



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]

Leota F.,¹
Complainant,

v.

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

Appeal No. 2022002024

Hearing No. 570-2021-01321X

Agency No. 4K-200-0035-21

DECISION

On March 4, 2022, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a February 2, 2022, decision issued by an EEOC Administrative Judge (AJ) concerning her 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. The Commission accepts the appeal in accordance with 29 C.F.R. § 1614.405.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Full-Time Sales & Services Distribution Associate at the Agency's Huntingtown, Maryland Post Office. Report of Investigation (ROI) at 253. On March 4, 2021, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of race (African-American), disability (physical), and reprisal for prior protected EEO activity 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.

1. On a date to be specified in October 2020, she was not provided a reasonable accommodation when she requested sedentary work within her medical restrictions, and another carrier was placed in a job as a fill-in supervisor; and
2. On unspecified dates, her FEHB insurance was not transferred to the Department of Labor, her CA2 was denied, and she was not paid compensation from the Office of Workers Compensation Programs (OWCP).

ROI at 195-200. The Agency dismissed claim (2) pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim, as a collateral attack on the OWCP process. Id. At the conclusion of the investigation into claim (1), on May 27, 2021, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC AJ within 30 days of receipt of the notice. ROI at 51-52.

According to the record, Complainant received notice of the right to request a hearing on June 1, 2021. ROI at 19-22. When the Agency did not receive a hearing request from Complainant, the Agency issued a final decision finding no discrimination on July 12, 2021. ROI at 26-46.

On July 27, 2021, Complainant contacted the Agency, stating that she had filed a request for a hearing with the Commission's Washington Field Office on June 23, 2021. ROI at 16. Complainant asked the Agency to honor her hearing request and rescind its final decision. ROI at 16. Complainant provided tracking information that appears to show that the hearing request was delivered to the Washington Field Office on June 24, 2021. But, Complainant did not explicitly state whether she had previously provided a copy of the hearing request to the Agency, nor did she provide tracking information showing that a copy of the hearing request was mailed to the Agency in June 2021. ROI at 16-18.

On August 4, 2021, the Agency forwarded a copy of Complainant's hearing request and the case file to the Commission. ROI at 15. In a letter accompanying the case file, the Agency asserted that the hearing request was untimely and explained that it had already issued a final decision on July 13, 2021. Id. On August 17, 2021, the Commission docketed Complainant's hearing request. ROI at 5. The AJ assigned to the case stated that the Washington Field Office received the hearing request on June 24, 2021, but the hearing request was not docketed until August 17, 2021, due to pandemic-related delays.² Id.

During a December 13, 2021, status conference, the AJ advised the Agency that Complainant's hearing request appeared to be timely and asked the Agency to consider rescinding its final decision. ROI at 5. On December 16, 2021, the Agency filed a motion to dismiss. ROI at 5; Agency's Motion to Dismiss.

² In the Commission's records for Hearing No. 570-2021-01321X, there is a digital stamp on the hearing request that states, "Received by EEOC Washington Field Office Date: 06/23/2021."

On December 16, 2021, Complainant filed an objection to the Agency's motion to dismiss, noting that the certificate of service on her hearing request certified that she mailed a copy of her hearing request to all parties on June 23, 2021. Complainant's Affidavit in Opposition to Motion to Dismiss.

On February 2, 2022, the AJ dismissed the matter pursuant to 29 C.F.R. § 1614.107 for lack of jurisdiction over Complainant's EEO complaint due to the Agency's final decision. ROI at 5. The AJ's Order of Dismissal stated that Complainant could file an appeal with the Office of Federal Operations for further review, directed the Agency to issue a final action, and provided information about how to file an appeal. ROI at 5-9.

Complainant filed the instant appeal on March 4, 2022. On appeal, she requests that the case be remanded for a hearing.

In response, the Agency argues that Complainant's appeal should be dismissed as untimely because she did not file within 30 days of receiving the Agency's final decision on July 16, 2021. The Agency further contends that Complainant did not timely provide it with a copy of her hearing request.

ANALYSIS AND FINDINGS

As a preliminary matter, we find that Complainant's appeal was not untimely filed. See Genny L. v. Dep't of the Army, EEOC Appeal No. 2020003662 (Oct. 15, 2020) (accepting complainant's appeal, which was filed more than 30 days after receipt of final agency decision, as timely because an EEOC AJ subsequently issued decision dismissing complainant's hearing request). The AJ issued the Order of Dismissal on February 2, 2022. Although Complainant's March 4, 2022, appeal was premature, because the Agency had not yet issued a final order and the 40-day period to do so had not yet expired, we find that this matter is now ripe for adjudication.

