



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

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

v.

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

Appeal No. 2021005166

Agency No. 1C-302-0025-21

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated August 17, 2021, dismissing a formal 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**

During the period at issue, Complainant worked as a Mail Processing Equipment at the Agency's North Metro Peachtree Processing and Distribution Center (P&DC) in Duluth, Georgia.

On July 28, 2021, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination based on sex when, on February 27, 2021, he was taken out of his bid position.

On August 17, 2021, the Agency issued a final decision dismissing the formal complaint as being untimely filed. Specifically, the Agency determined that on July 9, 2021, it had recorded delivering the notice of right to file (notice) a formal EEO complaint to Complainant on that day. EEOC Regulation 29 C.F.R. §1614.106(b) had required Complainant to file his formal complaint within 15 days after receipt of the notice of right to file.

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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.

According to the Agency, Complainant should have filed his formal complaint no later than July 27, 2021. However, the postmark on the envelope containing his formal complaint shows it was filed on July 28, 2021, one day late.

The instant appeal followed. On appeal, Complainant contends that his filing of the formal complaint should have been considered timely. Complainant states that the notice of right to file was delivered to his home address while he was away on bereavement leave. Complainant asserted that, as a result, he was not actually aware of the Agency's notice until July 15, 2021, after he had returned home from bereavement leave. Therefore, his July 28, 2021 filing of his formal complaint was timely made.

### ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.107(a)(2) states, in pertinent part, that the Agency shall dismiss a complaint for failure to comply with the applicable time limits. EEOC Regulation 29 § C.F.R. 1614.106 requires Complainant to file a formal complaint within fifteen days of receiving notice of the right to do so. However, all EEO time limits are subject to waiver, estoppel or equitable tolling under 29 C.F.R. § 1614.604(c).

We have consistently held that the Agency bears the burden to prove untimeliness in final dismissal decisions. Ericson v. Dep't of the Army, EEOC Request No. 05920623 (Jan. 14, 1993). Especially in a procedural dismissal, the Agency always must present sufficient evidence to support its determination of untimeliness. Guy v. Dep't of Energy, EEOC Request No. 05930703 (Jan. 4, 1994). In this present matter, we find the Agency simply failed to carry its burden. Here, the Complainant denied receiving or signing for the Agency's notice on July 9, 2021. The USPS tracking system indicates that the "item has been delivered to an agent for final delivery . . . on July 9, 2021." Beyond this entry, there is no evidence showing when Complainant actually received the notice and there is no indication that he signed for it. We conclude that this statement in the tracking system does not adequately establish when Complainant actually received the notice.

On appeal, the Agency has not responded to Complainant's conflicting timeline of events wherein Complainant stated that he did not actually find the Agency's notice until July 15, 2021. In light of the circumstances presented by Complainant and the inadequate evidence of receipt presented by the Agency, we exercise our discretion under 29 C.F.R. § 1614.604(c) to equitably toll the fifteen-day time limitation.

### CONCLUSION

We REVERSE the Agency's final decision dismissing the formal complaint for the reasons discussed above. The formal complaint is REMANDED to the Agency for further processing in accordance with the ORDER below.

ORDER (E0618)

The Agency is ordered to process the remanded claims 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. 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 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 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. 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 Complainant and his representative.

If the Agency does not comply with the Commission's order, Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). 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. 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, 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 Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** 29 C.F.R. § 1614.409.

Failure by the 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. 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Ch. 9 § VII.B (Aug. 5, 2015).

Complainant should submit his request for reconsideration, and any statement or brief in support of his request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit his request and arguments to the Director, OFO, EEOC, via regular mail addressed to P.O. Box 77960, Washington DC 20013, or by certified mail addressed to 131 M St. 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. 29 C.F.R. § 1614.604.

The Agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). 29 C.F.R. § 1614.403(g). Either party's request 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. 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

December 15, 2021

Date