



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

[REDACTED]

Alesia P,¹
Complainant,

v.

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

Appeal No. 2021000068

Agency No. 1F-927-0069-20

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated September 10, 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

BACKGROUND

During the period at issue, Complainant worked as a Clerk, PS-7, at the Agency's Processing and Distribution Center in City of Industry, California.

On August 24, 2020, Complainant filed a formal EEO complaint claiming that the Agency discriminated against her based on disability, age, and in reprisal for prior protected EEO activity when, on May 9, 2020, Complainant received a letter from the Office of Workers' Compensation Programs (OWCP) dated May 5, 2020, which denied Complainant's request for OWCP benefits.

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)(1), for failure to state a claim. Specifically, the Agency found that the formal complaint constituted a collateral attack on the Department of Labor's Office of Workers Compensation Programs (OWCP) process. The Agency determined that this matter was outside of the Commission's jurisdiction and should have been raised with the Department of Labor.

The instant appeal followed. On appeal, Complainant argues that her formal complaint alleges that she was subjected to a pattern of harassment and requests that her claim be accepted for investigation.

ANALYSIS AND FINDINGS

The Commission has held that an employee cannot use the EEO complaint process to lodge a collateral attack on another proceeding. See Wills v. Dep't of Def., EEOC Request No. 05970596 (July 30, 1998); Kleinman v. U.S. Postal Serv., EEOC Request No. 05940585 (Sept. 22, 1994); Lingad v. U.S. Postal Serv., EEOC Request No. 05930106 (June 25, 1993). A claim that can be characterized as a collateral attack, by definition, involves a challenge to another forum's proceeding, such as the grievance process, the workers' compensation process, an internal agency investigation, or state or federal litigation. See Fisher v. Dep't of Defense, EEOC Request No. 05931059 (July 15, 1994).

A review of the EEO Counselor's report and the formal complaint indicate that the essence of Complainant's complaint concerns the Agency's alleged misrepresentation that Complainant's previous modified duty assignment was still available from January 31, 2019 through March 6, 2019. As a result of this alleged false statement, Complainant's OWCP benefits were denied. The proper forum for Complainant to have raised her challenges to actions which occurred during the OWCP process is within that adjudicatory process itself because any remedial relief available to Complainant would be through the OWCP. There is no remedial relief available to Complainant on this matter through the EEO complaint process. Therefore, the Agency properly dismissed Complainant's complaint pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim due to lodging a collateral attack on the proceedings of the OWCP process.

Accordingly, we AFFIRM the Agency's final decision dismissing the instant formal complaint for the reason discussed above.

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).

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).

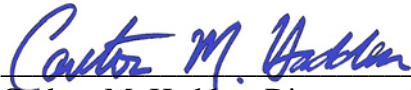
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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