We must determine whether or not Complainant filed a valid hearing request in this matter. If so, the Agency's July 12, 2021, final decision on the merits of her complaint was issued in error. See Kirkland v. U.S. Postal Serv., EEOC Request No. 0520120249 (May 9, 2014) (agency found to lack jurisdiction to issue its final decision when hearing request was pending); Chas T. v. U.S. Postal Serv., EEOC Appeal No. 2019001983 (Oct. 8, 2019) (no harm to agency or the process was shown by failure of complainant to send copy of hearing request to the agency).

The record establishes that, at the conclusion of the investigation into the complaint, the Agency provided Complainant with a copy of the investigative report and a notice of her right to request a hearing (Notice) before an EEOC AJ. The Notice explained that a request for a hearing should be made by completing an enclosed form and mailing it to the Hearings Unit of EEOC's Washington Field Office within 30 days of receipt, with a copy sent to the Agency at an address provided. The Agency argues that the AJ properly dismissed Complainant's hearing request because Complainant failed to timely serve it with a copy of the hearing request.

The Agency points out that the hearing request form indicated that Complainant risked forfeiture of her right to request a hearing by failing to serve a copy of the request on the Agency.

It is undisputed that Complainant timely filed her hearing request, on June 23, 2021, with the EEOC's Washington Field Office. Following a delay, the Washington Field Office docketed the hearing request on August 17, 2021. In the meantime, the Agency, believing that Complainant had not requested a hearing, issued its final decision on July 12, 2021. On August 4, 2021, before the Commission docketed Complainant's hearing request, the Agency provided a copy of Complainant's hearing request and the investigative record to the Washington Field Office. Despite the Agency having actual knowledge of Complainant's hearing request shortly after it was made and before the matter was docketed by the Commission, the AJ granted the Agency's motion to dismiss. After careful review of the record and the arguments presented on appeal, we disagree with the AJ that, under the circumstances presented by this case, it was appropriate to dismiss Complainant's hearing request.

EEOC Regulation 29 C.F.R. § 1614.108(h) provides that "the complainant may request a hearing by submitting a written request for a hearing directly to the EEOC office indicated in the agency's acknowledgment letter." Here, Complainant timely filed her hearing request with the EEOC. Complainant's June 23, 2021, request for a hearing at the Commission's Washington Field Office effectively transferred jurisdiction of the complaint to the Commission, such that the Agency no longer had jurisdiction to issue a final agency decision. There is no dispute that the Agency knew, no later than August 4, 2021, that Complainant had filed a hearing request. The Agency responded by forwarding a copy of Complainant's hearing request and the complaint file to the EEOC before the Commission docketed the hearing request. The Agency has failed to identify any substantive prejudice it will suffer in defending this matter if Complainant's hearing request is honored. Any delay was minimal, and we see no evidence of harm to the Agency or the federal sector EEO process. Therefore, no regulatory purpose was served by the AJ denying the hearing request. See Karry S. v. U.S. Postal Serv., EEOC Appeal No. 0120182640 (Nov. 8, 2019). Thus, we find that under the specific circumstances present and in the interests of fairness, Complainant should be afforded a hearing before an EEOC Administrative Judge.

The Commission hereby advises Complainant that the Commission's regulations and Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), in pertinent part, mandate that a complainant must provide the agency with a copy of every document she files with the Commission, whether it be at the hearing level or on appeal. The Commission further advises Complainant, that by virtue of this decision, she has clearly been put on notice of the requirement to provide the Agency with a copy of all documents she files with the Commission.

CONCLUSION

Accordingly, we VACATE the Agency's final decision and REMAND the matter to the Agency for further processing in accordance with this decision and the ORDER below.

ORDER

Within 30 calendar days of the date of this decision is issued, the Agency shall submit a renewed request for a hearing to the EEOC's Washington Field Office, along with a copy of the complete complaint file and a copy of this decision. The Agency shall provide written notification to the Compliance Officer as indicated below that the hearing request and complaint file has been transmitted to the Hearings Unit. Thereafter, the Administrative Judge will issue a decision on the complaint in accordance with 29 C.F.R. § 1614.109, and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

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)

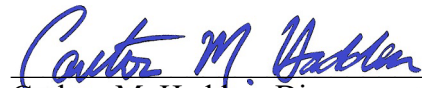
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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

May 2, 2022
Date