



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

[REDACTED]
Azucena X.,¹
Complainant,

v.

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

Appeal No. 2022001126

Agency No. 4J-440-0116-21

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated November 10, 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 of the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

BACKGROUND

During the period at issue, Complainant was employed as a City Carrier, Grade Q-1, at the Agency's Westlake Branch in Cleveland, Ohio.

On November 4, 2021, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on race (Caucasian), sex (female), age (47) and in reprisal for prior protected EEO activity (Agency Case No. 4C-440-0044-21) when, on July 30, 2021, Complainant was denied overtime and her supervisor delivered the excess mail (mail that could not be delivered within Complainant's regular shift) herself.

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.

The record shows that prior to filing her EEO complaint, she filed a grievance under the provisions of the collective bargaining agreement concerning the same matter. On October 19, 2021, in a grievance decision, the Agency agreed to pay Complainant \$40 for her lost overtime opportunity. The Agency also affirmed that, pursuant to the collective bargaining agreement, it was improper for Complainant's supervisor to perform the carrier work the Complainant failed to complete during her regularly scheduled shift on July 30, 2021.

On November 10, 2021, the Agency issued a final decision dismissing Complainant's EEO complaint, pursuant to 29 C.F.R. § 1614.107(a)(5), on the grounds of mootness. The Agency reasoned that the issue of Complainant's claim for overtime pay for July 30, 2021, had been resolved through the favorable decision she had received through the earlier grievance.

The instant appeal followed. On appeal, Complainant disputes that her matter was limited to the reported violation of the collective bargaining agreement. Complainant states her EEO claim involved violations of her civil rights that were different from the grievance that was apparently being settled when this appeal was submitted.

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.107(a)(5) provides that the Agency shall dismiss a complaint that is moot. To determine whether the issues raised in Complainant's complaint remain in dispute it must be ascertained: (1) if it can be said with assurance that there is no reasonable expectation that the alleged violation will recur, and (2) if the interim relief or events have completely irrevocably eradicated the effects of the alleged violations. See County v. Los Angeles v. Davis, 440 U.S. 625 (1979). When such circumstances exist, no relief is available and no need for a determination of the rights of the parties is presented.

Here, Complainant's successful prosecution of her union grievance resulted in remedying the much of the harm asserted in her EEO complaint. In her grievance, she was paid the overtime pay she was denied and there was a finding that the supervisor was violating the collective bargaining agreement when she delivered the mail herself rather than authorizing Complainant's overtime request. We note that in the section of her formal complaint concerning what remedial action she was seeking, Complainant wrote: "How are we going to get this to stop happening?" However, the Dispute Resolution Specialist (DRS) Inquiry Report (EEO counseling report) for the complaint shows Complainant explicitly indicated that she was requesting a lump sum payment of \$500 in compensatory damages to remedy the harm she suffered. In that same report, Complainant specifically defined the harm for which she was seeking compensatory damages was what she alleged was part of a pattern by the supervisor of retaliating against her for filing prior EEO complaints against the supervisor. Therefore, based on evidence that Complainant has made a viable claim for compensatory damages in her EEO case, the Agency may not dismiss the complaint for mootness because of the potential for the recovery of compensatory damages in the event Complainant were to prevail on the merits of the complaint. Pritt v. United States Postal Service, EEOC Request No. 05950792 (July 3, 1997); Glover v. U.S. Postal Service, EEOC Appeal No. 01930696 (Dec. 9, 1993).

CONCLUSION

The Agency's final decision dismissing the instant formal complaint is **REVERSED**. 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 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.

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 (S0610)

You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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. If you file a request to reconsider and also file a civil action, **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

March 14, 2022

Date