



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

[REDACTED]  
Lashonda M.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2021001083

Agency No. 4K-270-0077-20

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated October 16, 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. 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 Carrier at the Agency's Henderson Post Office in Henderson, North Carolina.

On June 3, 2020, Complainant filed the instant formal complaint. Complainant claimed that the Agency subjected her to harassment/a hostile environment based on disability and in reprisal for prior EEO activity when:

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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.

1. in 2020, a supervisor yelled at her on the workroom floor and tried to intimidate her;
2. in 2020, she was given investigative interviews;
3. on or around February 24, 2020, she was issued a 14-Day Suspension;
4. on or around March 31, 2020, she was issued a Notice of Removal;
5. around March and April 2020, management shared her personal information with co-workers; and
6. on May 16, 2020, a supervisor denied her assistance request and told her that her start time was changed.<sup>2</sup>

The Agency initially accepted the complaint for investigation. However, in an October 16, 2020 final decision, the Agency dismissed the complaint for failure to prosecute, described under the regulations as “failure to cooperate,” pursuant to 29 C.F.R. § 1614.107(a)(7). Specifically, the Agency stated that it sent Complainant an affidavit request for her to answer but a response was never sent to the Agency.

The instant appeal followed.

### ANALYSIS AND FINDINGS

The Commission has held that as a general rule, an agency should not dismiss a complaint when it has sufficient information on which to base an adjudication. See Ross v. U.S. Postal Service, EEOC Request No. 05900693 (August 17, 1990); Brinson v. U.S. Postal Service, EEOC Request No. 05900193 (April 12, 1990). It is only in cases where the complainant has engaged in delay or contumacious conduct and the record is insufficient to permit adjudication that the Commission has allowed a complaint to be dismissed for failure to cooperate. See Card v. U.S. Postal Service, EEOC Request No. 05970095 (April 23, 1998); Kroeten v. U.S. Postal Service, EEOC Request No. 05940451 (December 22, 1994).

Complainant’s alleged failure to respond to the Agency’s request letter does not indicate contumacious conduct such as to warrant dismissal of the instant formal complaint. The current record contains sufficient information to identify Complainant’s claims and allow for the Agency to conduct an appropriate investigation of those claims. If Complainant does not provide an affidavit during the investigation in response to a request she actually received, she risks having her claims adjudicated on the merits without her input. Under the circumstances of this particular case, we find that the Agency’s dismissal of the formal complaint for failure to prosecute was improper.

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<sup>2</sup> For ease of reference, we have re-numbered Complainant’s claims as claims 1 – 6.

### CONCLUSION

The Agency's final decision dismissing Complainant's is REVERSED. The complaint is REMANDED to the Agency for further processing in accordance with the ORDER below.

### ORDER

The Agency is ORDERED to resume processing of the instant formal complaint from the point where processing ceased in accordance with the procedures in 29 C.F.R. Part 1614. Within thirty (30) calendar days of the date of this decision, the Agency shall acknowledge to Complainant that it has reinstated and resumed processing of the instant formal complaint.

A copy of the Agency letter of acknowledgement must be sent to the Compliance Officer as referenced below.

### 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 (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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

February 2, 2021  
Date