



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Nathan S.,¹
Complainant,

v.

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

Appeal No. 2022001051

Agency No. 4J604019621

DECISION

Complainant timely appealed to the Equal Employment Opportunity Commission (“EEOC” or “Commission”), from the Agency’s October 29, 2021 dismissal of his 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. and Section 501 of the Rehabilitation Act of 1973 (“Rehabilitation Act”), as amended, 29 U.S.C. § 791 et seq.

BACKGROUND

At the time of events giving rise to this complaint, Complainant was a former Agency employee, having worked as a Distribution Window Clerk, PS-5, at the Agency’s Rontoul Post Office in Rontoul, Illinois.

On October 12, 2021, Complainant filed a formal EEO complaint alleging discrimination by the Agency on the bases of sex (male) race (Black/African-American), disability (regarded as disabled, brain tumor) and reprisal for prior protected EEO activity² when:

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 Complainant identifies Agency Case No. 4L00298 as his prior EEO activity, which concerns a settlement agreement he entered into with the Agency on February 17, 1989, but was the subject of two of his more recent actions before the Commission. EEOC Appeal Nos. 0120121085 (Jul.

On or about September 28, 2021, the current Rantoul, IL, Postmaster refuses to address Complainant's status on the eligibility roster, even though he was placed on the reemployment eligibility roster years ago following his recovery from psychosis.³

Based on the record, documentary evidence submitted by Complainant, and the EEO complaints referenced in the Agency's dismissal, we ascertained the following facts:

On March 25, 1994, Complainant, who had been experiencing psychosis, was terminated by the Agency following a psychiatric evaluation. Complainant took numerous actions to obtain reinstatement to his former position including filing EEO complaints, without success. In December 1998, the Agency placed Complainant on a "reinstatement roster" after he provided it with evidence that his psychiatric illness was a misdiagnosis, as his symptoms were caused by a large, benign brain tumor. Complainant then presented the Agency with a July 8, 1999 letter from his physician, stating that his psychosis was "resolved" once the tumor was surgically removed, and that Complainant could return to work. Complainant, however, was denied when he requested reinstatement in April and September 1999. Complainant filed a new EEO complaint (Agency Case No. 4J604002900), which the Agency dismissed for failure to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1), reasoning that Complainant already filed an EEO complaint alleging that the Agency denied him reinstatement.

On July 19, 2000, the Commission reversed the Agency's dismissal, reasoning that Complainant's placement on the reinstatement roster and medical evidence that his psychosis would not return established a change in circumstances.⁴ Therefore, even though the Agency already addressed reinstatement in Complainant's prior EEO complaints, these instances constituted new claims of discrimination, and stated a claim pursuant to 29 C.F.R. § 1614.107(a)(1). The Agency was ordered to investigate Complainant's complaint, and, per Complainant's request, the matter was subsequently assigned to an EEOC Administrative Judge ("AJ") for a hearing.

17, 2013) reconsideration denied 0520130628 (Jan. 16, 2014) (no breach found) and 0120160839 (May 24, 2016) reconsideration denied 0520160330 (Jul. 26, 2016) (claim that settlement agreement was fraudulent because Complainant was not issued an ID Badge dismissed as untimely, and previously raised with the Commission, and in civil court).

³ Reframed based on Complainant's formal EEO complaint, as Agency's wording ("You were terminated on March 24, 1994, and subsequently, you have not been permitted to return to work.") did not reflect Complainant's allegation or the change in circumstances in 1999.

⁴ EEOC Appeal No. 0120002261 (July 19, 2000) (Agency Case No. 4J604002900).

On August 4, 2003, the AJ issued a decision by summary judgment in favor of the Agency for Agency Case No. 4J604002900, after concluding that Complainant was unable to establish, by a preponderance of the evidence, that the April and September 1999 denials of reinstatement were motivated by discriminatory or retaliatory animus.⁵ The Agency issued a Final Decision adopting the AJ's decision, which the Commission affirmed on appeal.⁶ Complainant continued pursuing reinstatement through the EEO and other processes.

