



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Hyo E.,¹
Complainant,

v.

Christine Wormuth,
Secretary,
Department of the Army,
Agency.

Appeal No. 2021004160

Agency No. ARBENNING21APR01212

DECISION

Complainant timely appealed with the Equal Employment Opportunity Commission (“EEOC” or “Commission”) from the Agency's June 9, 2021 dismissal of her 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Dietetic Technician, GS-05, in the Nutrition Care Division at the Martin Army Community Hospital (MCXB-DCN-NC) in Fort Benning, Georgia.

On May 30, 2021, Complainant filed a formal EEO complaint alleging that she was subjected to a hostile work environment/harassment on the basis of sex (female) when:

- a) On March 23, 2021, the Food Service Worker (“FSW”) Leader asked her to have a relationship with him,
- b) On March 24, 2021, the FSW Leader asked to kiss her lips,

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.

- c) On April 12, 2021, the FSW Leader allowed one of his FSW subordinates to speak to her in a disrespectful tone,
- d) On April 16, 2021, the FSW Leader propositioned her to have an affair with him,
- e) On April 16, 2021, the FSW Leader used his position and authority to retaliate against her for refusing his sexual advances, and,
- f) On April 17, 2021, the Cook Supervisor came up behind her and started to massage her shoulders without her consent.

By Complainant's account, the FSW Leader first asked if he could "kiss her beautiful lips," in the confined space of his office, with the door closed, then, when Complainant responded "no," and left, he followed her and asked again a few more times. He also allegedly asked Complainant to have an affair with him twice. Complainant alleges that once she declined, the FSW Leader went from praising her work to regularly complaining to her supervisor and no longer allowing her in the kitchen. Complainant began to hate coming to work, alleging that "no matter what [she] did" the FSW Leader would complain, and he used his position of authority to influence others to start harassing her as well.

The Agency dismissed the complaint, pursuant to 29 C.F.R. § 1614.107(a)(2), due to the untimely filing of the formal complaint. The instant appeal followed.

ANALYSIS AND FINDINGS

Pursuant to 29 C.F.R. §1614.106(b) a written complaint must be filed with the agency that allegedly discriminated against the complainant within fifteen (15) calendar days after the date of receipt of the "Notice of Right to File an Individual Complaint," required by 29 C.F.R. §1614.105(d), (e), or (f). A complaint is deemed timely if it is received or postmarked before the expiration of the applicable filing period, or in the absence of a legible postmark, if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. §1614.604(b). An agency shall dismiss a complaint which is not filed within the fifteen-day time period. See 29 C.F.R. §1614.107(a)(2). This time limit is subject to waiver, estoppel, and equitable tolling. 29 C.F.R. §1614.604(c).

Where, as here, there is an issue of timeliness, "[a]n agency always bears the burden of obtaining sufficient information to support a reasoned determination as to timeliness." Guy v. Dep't of Energy, EEOC Request No. 05930703 (Jan. 4, 1994) (quoting Williams v. Dep't of Defense, EEOC Request No. 05920506 (Aug. 25, 1992)). In instances of untimely filing, the Agency must not only demonstrate that the complainant received Notice, but that the Notice clearly informed the complainant of the 15-day deadline to file. See Paoletti v. United States Postal Serv., EEOC Request No. 05950259 (Aug. 17, 1995).

The record discloses, and it is undisputed that Complainant received her “Notice of Right to File” on May 12, 2021. In the Notice and in an accompanying email, the EEO Specialist explained that Complainant had to file within fifteen (15) calendar days, with the last day falling on May 27, 2021. Complainant did not file her formal complaint until May 30, 2021.

On appeal, Complainant acknowledges that she “waited until last minute” to file, but explains that she was under tremendous stress from working 12-hour shifts in a hostile work environment, which she describes as a “nightmare” that had “broken [her] down.” Complainant also attributes the delayed filing to her indecision on whether she wanted to move forward with her complaint, because if she did, “they [presumably her alleged harassers and Management] are going to come after” her. These reasons are not adequate justification to warrant an extension of the time limit for filing the complaint.

In order for the Commission to excuse a missed filing deadline due to a complainant’s mental or physical condition, such as symptoms resulting from stress, the complainant must establish that they were so physically or emotionally incapacitated that they were *unable* to make a timely filing. See Zelmer v. United States Postal Serv., EEOC Request No. 05890164 (Mar. 8, 1989). In addition, a claim of incapacitation must be supported by medical evidence of incapacity during the filing window. See Dos Santos v. Dep’t of Veterans Affairs, EEOC Appeal No. 01992476 (Jan. 3, 2001), citing Crear v. United States Postal Serv., EEOC Request No. 05920700 (Oct. 29, 1992).

Moreover, the Commission has consistently held that, in general, fear of reprisal is an insufficient justification for extending time limitation periods. See Parker v. Dep’t of Veterans Affairs, EEOC Request No. 05940436 (Feb. 9, 1995). We also note that there is no evidence that Complainant asked the EEO Counselor for an extension of the fifteen (15) day limitation period, and that Complainant has the right to withdraw her EEO complaint at any stage of the EEO process, even after filing.

The Commission declines to extend the fifteen (15) day limitation period in this case.

However, we note that Complainant, on appeal, indicates that she continues to be subjected to harassment. If Complainant intends to raise these additional claims and would like to pursue them in an EEO complaint, then she must contact an Agency EEO counselor pursuant to 29 C.F.R. § 1614.105. See Hall v. United States Postal Serv., EEOC Appeal No. 0120031342 (Apr. 24, 2003).

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

December 23, 2021

Date