



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

[REDACTED]
Denise W.,¹
Complainant,

v.

Monty Wilkinson,
Acting Attorney General,
Department of Justice
(Bureau of Alcohol, Tobacco, Firearms & Explosives),
Agency.

Appeal No. 2021000952

Hearing No. 410-2019-00258X

Agency No. 187-9-336

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final order dated October 27, 2020, implementing the procedural dismissal by an EEOC Administrative Judge (AJ) of a formal complaint of unlawful employment discrimination alleging a violation of 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 an Industry Operations Investigator, GS-13, at the Agency's Atlanta Field Division in Atlanta, Georgia.

Complainant filed a formal EEO complaint claiming the Agency discriminated against her on the basis of disability when she was not granted her request for reasonable accommodation.

Despite apparent concerns about the timeliness of the complaint filing, the Agency accepted the formal complaint for investigation into the allegations of discrimination. After the investigation was completed, Complainant timely requested a hearing before an EEOC AJ.

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.

Subsequently, the Agency filed a motion with the AJ to dismiss the formal complaint pursuant to 29 C.F.R. § 1614.107(a)(2). Specifically, the Agency asserted that Complainant's formal complaint had been untimely filed.

On September 28, 2020, after receiving an opposition from Complainant and a reply from the Agency, the AJ issued a summary decision, without analysis, dismissing Complainant's formal complaint as untimely filed.

The instant appeal from Complainant followed.

ANALYSIS AND FINDINGS

EEOC Regulation 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 a complaint may be dismissed if it 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, the AJ dismissed the complaint as untimely filed.

It is undisputed that Complainant's attorney received the Notice of Right to File a Formal Complaint on December 4, 2017.² Therefore, Complainant had 15 days, or until December 19, 2017, to timely file the formal complaint. Complainant's attorney asserts she sent the formal complaint via certified mail to the Agency address provided in the Notice³ on December 18, 2017, within the 15-day filing period. Complainant has produced copies of the certified mail receipt showing the complaint was mailed on December 18, 2017. Additionally, the envelope containing the formal complaint has a December 18, 2017 postmark date.⁴ EEOC Regulation 29 C.F.R. § 1614.604(b) provides that a document shall be deemed timely *if it is postmarked* before the expiration of the applicable filing period. Here, reliable evidence establishes that the formal complaint was sent to the Agency by certified mail in an envelope postmarked on December 18, 2017, before the expiration of the 15-day filing period. Therefore, we conclude that the complaint was timely filed.

² 29 C.F.R. § 1614.605(d) provides that the EEO complaint processing time frames shall be computed from the time of receipt by a complainant's designated attorney.

³ It appears the envelope contained an incorrect zip code. However, the remainder of the address was correct and appears sufficient for a correct delivery. As cited by Complainant, we have previously reversed an Agency's dismissal of a formal complaint where complainant's formal complaint was received by the Agency significantly after the 15-day limitation period because complainant used an incorrect zip code. See Thurman L. v. Dep't of Agriculture, EEOC Appeal No. 0120172885 (Jan. 26, 2018).

⁴ The Agency does not dispute this mailing in its legal analysis in its final order adopting the AJ's dismissal decision.

The Agency asserts that it never received the package containing the formal complaint mailed in December 2017. It asserts that it was unaware of the complaint until Complainant's attorney contacted the EEO office on April 12, 2018, to inquire about the status of the complaint.⁵ The Agency's receipt of the complaint, however, is irrelevant to the determination of timeliness of a complaint filing where, as here, there is a legible postmark verifying the timely mailing of the complaint.

CONCLUSION

The Agency's order implementing the AJ's dismissal for the formal complaint is **REVERSED**. The complaint is **REMANDED** to the Agency for further action pursuant to the following Order.

ORDER

The Agency is directed to submit a renewed request for a hearing on Complainant's behalf, as well as a copy of the complete complaint file and this appellate decision, to the Hearings Unit of the EEOC's Atlanta District Office within fifteen (15) calendar days of the date this decision is issued. The Agency shall provide written notification to the Compliance Officer at the address set forth below that the complaint file has been transmitted to the Hearings Unit. Thereafter, the Administrative Judge shall issue a decision on the complaint 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).

⁵ Complainant submits a declaration completed by her attorney, stating that between December 18, 2017 and April 12, 2018, she had no reason to believe that the formal complaint had not been delivered to the Agency. The declaration further states that Complainant's attorney did not learn that the Agency had not received the formal complaint until she received correspondence from the Agency on April 13, 2018, indicating that it was not in receipt of the mailed formal complaint.

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 (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 (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:



Carlton M. Hadden, Director
Office of Federal Operations

February 9, 2021

Date