



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

[REDACTED]
Takako Y.,¹
Complainant,

v.

Michael R. Pompeo,
Secretary,
Department of State,
Agency.

Appeal No. 2021000174

Agency No. DOS-0292-20

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated September 14, 2020, dismissing her complaint of unlawful employment discrimination in violation of 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 Diplomatic Security Special Agent.

On July 29, 2020, Complainant, through counsel, initiated EEO Counselor contact. Informal efforts at resolution were not successful.

On August 20, 2020, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the basis of age (49) when her candidacy for a Diplomatic Security Special Agent position was terminated on February 18, 2020.

On September 14, 2020, the Agency issued a final decision. Therein, 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 was informed of the candidacy termination on February 18, 2020, but that Complainant's initial EEO counselor contact was on July 29, 2020, which it found to be beyond the 45-day limitation period. Additionally, the Agency found that Complainant failed to state a claim.

The instant appeal followed. On appeal, Complainant, through counsel, argues that she contacted the Agency Human Resources (HR) about her candidacy termination on March 13, 2020. Complainant states that, while she did not request EEO counseling until July 29, 2020, she reached out again to on May 12, 2020, requesting "reconsideration and clarification" of the Agency determination, and then received another letter from the Agency on May 29, 2020 stating that Complainant was "ineligible for reappointment" due to her age. Additionally, Complainant argues that, due to COVID-19 pandemic, the 45 days should be extended.

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 personnel action, within forty-five (45) days of the effective date of the action.

Here, it is undisputed that Complainant made EEO contact on July 29, 2020, which is more than 45 days after the alleged discriminatory incident. Complainant argues that she made contact with HR on March 13, 2020 and with high-level personnel and Agency legal advisors on May 12, 2020, regarding her candidacy termination due to age. We have consistently held that "a complainant may satisfy the criterion of Counselor contact by initiating [contact] to an agency official logically connected with the EEO process, even if that official is not an EEO Counselor." Floyd v. National Guard Bureau, EEOC request No. 05890086 (June 22, 1989). Here, however, Complainant describes her March 13, 2020 HR communication and May 12, 2020 personnel and legal advisor communication as seeking reconsideration of the candidacy termination. The record shows that, while Complainant contacted individuals about reconsidering her candidacy termination, she did not seek EEO counseling to begin the EEO process until July 29, 2020. We also note that the Commission has consistently held that the utilization of agency procedures, union grievances, and other remedial processes does not toll the time limit for contacting an EEO Counselor. See Ellis v. United States Postal Service, EEOC Appeal No. 01992093 (November 29, 2000).

Additionally, Complainant argues that due to COVID-19 the 45-day time frame should be extended. However, Complainant does not state with any specificity if or how she was prevented from making EEO counselor contact by the pandemic. As such, we find no justification has been provided for extending the 45-day limitation period. Therefore, we affirm the Agency's determination that Complainant's EEO Counselor contact was untimely made.

Because we affirm the Agency dismissal for the reason discussed above, we will not address alternative dismissal grounds.

CONCLUSION

The Agency's final decision, dismissing the instant formal complaint for untimely EEO Counselor contact is **AFFIRMED**.

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).

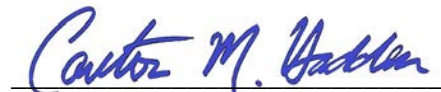
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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 22, 2021

Date