



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Helen G.,¹
Complainant,

v.

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

Appeal No. 2021005154

Agency No. 1C-441-0017-21

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 2, 2021, dismissing her complaint of unlawful employment discrimination in violation of 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 Mail Processing Assistant at the Agency's Cleveland Annex in Cleveland, Ohio. On March 18, 2021, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of disability and in reprisal for prior protected EEO activity when:

1. Complainant was not paid for hours worked;
2. She was denied Higher Level pay;
3. On October 8, 2020, a co-worker yanked a piece of equipment out of her hands;
4. A co-worker intentionally provoked her to try to get a reaction out of her;
5. On October 11, 2020, she was sent home from work;
6. On or about November 7, 2020, a supervisor threatened her job;
7. On or about December 2, 2020, she was issued a letter of separation; and

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.

8. On about February 22, 2021, she was issued a letter of separation.

The Agency accepted the claims for investigation and an Investigator was assigned the matter. The Investigator conducted the investigation into the formal complaint. By letter dated May 6, 2021, the Investigator requested an affidavit and informed Complainant that failure to respond within 15 days could result in a dismissal of her complaint. Complainant received this final letter on May 10, 2021, pursuant to tracking of the request by the postal service. Complainant did not respond to the request. The record indicates that the Investigator continued the investigation and was able to obtain five affidavits from Agency Officials and various relevant documents.

When the Complainant failed to provide an affidavit in a timely manner, the Agency rendered its Final Agency Decision (FAD), dismissing the complaint pursuant to 29 C.F.R. § 1614.107(a)(7) for failure to cooperate.

Complainant filed the instant appeal but did not provide a statement in support of her appeal. The Agency provided the complaint file but did not respond specifically to Complainant's appeal.

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.107(a)(7) provides that an agency shall dismiss a complaint, or a portion of a complaint, where the agency has provided the complainant with a written request to provide relevant information or otherwise proceed with the complaint, and the complainant has failed to respond to the request within 15 days of its receipt or the complainant's response does not address the agency's request, provided that the request included a notice of the proposed dismissal.

The Commission has held, however, that an Agency should not dismiss a complaint when it has sufficient information upon which to base adjudication. See Ross v. U.S. Postal Serv., EEOC Request No. 05900693 (Aug. 17, 1990); Brinson v. U.S. Postal Serv., EEOC Request No. 05900193 (Apr. 12, 1990). It is only in cases where there is a clear record that 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 Serv., EEOC Request No. 05970095 (Apr. 23, 1998); Kroten v. U.S. Postal Serv., EEOC Request No. 05940451 (Dec. 22, 1994).

In the instant complaint, the Investigator contacted Complainant in a letter dated March 6, 2021, requesting an affidavit regarding her allegation of discrimination. Complainant did not respond to the request for the affidavit. Yet, the record does not indicate that Complainant's lack of compliance with the Investigator's singular affidavit request substantially inhibited the Investigator's ability to conduct an investigation into her complaint. Specifically, the Investigator assessed numerous relevant documents and received five affidavits related to the Complainant's complaint. Thus, the Commission finds that the Agency had sufficient information to adjudicate Complainant's formal complaint. See Card, supra.

Moreover, Complainant's lack of response was limited to a single request for an affidavit. Failure to respond to one attempt by the Agency to obtain this information does not rise to the level of a "clear record" of contumacious conduct. Id.

We find, therefore, that the Agency should have completed its investigation of the complaint and allowed for a decision on the merits rather than dismissing the formal complaint for failure to cooperate.

CONCLUSION

Accordingly, we REVERSE the Agency's dismissal of Complainant's complaint and REMAND the complaint for further processing, in accordance with the Order below.

ORDER

Within thirty (30) calendar days from the date this decision was issued, the Agency is ORDERED to resume processing of the underlying complaint from the point where processing ceased because of the dismissal of the complaint. The processing shall be within the procedures and timeframes detailed in the 29 C.F.R. Part 1614 regulations.

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 Final Agency Decision, 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:



Carlton M. Hadden, Director
Office of Federal Operations

November 8, 2021
Date