



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

[REDACTED]
Abe U.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Appeal No. 2021003512

Agency No. 4E-500-0017-21

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated March 29, 2021, dismissing his complaint alleging 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

At the time of events giving rise to this complaint, Complainant worked as a City Letter Carrier, Q-1, at the Agency's Marshalltown Post Office in Marshalltown, Iowa.

On February 28, 2021, Complainant filed a formal EEO complaint alleging that the Agency subjected him to discrimination on the bases of disability and reprisal for prior protected EEO activity when, on December 11, 2020, Complainant was denied the proper paperwork to file a claim with the Department of Labor's Office of Workers' Compensation Programs (OWCP), and management resisted in facilitating his medical treatment.

The Agency dismissed the complaint, pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim.

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.

Specifically, the Agency found the complaint concerned Complainant's work injury and management's alleged untimely handling of his worker's compensation paperwork, which constituted "a collateral attack on the proceedings of another forum" namely, the Department of Labor's OWCP adjudicatory process.

The instant appeal followed.

ANALYSIS AND FINDINGS

A claim that can be characterized as a collateral attack if, by definition, it involves a challenge to another forum's adjudicatory proceedings, such as the workers' compensation process, the negotiated grievance process, or state or federal litigation. See Fisher v. Department of Defense, EEOC Request No. 05931059 (July 15, 1994). In the instant case, Complainant asserts that management delayed providing him with the proper paperwork to file a claim with the OWCP. This Commission has generally held that complaints involving other administrative proceedings, including those involving the OWCP and its related processes, do not state a claim within the meaning of its regulations. See Hogan v. Dep't of the Army, EEOC Request No. 05940407 (Sept. 29, 1994). Our rejection of such claims includes cases like this one, where the claim of discrimination is based on the Agency's actions (alleged mishandling of paperwork) rather than those of OWCP. See Schneider v. U.S. Postal Serv., EEOC Request No. 05A01065 (Aug. 15, 2002) (rejecting complainant's claim that the Agency's delay in processing her OWCP paperwork constituted harassment); Bell v. Dep't of Transportation, EEOC Appeal No. 01991806 (Jan. 11, 2001) (dismissing a discrimination complaint alleging that the agency submitted inaccurate and incomplete information to the Department of Labor while processing the complainant's OWCP claim). Like Bell and Hogan, we find the proper forum for Complainant to have raised his allegation that management failed to timely provide him with the proper paperwork to file an OWCP claim was with the OWCP.

Also at issue is whether the Agency properly dismissed Complainant's claim that management resisted in facilitating his medical treatment. On appeal, Complainant adds that management failed to meet its "obligation" to adhere to "safety and health" requirements enumerated in the Agency's handbook and union agreement. Neither policy concerns discrimination, yet Complainant is essentially requesting that the EEOC enforce the provisions of the Agency's union agreement on his behalf. Again, this is outside the scope of the EEO complaint process. The proper venue for pursuing this allegation would be filing of a grievance through the Agency's negotiated grievance procedure.

We note that Complainant submitted excerpts from two Commission decisions in support of his appeal, where the Commission reversed agency dismissals on the basis that the underlying claims were not collateral attacks. However, Complainant offers no argument or explanation as to how the facts in these cases were similar to his situation, or how the legal principles derived from these cases apply to his case. On their own, the excerpts are insufficient to demonstrate that the complaint raises a matter within the jurisdiction of the EEO complaint process.

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint 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).

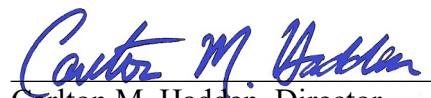
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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

August 4, 2021
Date