



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Melodee M.,¹
Complainant,

v.

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

Appeal No. 2021004129

Agency No. 4F-940-0025-21

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated June 4, 2021, dismissing a formal complaint of 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

During the period at issue, Complainant worked as a letter carrier at the Agency's Steiner Station Post Office in San Francisco, California.

On February 2, 2021, Complainant initiated EEO Counselor contact. Informal efforts to resolve her concerns were not successful.

On May 10, 2021, Complainant filed a formal EEO complaint alleging that the Agency subjected her to discrimination based on race (Middle Eastern – Central Asian), national origin (Uzbekistan), and sex (female) when:

1. In December of 2019, Complainant alleged on approximately three occasions she

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.

was sexually harassed and threatened by her co-worker.

2. On February 1, 2021, the co-worker who sexually harassed her in December 2019 was allowed to return to the Steiner Station Post Office.

On June 4, 2021, the Agency issued a final decision dismissing the formal complaint. The Agency dismissed claim 1 pursuant to 29 C.F.R. 1614.107(a)(2), for untimely EEO counselor contact. The Agency stated that the sexual harassment alleged in Claim 1 occurred in December 2019, but that Complainant did not make EEO counselor contact until February 2, 2021, beyond the 45-day time limit.

The Agency dismissed claim 2 pursuant to 29 C.F.R. 1614.107(a)(1), for failure to state a claim. The Agency stated that Complainant's allegation of learning that her co-worker returned to the Steiner Station Post Office did not render Complainant aggrieved.

The instant appeal followed.

ANALYSIS AND FINDINGS

Claim 1 – Untimely EEO Counselor Contact

EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination should be brought to the attention of the Equal Employment Opportunity Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within forty-five (45) days of the effective date of the action.

Here, the sexual harassment occurred in December 2019, but Complainant's initial EEO counseling contact was on February 2, 2021, well beyond the 45-day limitation period. On appeal, Complainant through her representative, states that she had no knowledge about the EEO complaint process, how to contact an EEO counselor, or the time for filing an EEO complaint. However, she states that when she experienced the sexual harassment, she immediately contacted a management official from labor relations. Complainant also states that, in December 2019, she reported the sexual harassment and threat of being killed to the Steiner Station management and her union shop steward. Additionally, Complainant states that she advised the San Francisco District Human Resources Manager (HRM) of the issue, and she provides emails between her and HRM regarding moving Complainant to a facility where she feels safe and comfortable.

EEOC regulations provide that the Agency or the Commission shall extend the time limits when the individual shows that she was not notified of the time limits and was not otherwise aware of them, that she did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence she was prevented by circumstances beyond her control from contacting the Counselor within the time limits, or for other reasons considered sufficient by the Agency or the Commission. 29 C.F.R. § 1614.105(a)(2).

Here, Complainant states that she was unaware of the time limit of 45-days to file her EEO complaint. The Agency has not challenged this assertion by presenting any evidence that Complainant had knowledge of the regulatory time limit for EEO Counselor contact, whether through training, posters, or other means. Where timeliness is an issue, the Agency bears the burden of proof of obtaining sufficient information to support a reasoned determination as to whether that time limit was met. Guy v. Dep't. of Energy, EEOC Request No. 05930703 (Jan. 4, 1994) (quoting Williams v. Dep't. of Defense, EEOC Request No. 05920506 (Aug. 25, 1992)). The Agency has failed to demonstrate that Complainant was notified or was otherwise aware of the 45-day requirement to initiate EEO Counselor contact. 29 C.F.R. § 1614.105(a)(2).

Complainant also states that she made HRM, her union steward, and facility management, among others, aware of the sexual harassment and threat to her life. The Commission has held that EEO contact can be established when the aggrieved individual contacts an agency official logically connected to the EEO process and exhibit an intent to begin the EEO process. See Allen v. United States Postal Service, EEOC Request No. 05950933 (July 9, 1996). In light of Complainant's lack of awareness about the EEO complaint process, her prompt contact with facility management and human resources officials indicates that she was prepared to pursue this matter at the time it occurred. Complainant also explains that after she informed her union steward and facility management, she thought the situation was resolved as the offending co-worker was removed from the Steiner facility and transferred to another facility for over a year.

Based on the circumstances presented by this case, pursuant to our authority under 29 C.F.R. § 1614.604(c), we find adequate justification to excuse Complainant's untimely EEO Counselor contact. Claim 1 can also be reasonably construed as the start of ongoing alleged events which began with the alleged harassment and subsequent removal of the alleged harasser from the Steiner Station, only to have him return to that facility, as more fully addressed in our discussion of Claim 2, which now follows.

Claim 2 – Failure to State a Claim

Under the regulations set forth at 29 C.F.R. Part 1614, an agency shall accept a complaint from an aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that agency because of race, color, religion, sex, national origin, age or disabling condition. 29 C.F.R. §§ 1614.103, .106(a). The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994). An agency may dismiss a claim where a complainant has failed to state a claim under 29 C.F.R. § 1614.107(a)(1).

The Agency stated that Complainant did not claim any personal loss related to a term, condition or privilege of employment. Complainant has alleged that she was sexually harassed and had her life threatened by her co-worker. That same co-worker was assigned to another location after Complainant reported the matter to facility management.

The co-worker was removed from the facility and transferred to another location. On February 1, 2021, however, Complainant learned that the same co-worker was *again* working at the Steiner facility. Complainant states that the co-worker's return to the facility caused her to relive the traumatic physical and verbal sexual harassment, leading to severe distress and fear for her safety. We construe that Complainant is alleging that she was subjected to ongoing harassment when the Agency management failed to protect her identified employee despite his alleged long history of harassment. The latest example she provided of management's failure to effectively deal with the harassing employee was when he was allowed to return to the office in February 2021. As such, because the issue to be adjudicated in this complaint is the *Agency's liability* for its employee's alleged discriminatory harassment of Complainant, we conclude that her assertion that management failed yet again to protect her by allowing the employee who purportedly harassed Complainant and threatened her life, to return to work in February 2021, states a viable claim of harassment in violation of Title VII that requires investigation and further processing.

CONCLUSION

The Agency's final decision dismissing the 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.

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

October 27, 2021

Date