



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Lawrence L.,¹
Complainant,

v.

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

Appeal No. 2022001100

Agency No. 4B-190-0073-21

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated November 26, 2021, dismissing his 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

At the time of events giving rise to this complaint, Complainant worked as a Rural Carrier Associate, 05B, at the Agency's Smyrna Post Office in Smyrna, Delaware.

On October 29, 2021, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of race (Black), national origin (Liberian), and reprisal for prior protected EEO activity (current EEO activity) when:

1. in 2018, Complainant was denied positions he applied for;
2. on or around May 20, 2021, Complainant became aware that he was not selected for a position he applied for; 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.

3. on September 15, 17, 2021, Complainant received notices that he owed the Post Office \$200.

The Agency dismissed Claims 1 and 2 pursuant to 29 C.F.R. § 1614.107(a)(2) for untimely EEO counselor contact. The Agency dismissed Claim 3 pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim, finding it was a collateral attack on the administrative process of the Debt Collection Act.

Complainant filed the instant appeal. On appeal, Complainant contends his initial EEO counselor contact occurred on July 1, 2021 and not on July 20, 2021 as stated by the Agency. He further contends it was inappropriate to dismiss Claim 3 as a collateral attack on the Debt Collection Act because his complaint is that he was issued charges for mis-deliveries in retaliation for initiating the instant complaint. He also notes that a resignation form was left on his desk the day after mediation and that management has refused to speak with him since he filed his EEO complaint.

The Agency did not file a brief on appeal.

ANALYSIS AND FINDINGS

Claims 1 and 2

EEOC Regulation 29 C.F.R. §1614.105(a)(1) provides that an aggrieved person must initiate contact with an EEO Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) days of the effective date of the action. EEOC Regulation 29 C.F.R. § 1614.107(a)(2) provides for the dismissal of complaints where the complainant did not initiate contact with an EEO Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action.

Additionally, a complainant satisfies the requirement of counselor contact by contacting an agency official “logically connected” with the EEO process, even if that official is not an EEO Counselor, and by exhibiting an intent to begin the EEO process. See Jayna A. v. U.S. Postal Serv., EEOC Appeal No. 2019000179 (Nov. 29, 2018), citing Cristantiello v. Dep’t of the Army, EEOC Appeal No. 01992817 (Dec. 19, 2000), Cox v. Dep’t of Hous. and Urban Dev., EEOC Request No. 05980083 (July 30, 1998); Allen v. U.S. Postal Serv., EEOC Request No. 05950933 (July 9, 1996); Jones v. Dep’t of the Army, EEOC Request No. 05900435 (Sept. 7, 1990).

Where, as here, there is an issue of timeliness, “[a]n agency always bears the burden of obtaining sufficient information to support a reasoned determination as to timeliness.” Guy v. Dep’t of Energy, EEOC Request No. 05930703 (January 4, 1994) (quoting Williams v. Dep’t of Defense, EEOC Request No. 05920506 (August 25, 1992)). In addition, in Ericson v. Dep’t of the Army, EEOC Request No. 05920623 (January 14, 1993)), the Commission stated, “the agency has the burden of proving evidence and/or proof to support its final decisions.” See also Gens v. Dep’t of Defense, EEOC Request No. 05910837 (January 31, 1992).

Complainant has provided evidence in the form of a fax receipt indicating that, on July 1, 2021, he faxed a complaint of discrimination using the standard Agency Form PS 2565 to the Agency EEO specialist (“EEO Specialist”) who ultimately served as the EEO counselor for the instant complaint. The Agency has not stated that the EEO Specialist did not receive this fax transmission or provided any evidence to show this fax transmission was not received by the EEO Specialist. Thus, it appears Complainant contacted an Agency official logically connected to the EEO process and expressed an intent to begin the EEO process on July 1, 2021. This is considerably more than 45 days after the events described in Claim 1 but is clearly within 45 days of the events described in Claim 2. We find that while the Agency correctly dismissed Claim 1 for untimely EEO Counselor contact. However, as to Claim 2, the Agency has not met its burden to show untimely EEO Counselor contact.

Claim 3

Under 29 C.F.R. § 1614.107(a)(1) an agency shall dismiss a complaint that fails to state a claim. This Commission has generally held that complaints involving other administrative proceedings, and related processes, do not state a claim within the meaning of its regulations. See Hogan v. Dep't of the Army, EEOC Request No. 05940407 (Sept. 29, 1994); Heard v. Dep't of Justice, EEOC Appeal No. 0120092680 (Aug. 27, 2009). Additionally, the Commission has held that an employee cannot use the EEO complaint process to lodge a collateral attack on another proceeding. See Wills v. Dep't of Defense, EEOC Request No. 05970596 (Jul. 30, 1998). A claim that can be characterized as a collateral attack, by definition, involves a challenge to another forum's proceeding. See Lingad v. United States Postal Serv., EEOC Request No. 05930106 (Jun. 23, 1994).

Complainant's allegations in Claim 3 concern notices of money owed to the Agency for mis-delivery of packages. Because these allegations involve a monetary dispute involving an agency of the United States Government, the claim is outside the jurisdiction of the Commission and should be resolved through the administrative process of the Debt Collection Act. Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120130752 (Apr. 17, 2013) (referencing Amato v. Dep't of the Army, EEOC Request No. 0520070240 (Jul. 18, 2007)). Therefore, we find the Agency properly dismissed this claim as an impermissible collateral attack on another forum's proceeding.

CONCLUSION

For the foregoing reasons, we **AFFIRM** the Agency's dismissal of Claims 1 and 3. We **REVERSE** the Agency's final decision dismissing Claim 2. We **REMAND** Claim 2 for further Agency processing in accordance with this decision and **ORDER** below.

ORDER (E0618)

The Agency is ordered to process the remanded claim (Claim 2) in accordance with 29 C.F.R. § 1614.108. 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

April 5, 2022
Date