



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Wade K.,¹
Complainant,

v.

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

Appeal No. 2022000215

Agency No. 4B-270-0022-21

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated September 7, 2021, dismissing a formal complaint alleging 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

During the period at issue, Complainant worked as a Letter Carrier at the Agency's Myrtle Grove Post Office in Wilmington, North Carolina.

On May 13, 2021, Complainant requested EEO Counseling. On August 17, 2021, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the basis of disability. On September 7, 2021, the Agency issued a final decision. the Agency determined that the formal complaint was comprised of the following two claims:

1. On December 28, 2020 and January 24, 2021, [Complainant was] sent home for not wearing a face mask;

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.

2. On March 10, 2021 and April 13, 2021, [Complainant's] reasonable accommodation request was denied.

The Agency dismissed claim (1) for untimely EEO counselor contact. The Agency reasoned that the alleged discriminatory incidents, Complainant being sent home, occurred on December 28, 2020 and January 4, 2021, but Complainant did not initiate EEO contact until May 13, 2021, outside of the regulatory time limit.

The Agency dismissed claim (2) for failure to state a claim. The Agency reasoned that Complainant abandoned this claim by initially raising it during EEO counseling but not including it in his formal complaint.

The instant appeal followed. On appeal, Complainant asserts that he was forced to leave the work facility after having provided proper medical documentation that he could not wear a face covering. Complainant further asserts that he followed all of the time frames that he was given.

ANALYSIS AND FINDINGS

The Agency improperly dismissed Complainant's complaint for failure to state a claim. A fair reading of the complaint shows Complainant is alleging an ongoing denial of a reasonable accommodation claim when he was initially sent home on December 28, 2020, when he informed management he could not wear a face covering due to a medical condition. Complainant further asserted that he returned to the facility on January 4, 2021, with medical documentation that he could not wear a face covering and was again sent home by management and told that he would receive paperwork regarding the District Reasonable Accommodation Committee (DRAC) process.²

The record reflects that Complainant requested to be returned to his position and alleges that he has not earned income since December 28, 2020. While the Agency, in its final decision, asserts that Complainant abandoned his denial of a reasonable accommodation claim by not raising it in his formal complaint, we disagree. The matters which the Agency separated and identified as two distinct claims both relate to Complainant's singular ongoing denial of a reasonable accommodation in which he alleged he was sent home for not wearing a face covering and did not receive pay. In his formal complaint, Complainant clearly stated that he had not received an income since December 28, 2020. Complainant also states that management sent him home for not wearing a face covering after he informed them that he had a medical condition. Based on the foregoing, we find that Complainant raised the issue of an ongoing denial of a reasonable accommodation claim in his formal complaint.

² Complainant alleges that his request for a reasonable accommodation was subsequently denied in the DRAC process.

We further find that the Agency improperly dismissed Complainant's complaint for untimely EEO Counselor contact. As set forth above, we find that Complainant is alleging an ongoing denial of a reasonable accommodation claim. EEOC's Compliance Manual, Section 2, "Threshold Issues", p. 2-73, EEOC Notice 915.003 (July 21, 2005), provides that "because an employer has an ongoing obligation to provide a reasonable accommodation, failure to provide such accommodation constitutes a violation each time the employee needs it."

The EEO Counselor's Report reflects that Complainant alleged that management sent him home from work for not wearing a face covering and that he had not been paid since December 28, 2020. Complainant requested to be returned to his position. Thus, we find that Complainant alleged that the Agency's denial of his reasonable accommodation request continued during the 45 days preceding his initial EEO contact on May 13, 2021. Based on the foregoing, we find that Complainant timely initiated EEO contact with respect to his ongoing denial of a reasonable accommodation claim.

CONCLUSION

Accordingly, we REVERSE the Agency's final decision dismissing Complainant's complaint and we REMAND this matter (defined herein as an ongoing denial of a reasonable accommodation claim) to the Agency for further processing in accordance with the ORDER below.

ORDER (E0618)

The Agency is ordered to process the remanded claim in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall acknowledge to the 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 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:



Carlton M. Hadden, Director
Office of Federal Operations

December 9, 2021

Date