In September 2021, Complainant initiated the instant complaint, after the current Rantoul, Illinois Postmaster ("PM") failed to respond to a letter he sent on July 17, 2021, with the subject, "Return to Duty Request." In the letter, Complainant explained that during an EEO hearing in 2002, the former Rantoul Illinois PM "promised me my job back upon the next position opening at the Rantoul Post Office." Among other things, Complainant provides a November 28, 2001 letter from a district Manager of Human Resources, stating that "[o]n April 23, 2001, [the former PM] responded to your request, notifying you that you were placed on a reemployment eligibility roster, Please direct all future correspondence on this matter to [the former PM]." Complainant then asks for the status of the "promises made during the hearing."

The EEO Counselor assigned to the instant complaint spoke with the current PM who explained that he became PM in 2011, around the same time the former PM, who Complainant recalls from the 2002 hearing, retired. The current PM states that he has no record of Complainant's case, and that he forwards Complainant's inquiries, which he has occasionally received over the years, to Labor Relations or Human Resources.

The Agency, reasoning that Complainant was once again raising the same claim as he had in prior EEO complaints, dismissed Complainant's complaint pursuant to 29 C.F.R. §§ 1614.107(a)(1) for failure to state a claim, and 1614.107(a)(9) for misuse of the EEO process.

The instant appeal from Complainant followed.

ANALYSIS AND FINDINGS

An agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that they have been discriminated against by that agency because of race, color, religion, sex, national origin, age or disabling condition. 29 C.F.R. §1614.103; §1614.106(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).

⁵ EEOC Hearing No. 210200106153X (Agency Case No. 4J604002900).

⁶ EEOC Appeal No. 0120035408 (Jun. 22, 2004) reconsideration denied, EEOC Request No. 0520041099 (Aug. 25, 2004) (Agency Case No. 4J604002900).

Same Claim

The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides that an agency shall dismiss a complaint that states the same claim that is pending before or has been decided by the agency or Commission. To be dismissed as the "same claim," the present formal complaint and prior complaint must have involved identical matters. The Commission has consistently held that in order for a formal complaint to be dismissed as identical, the elements of the complaint must be identical to the elements of the prior complaint in time, place, incident, and parties. See Jackson v. United States Postal Serv., EEOC Appeal No. 01955890 (Apr. 5, 1996).

Identifying new evidence to support a claim previously raised with the agency or the commission, or arguing a different theory of law, does not create a new claim. See Doleshal v. Dep't of Health & Human Servs., EEOC Appeal No. 01A40020 (Jul. 29, 2004), see also, e.g. Complainant v. United States Postal Serv., EEOC Appeal No. 0120132933 (Jan. 14, 2014) (dismissal for stating the same claim proper where new evidence provided by the complainant did not "fundamentally change the nature of the claim" he raised in a previous complaint).

The instant complaint involves identical matters to those in Agency Case No. 4J604013418, where Complainant alleged that he called the current PM to ask about his status on the reinstatement list, and the current PM would not discuss reinstatement with him.⁷ Here, Complainant is again recounting an instance where the current PM declined to answer his inquiries about his status on the reinstatement list, only this time, the inquiry was by letter, instead of a phone call. Such a distinction does not "fundamentally change the nature of the claim." Complainant has not otherwise shown that a change in circumstances occurred since the events giving rise to Agency Case No. 4J604013418 that would make the instant complaint a new claim of discrimination.

On appeal, the Commission clarified the framing of Agency Case No. 4J604013418: "Complainant is alleging that he has had not been granted reinstatement by the Agency, which he asserts should have happened decades ago." In other words, while Complainant is ostensibly asking about his status on a list, his presence on the list cannot be extricated from the issue of whether the Agency must allow for Complainant's reinstatement, which was addressed in Agency Case Nos. 4J604002900 and 4J604003203.⁸ Complainant supports his appeal for the instant complaint by submitting evidence that he provided for EEOC appeal of Agency Case Nos. 4J604002900 and 4J604003203.

