



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

[REDACTED]
Lenard H.,¹
Complainant,

v.

Gina M. Raimondo,
Secretary,
Department of Commerce
(Bureau of the Census),
Agency.

Appeal No. 2022000855

Agency No. 63-2021-00432D

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated November 3, 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., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

During the period at issue, Complainant worked as a Recruiting Assistant at the Agency's North Manhattan Area Census Office in New York, New York.

On July 15, 2021, Complainant initiated EEO Counselor contact. Informal efforts to resolve his concerns were not successful.

On September 2, 2021, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of race, color, and age when:

1. On November 21, 2019, Complainant's supervisor who was the Recruiting Manager [Employee HR] of the South Bronx Area Census, wrote-up Complainant for missing a New York City Housing Authority event;

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 November 23, 2019, the Recruiting Manager and went “ballistic,” stating how dare Complainant call the South Bronx Area Census Office without asking permission, or obtaining prior authorization, and vociferously proclaimed the Agency was not going to pay Complainant for the time Complainant spent at the South Bronx ACO;
3. On September 5 or September 6, 2019, the Recruiting Manager issued Complainant a Manager’s/Supervisor’s iPad rather than one for a Recruiting Assistant, which resulted in Complainant being forced to use his own personal equipment for eight months between September 24, 2019, and May 22, 2019; in order to view, store, and update appointments;
4. On May 26, 2020, the Recruiting Manager screamed and falsely accused Complainant of doing something wrong, compared to similarly situated managers and colleagues and implied that Complainant was incompetent, and stated: “You are the only one who is always having issues with your email;”
5. On January 15 or January 6, 2020, Complainant was called and instructed to come back to the office, the Recruiting Manager screamed and falsely accused him of doing or saying something wrong to a tearful female co-worker, who insisted that Office Operations Supervisor said she could work with Complainant, as opposed to independently handling her own assignments;
6. On January 15 or January 16, 2020, Area Census Office Director did not address the Recruiting Manager’s behavior, despite his awareness;
7. On January 14, 2020, when Complainant entered the ACO multi-purpose room, the Recruiting Manager began verbally abusing him in front of the Area Census Office Director, a coworker and a colleague; and
8. On July 22, 2020, Complainant was terminated from his position of Recruiting Assistant under a temporary appointment.

The Agency dismissed the Complaint for failure to comply with applicable time limits under 29 C.F.R. § 1614.107(a)(2). Specifically, the Agency determined that Complainant failed to initiate contact with an EEO Counselor within 45 days of the alleged discrimination as required pursuant to 29 C.F.R. § 1614.105(a)(1). Whereas Complainant was removed on July 22, 2020, the Agency stated that Complainant failed to initiate EEO Counselor contact until July 15, 2021, nearly one year later.

The instant appeal followed. On appeal, Complainant contended that, as a home-based employee, he was unaware of both the EEO complaint process and the 45-day time limit. Complainant explained that he only learned about the EEO process from an EEO investigator who had contacted him in July 2021, as a witness regarding a co-worker’s separate EEO complaint.

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.107(a)(2) states that an agency shall dismiss an entire complaint that fails to comply with the applicable time limits. EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that Complainant initiate contact with an EEO Counselor within forty-five days of the date of the matter alleged to be discriminatory or within forty-five days of the effective date of the personnel action.

In accordance with 29 C.F.R. § 1614.105(a)(2), the Agency or the Commission shall extend the 45-day time limit if Complainant shows that he was not notified or otherwise aware of the time limits, that he did not know and reasonably should not have been known that the discriminatory matter or personnel action occurred, that despite due diligence he was prevented by circumstances beyond his control from contacting the EEO counselor within the time limit, or for other reasons considered sufficient by the agency or the Commission.

On appeal, Complainant stated that he was unaware of the 45-day time limit to initiate contact with an EEO Counselor. Although the Agency's final decision denied that Complainant warranted an extension of the applicable time limit, the Agency did not provide any evidence reflecting that Complainant knew or should have known about the regulatory time limit for EEO Counselor contact, whether through training, posters, prior EEO activity or other means. We note that Complainant was a term-limited hire during the 2020 Census. Furthermore, Complainant has stated he primarily teleworked, reflecting that he had less exposure to notifications about EEO time limits that may have been posted within Agency offices. Wherever timeliness is an issue, the Agency bears the burden of proving, with sufficient information, a determination of untimeliness. Guy v. Dep't. of Energy, EEOC Request No. 05930703 (Jan. 4, 1994). Here, the Agency failed to demonstrate that Complainant was notified or otherwise should have been aware of the 45-day requirement to initiate EEO Counselor contact. 29 C.F.R. § 1614.105(a)(2).

CONCLUSION

Accordingly, the Agency's final decision dismissing the formal complaint is REVERSED. The complaint is REMANDED to the Agency for further processing in accordance with this decision and 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 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)

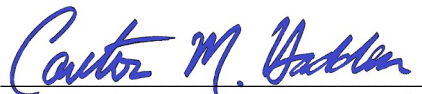
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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

February 28, 2022

Date