



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

[REDACTED]  
Delphia F.,<sup>1</sup>  
Complainant,

v.

Dr. Benjamin S. Carson, Sr., M.D.,  
Secretary,  
Department of Housing and Urban Development,  
Agency.

Appeal No. 2020004684

Hearing No. 570-2019-01314X

Agency No. HUD-00164-2018

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final order dated July 31, 2020, implementing the dismissal of 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 Program Support Specialist, 0301, GS 12 at the Agency's Office of Special Needs Assistance in Washington, D.C.

According to the Agency, on November 8, 2018, Complainant filed a formal complaint claiming that the Agency discriminated against her based on disability and in reprisal for prior protected EEO activity when, on August 10, 2018, Complainant's request to work from home five days a week was denied.

After the investigation of the accepted claim, Complainant timely requested a hearing before an EEOC Administrative Judge (AJ). On May 14, 2020, the Agency filed a motion to dismiss the

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<sup>1</sup> 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.

formal complaint. The Agency reasoned that Complainant received the Notice of Right to File a Formal Complaint (Notice) on October 23, 2018. The Agency found, however, that Complainant did not file her formal complaint until November 8, 2018, which it determined was one day beyond the 15-day filing period. After Complainant filed an opposition, the AJ issued a June 15, 2020 Order granting the Agency's motion and dismissed the formal complaint for untimeliness.

On July 31, 2020, the Agency issued a final Order implementing the AJ's dismissal.

The instant appeal followed. On appeal, Complainant asserts that she timely filed her formal complaint on November 8, 2018. Complainant explains that the AJ incorrectly determined that she received the Notice on *October 23, 2018*. Complainant states that she received the Notice on *October 24, 2018*, and that therefore, she timely filed the formal complaint fifteen days later on November 8, 2018.

### ANALYSIS AND FINDINGS

The regulation set forth at 29 C.F.R. § 1614.109(b) states, in pertinent part, that an AJ may dismiss an EEO complaint on any of the procedural grounds detailed in 29 C.F.R. § 1614.107. The regulation 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.

Our review of the record indicates that the Agency did not provide adequate mail confirmation in the record to support a determination that Complainant received the Notice on October 23, 2018, as the Agency contends. The United States Postal Service tracking confirmation provided in the record only indicates that the Notice was delivered to "Oxen Hill, MD" and does not indicate that it was delivered to Complainant's home address on the date in question. Although the record includes a November 9, 2018 email from Complainant's non-legal representative to an Agency EEO Specialist indicating that Complainant received the Notice on October 23, 2018, Complainant expressly denied this in both her opposition to the Agency's motion to dismiss before the AJ, as well as on appeal, and asserted that she did not receive the Notice until October 24, 2018. The Agency has not provided any evidence to dispute Complainant's assertion that she received the Notice on October 24, 2018, beyond the email from her non-attorney representative.

Therefore, we find that there is insufficient evidence in the record to conclude that Complainant's formal complaint was untimely filed. Where, as here, there is an issue of timeliness, the "agency always bears the burden of obtaining sufficient information to support a reasoned determination as to timeliness." Guy v. Department of Energy, EEOC Request No. 05930703 (January 4, 1994) (quoting Williams v. Department of Defense, EEOC Request No. 05920506 (August 25, 1992)).

### CONCLUSION

The Agency's final order implementing the AJ's dismissal of the instant formal complaint is REVERSED. We REMAND the complaint to the Agency for further processing in accordance with the ORDER below.

### ORDER (E0618)

Within fifteen (15) calendar days from the date this decision was issued, the Agency shall submit a renewed request for a hearing on behalf of Complainant, as well as the complete complaint file and a copy of this decision, to the Hearings Unit at EEOC's Washington Field Office. Thereafter, the EEOC AJ assigned shall process the claims in accordance with 29 C.F.R. § 1614.109, and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

### 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).

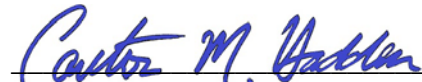
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

November 30, 2020

Date