⁷ EEOC Appeal No. 2019002339 (Apr. 26, 2019) reconsideration denied EEOC Request No. 2019004171 (Oct. 11, 2019) (Agency Case No. 4J604013418).

⁸ EEOC Nos. 0120002261, 0120035408, & 0520041099 (Agency Case No. 4J604002900); EEOC Appeal No. 0120034667 (Dec. 16, 2003) reconsideration denied, EEOC Request No. 0520040358 (Feb. 5, 2004) (Agency Case No. 4J604003203).

While we do not doubt the evidence, which includes documentation that Complainant is medically fit for duty and, approximately 20 years ago, he was placed on a reinstatement list, it does not support that the instant complaint alleges a new claim of discrimination.

We note that the Agency, as the prevailing party in Agency Case No. 4J604002900, is not obligated under any EEO statute to notify Complainant if he is on a reinstatement list. Although the former PM may have promised to place Complainant on the reinstatement list, he did not memorialize that promise in writing, and he no longer works for the Agency. We also remind Complainant of our decision on his appeal of Agency Case No. 4J604012603, where Complainant alleged, among other things, that the Agency subjected him to discrimination when the Officer in Charge at the Rantoul Illinois Post Office promised to call him back with information and never did.⁹ Complainant's prior employment and placement on the reinstatement list is not sufficient to obligate the current PM to respond, even if Complainant feels he "has a right to know." See 29 C.F.R. §1614.103.

Misuse/Abuse of the EEO Process

Abuse of process is defined as a clear pattern of misuse of the process for ends other than that which it was designed to accomplish. The Commission has a strong policy in favor of preserving a complainant's EEO rights whenever possible. Strict criteria have been established by the Commission to determine whether a complaint, or a number of consolidated complaints, should be dismissed for this reason under 29 C.F.R. § 1614.107(a)(9). The occasions in which application of the standards are appropriate must be rare. This requires an analysis of whether the complainant evidences an ulterior purpose to abuse or misuse the EEO process.

Numerous complaint filings alone are not a sufficient basis for determining that there has been an abuse of the process. EEOC Management Directive for 29 C.F.R. Part 1614 ("EEO-MD-110") (Aug. 5, 2015), at 5-20. The Agency must show evidence that somehow in filing numerous complaints a complainant specifically intended to misuse the EEO process. *Id.* But multiple filings on the same issues, lack of specificity in the allegations, and the filing of complaints on allegations previously raised, may be considered in deciding whether a complainant has engaged in a pattern of abuse of the EEO process. *Id.*

Here, the Agency dismissed the instant complaint for misuse of the EEO process under 29 C.F.R. § 1614.107(a)(9), reasoning that Complainant already raised the same issues in Agency Case Nos. 4J604002900, 4J604000603, 4J604003203, 4J604012603, and 4J604013418. The Agency emphasizes that none of these cases resulted in a finding of discrimination, the Commission upheld its dismissals on appeal, and denied Complainant's requests for reconsideration.

Upon review, we find that not only did the Agency fail to support a dismissal for misuse of the EEO process, its proffered rationale was misleading.

⁹ EEOC Appeal No. 0120034725 (Nov. 25, 2003) reconsideration denied, EEOC Request No. 0520040317 (Jan. 15, 2004) (Agency Case No. 4J604012603).

