



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

[REDACTED]  
Tera B,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2021001319

Agency No. 4F-940-0064-20

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated November 9, 2020, dismissing a formal complaint of unlawful employment discrimination alleging violations 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 a Letter Carrier, PS-06, at the Agency's Bayview Station in San Francisco, California.

On September 1, 2020, Complainant initiated EEO Counselor contact. Informal efforts at resolution were not successful. On October 9, 2020, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the basis of disability. According to the Agency, the claims raised in the complaint were as follows:

1. on April 3, 2019, management rescinded her Letter of Proposed Separation – Disability via a pre-arbitration settlement;
2. on June 24, 2019, Complainant received an Absent Inquiry Letter;

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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.

3. on August 24, 2019, Complainant was issued a document regarding her attendance; and
4. on July 25, 2020, Complainant received a Letter of Proposed Separation – Disability dated July 17, 2020.

The Agency dismissed Claims 1 through 3 of the formal complaint for untimely EEO counselor contact, pursuant to 29 C.F.R. § 1614.107(a)(2). In reaching this conclusion, the Agency characterized each of the incidents in Claims 1 through 3 as discrete acts, each requiring EEO Counselor contact within 45 days of the occurrence. As such, the Agency determined that Complainant's initial EEO Counselor contact on September 1, 2020, was beyond the 45-day limitation period. The Agency then dismissed Claim 4 for mootness, pursuant to 29 C.F.R. § 1614.107(a)(5). On October 7, 2020, the Agency rescinded the Letter of Proposed Separation – Disability, leading to the Agency determining that the matter was moot.

The instant appeal followed. On appeal, Complainant states that the incidents in Claims 1 through 3 are part of a pattern related to ongoing harassment based on reprisal and disability. She also states that she received the Letter of Proposed Separation – Disability (“LPSD”) on July 25, 2020, and she made EEO Counselor contact on September 1, 2020, which makes the entire complaint timely.

The Agency does not respond to Complainant's appeal.

### ANALYSIS AND FINDINGS

#### Claim 4

EEOC regulations direct agencies to dismiss complaints that are moot, pursuant to 29 C.F.R. § 1614.107(a)(5). We have found that a case is moot when: (1) it can be said with assurance that there is no reasonable expectation that the alleged violation will occur; and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation. County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979).

Here, the Agency's dismissed claim 4 on the grounds of mootness predicated on an assessment that it has rescinded the LPSD on October 7, 2020. Complainant has asserted, however that the continued issuance of LPSDs, including the one identified in claim 4, has caused her emotional distress, pain, and suffering entitling her to \$10,000.00 in compensatory damages.

Despite its rescission of the LPSD, we conclude that claim 4 was not rendered moot. At a minimum, Complainant requested compensatory damages. An agency must address the issue of compensatory damages when a complainant alleges she incurred compensatory damages, and that the damages were related to the alleged discrimination. See Jackson v. USPS, EEOC Appeal No. 01923399 (November 12., 1992), request to reconsider denied, EEOC Request No. 05930386 (February 11, 1993).

Should Complainant prevail in the instant claim, the possibility of a compensatory damages award exists. See Glover v. United States Postal Service, EEOC Request No. 01930696 (December 9, 1993). Moreover, Claim 4 is part of a broader harassment claim, more fully discussed below.

#### Claims 1-3<sup>2</sup>

The Agency dismissed Claims 1 through 3 for untimely EEO Counselor contact. While each of the acts in Claims 1-3 occurred more than 45-days before Complainant made EEO Counselor contact, that contact does not render these claims untimely raised with an EEO Counselor. A fair reading of Complainant's formal complaint demonstrates that she is alleging a claim of ongoing harassment. Each of the incidents in Claims 1 through 3 are part of a claim of harassment, and cannot be disposed of through the assertion that Complainant failed to make timely EEO Counselor contact. We conclude Complainant has alleged that the harassment was *ongoing* – including through July 25, 2020, when she received the most recent LPSD (claim 4, discussed above). The Supreme Court has held that a complainant alleging a hostile work environment will not be time barred if all acts constituting the claim are part of the same unlawful practice and at least one act falls within the filing period. See National Railroad Passenger Corp. v. Morgan, 536 U.S. 101, 122 S. Ct. 2061 (2002). Here, Complainant received the July 17, 2020 Letter of Proposed Separation within 45-days of her initial contact with an EEO counselor on September 1, 2020, rendering the entire harassment claim (of which claims 1-4 are evidence) as timely raised. We therefore determine that the Agency improperly dismissed this claim for untimely EEO Counselor contact.

#### CONCLUSION

The Agency's final decision dismissing the complaint, as now redefined as a claim of ongoing harassment of which claims 1-4 are evidence, is REVERSED. The formal complaint is REMANDED to the Agency for further processing pursuant to the ORDER below.

#### ORDER (E0618)

The Agency is ordered to process the remanded complaint (as defined as a claim of ongoing harassment of which claims 1-4 are evidence) in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall acknowledge to Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued.

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<sup>2</sup> According to the record, there was another LPSD issued to Complainant, dated August 24, 2018. The Agency final decision included a footnote that Complainant did not specify what action occurred in Claim 3, on August 24, 2019. It is unclear whether Claim 3 is referring to the August 24, 2018 LPSD or another matter. Whether or not Claim 3 is actually the August 24, 2018 LPSD or a separate matter, or whether there is an inadvertent reference to an incorrect date, does not change the disposition of our decision.

The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, a copy of complainant's request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

#### 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 22, 2021  
Date