2 are inextricably intertwined as part of Complainant's denial of reasonable accommodation claim. In essence, Complainant has alleged that the Agency failed to accommodate her medical restrictions by not permitting her to return to work, and then only allowed her to return if she signed a document agreeing to be terminated if she was injured. We find that these allegations states a valid claim of discrimination that requires investigation and further processing.

CONCLUSION

We REVERSE the Agency's final decision dismissing the formal complaint on the procedural grounds discussed above. We REMAND this matter to the Agency for further processing in accordance with 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)

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:

A handwritten signature in blue ink, reading "Carlton M. Hadden", is written over a horizontal line.

Carlton M. Hadden, Director
Office of Federal Operations

December 10, 2020

Date