



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

[REDACTED]
Bell S,¹
Complainant,

v.

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

Appeal No. 2020005007

Agency No. 1J-609-0017-20

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated August 17, 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

During the relevant time, Complainant worked for the Agency as an Expeditor in Forest Park, Illinois.

On July 28, 2020, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on of sex (female) and in reprisal for prior protected EEO activity. In its final decision, dated August 17, 2020, the Agency determined that Complainant's complaint was comprised of the following claim:

On June 8, 2019, management abolished all Bulk Mail Entry Clerk positions.

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 for untimely EEO Counselor contact. The Agency reasoned that Complainant initiated EEO contact on April 10, 2020, regarding the June 8, 2019 incident, outside of the applicable time period.

The instant appeal followed. On appeal, Complainant asserts that the June 8, 2019 abolishment of the Bulk Mail Entry Clerk positions is not the main focus of her complaint. Rather, Complainant asserts that the “focus” of her complaint is a letter that she received on March 6, 2020. Thus, Complainant asserts that she timely initiated EEO contact.

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. Dep't of the Navy, EEOC Request No. 05970852 (Feb. 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.

We find that the Agency properly dismissed Complainant's complaint for untimely EEO Counselor contact. The Agency properly framed Complainant's claim that she was subjected to discrimination when the Bulk Mail Entry Clerk positions were abolished effective June 8, 2019. The record contains a copy of the EEO Counselor's report. Therein, Complainant's claim is framed as follows “[o]n June 8, 2019, all Bulk Mail Entry Clerk positions were eliminated.” As a remedy, Complainant, according to the EEO Counselor's Report, was seeking in pertinent part, full reinstatement into Bulk Mail Entry Clerk position previously abolished.

The record also contains a copy of Complainant's formal complaint. Therein, Complainant lists that date of the alleged discrimination as June 8, 2019. In addition, in her formal complaint, Complainant asserts that her claim is that the Bulk Mail Entry Clerk positions were abolished in 2019. Complainant, in her formal complaint, asserts that she is seeking reinstatement to the position. Based on the foregoing, we find the Agency properly framed her claim.

We are not persuaded by Complainant's assertion, on appeal, that the focus of her complaint was a letter she received on March 6, 2020.² We note that the EEO Counselor's Report provides that Complainant stated that she was subjected to discrimination when on May 20, 2019, she received a letter informing all BMEU clerks that their bids were being abolished effective June 8, 2019. According to the EEO Counselor's Report, Complainant further stated that on March 6, 2020, she received a letter from management indicating that the BMEU jobs were eliminated due to an invalid position. We find that Complainant should have reasonably suspected discrimination at the time of the abolishment of the positions on June 8, 2019. We find that Complainant's reference to a March 6, 2020 letter was not a separate claim but rather additional information in support of her claim (that the BME positions were abolished on June 8, 2019).³ Complainant initiated EEO contact on April 10, 2020 more than 45 days from the alleged discriminatory event (which occurred on June 8, 2019). Complainant has not provided sufficient justification for her delay in initiating EEO contact.

Accordingly, we AFFIRM the Agency's final decision dismissing Complainant's formal complaint.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0920)

The Commission may, in its discretion, reconsider this appellate decision if 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).

² The record does not contain a copy of the March 6, 2020 letter.

³ We further find that Complainant has not provided sufficient information that she did not reasonably suspect discrimination regarding the abolishment of the positions until March 6, 2020.

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, a 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

January 11, 2021

Date