The final decision is misleading by stating: “you were terminated on March 24, 1994 and subsequently you have not been permitted to return to work (“these matters were closed each time [EEOC] upheld the Agency’s dismissal of your reinstatement complaints.”) The record reflects that Complainant was placed on the reinstatement list in 1998, and provided medical evidence to contradict the basis for his 1994 dismissal in 1999. The Agency also misleadingly states that the Commission’s “decision on this issue is dated July 17, 2013 ... [and] found that the Agency need not reinstate [Complainant].” The decision the Agency references concerned a settlement agreement it entered with Complainant in 1989.¹⁰

As for the cases the Agency identified in its dismissal, Agency Case Nos. 4J604000603¹¹ and 4J604012603¹² related to Complainant’s quest for reinstatement to varying degrees but consisted of different claims and were dismissed on different procedural grounds. While Agency Case Nos. 4J604002900, 4J604003203, and 4J604013418, as discussed, all concern the same issues as the instant complaint, Agency Case Nos. 4J604002900 and 4J604003203 were both filed in the wake of a change in circumstances. The Agency neglects to mention that its initial procedural dismissal in Agency Case No. 4J604002900 was reversed by the Commission and the matter was reviewed by an AJ. Agency Case No. 4J604003203 was partially dismissed as untimely, and because the Commission determined that one claim, while worded differently, amounted to the same issue raised in then-pending Agency Case No. 4J604002900. There is no evidence that by raising issues about change in circumstances in two complaints, Complainant, acting in a *pro se* capacity, sought to misuse the EEO process.

Unlike the other referenced complaints, Agency Case No. 4J604013418, is nearly identical to the instant complaint. Arguably, both complaints are an attempt by Complainant to use the EEO process to force the current PM to respond to him directly.

¹⁰ EEOC Nos. 0120121085 & 0520130628 (Agency Case No. 4L00298).

¹¹ EEOC Appeal No. 0120034725 (Nov. 25 2003) reconsideration denied, Request No. 0520040317 (Jan. 23, 2004) (failure to state a claim due to *lack of standing* where complainant was not an employee or applicant for employment, no remedy for allegations that he saw new employees working at the agency who were outside his protected classes, and where the officer in charge at the Rantoul Post Office promised to call him back with information and never did, and he was denied a reasonable accommodation).

¹² EEOC Appeal No. 0120031224 (Apr. 17, 2003) reconsideration denied, EEOC Request No. 0520030682 (Jun. 6, 2003) (affirming dismissal *for untimely EEO contact*, where complainant alleged that agency refused to re-open his postal service exam based on a 10 point veterans preference, and failed to respond when he requested his complete medical file pertaining to his employment with the agency).

However, “the focus of the analysis is on the totality of the individual's claims, circumstances, and intentions.” Jeffery J. v. Dep’t of the Navy, EEOC Appeal No. 2020004860 (Dec. 2, 2020) (agency argument that a complaint is identical or “similar” to the complainant’s prior complaints, which did not result in a discrimination finding, is insufficient to support dismissal for misuse of process), see also, Kenyatta S. v. Environ. Protection Agency, EEOC Appeal No. 2019003653 (Nov. 8, 2019) (concluding no misuse of EEO process occurred despite the complainant’s numerous EEO complaints, where “a fair reading of the complete record reflects that Complainant seems to genuinely believe that she is a victim of discrimination and that she will eventually remedy her situation through the EEO complaint process”). Here, the totality of Complainant’s claims, circumstances, and intentions indicate that Complainant believed he was subjected to discrimination by the Agency, and that he could still obtain a remedy through the EEO process. Dismissal for misuse of the EEO process, pursuant to 29 C.F.R. §1614.107(a)(9) is improper.

However, for Complainant’s clarification, we emphasize and reiterate that the AJ’s August 4, 2003 finding, adopted by the Agency and affirmed by this Commission, that for Agency Case No. 4J604002900, he did not prove, by a preponderance of the evidence, that the denial of reinstatement was motivated by discrimination *cannot be relitigated*. As with his prior EEO complaints alleging discrimination based on the same underlying issue as Agency Case No. 4J604002900, this complaint was properly dismissed for failure to state a claim pursuant to 29 C.F.R. §1614.107(a)(1).

CONCLUSION

Accordingly, we AFFIRM the Agency's final decision dismissing Complainant's complaint for failure to state a claim pursuant to 29 C.F.R. §1614.107(a)(1).

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

May 2, 2022

Date