



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

[REDACTED]
Ciera B.,¹
Complainant,

v.

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

Appeal No. 2021005187

Agency No. 4G-370-0033-21

DECISION

On September 28, 2021, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) in which she appeared to be alleging breach of a July 28, 2021 settlement agreement.

BACKGROUND

During the period at issue, Complainant worked as a Rural Carrier for the Agency in Cordova, Tennessee.

Believing that the Agency subjected her to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. On July 28, 2021, Complainant and the Agency entered into a settlement agreement to resolve the matter. The July 28, 2021 settlement agreement provided, in pertinent part, that:

1. A special route count will be conducted in September 2021, if Counselee requests it.
2. Route 5 is being reposted to give Counselee an opportunity to rebid for said route.

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.

3. HIPPA regulations will be strictly enforced.
4. Counselee and management agree to communicate directly any RCA/supervisor conflict for immediate resolution.²

On September 28, 2021 Complainant filed an appeal with the Commission and appeared to be alleging breach of the subject settlement agreement. Complainant asserts that her underlying case needs to be processed as if a settlement agreement had never been reached. In her September 28, 2021 submission to the Commission, Complainant sets forth various events that occurred after the execution of the settlement agreement.

In response, the Agency asserts that Complainant settled an EEO matter on July 28, 2021. In addition, the Agency asserts that there is no record that Complainant contacted the Agency regarding her breach claims or that she had initiated a new complaint prior to contacting the Commission. Thus, the Agency asserts that there is presently no Agency action for Complainant to appeal.

ANALYSIS

EEOC Regulation 29 C.F.R. § 1614.504(a) provides that if a complainant believes that a settlement agreement has been breached, she shall notify the EEO Director of the Agency in writing, of the alleged breach within 30 days of when the Complainant knew or should have known of the breach. EEOC Regulation 29 C.F.R. § 1614. 504(b) provides, in pertinent part, that the agency shall resolve the matter and respond to complainant in writing. If the agency has not responded to the complainant, in writing, complainant may appeal to the Commission for a determination as to whether the agency has complied with the settlement agreement. Complainant may file such an appeal 35 days after she has served the agency with the allegations for noncompliance.

In this case, there is no evidence that Complainant properly notified the Agency of her allegations of non-compliance with the July 28, 2021 settlement agreement prior to filing an appeal with the Commission. Consequently, Complainant's direct appeal of noncompliance allegations was premature. However, the Agency was notified of Complainant's appeal, which provided the Agency with constructive notice of Complainant's noncompliance allegations. The Agency has not issued a final determination regarding Complainant's breach allegations.

Based on the foregoing, we REMAND this matter to the Agency in accordance with the Order below to issue a final determination on Complainant's breach allegations.

² The provisions of the settlement agreement are numbered herein for ease of reference.

ORDER

Within thirty (30) calendar days from the date this decision is issued, the Agency shall issue a final determination, with appeal rights to the Commission, on Complainant's breach claims. The Agency may seek clarification from Complainant on her breach allegations.

The Agency shall submit to the Commission, for compliance purposes, copies of its final determination and any supporting documentation as set forth below in the section entitled "Implementation of the Commission's Decision."

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report **within thirty (30) calendar days** of the completion of all ordered corrective action. The report shall be in the digital format required by the Commission, and submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. 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).

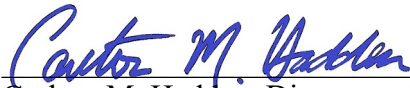
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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

January 4, 2022

Date