



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

[REDACTED]
Kristie O.,¹
Complainant,

v.

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

Appeal No. 2022002885

Agency No. 1F-641-0069-22

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated March 31, 2022, dismissing a formal complaint alleging unlawful employment discrimination in violation of Title II of the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff et seq.

BACKGROUND

During the period at issue, Complainant worked for the Agency as a Mail Handler in Hazelwood, Missouri.

On March 11, 2022, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on genetic information and in reprisal for prior protected activity. On March 31, 2020, the Agency issued a final decision dismissing the complaint. Therein, the Agency determined that the formal complaint was comprised of the following claims:

1. From October 2020 to November 2020, Complainant was harassed daily and experienced problems with clock rights, missing timecards, and missing pay/work hours.

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. In December 2020 and ongoing, [Complainant was] required to work over six hours with no break, not allowed to use her inhaler, called into the office regularly and given multiple assignment by different supervisors.
3. On February 2, 2021, [Complainant was] issued a Notice of Removal for lying on [her] application about an alleged removal in 2004.

The Agency dismissed the formal complaint for alleging the same matters raised in prior EEO complaints.

Regarding claim (1), the Agency found that Complainant previously raised these matters in Agency Case No. 1J-631-0007-21. The Agency determined that Complainant was sent a Notice of Right to File a Formal Complaint regarding this prior EEO case on February 1, 2021, but that Complainant did not file a formal complaint. Regarding claims (2) and (3), the Agency found that Complainant previously raised these matters in Agency Case No. 1J-631-0039-21. The Agency determined that Complainant was sent a Notice of Right to File a Formal Complaint regarding this prior EEO case on May 20, 2021, but again did not file a formal complaint. The Agency reasoned, “[Complainant] received notice on [her] prior complaints and [was] informed of [her] rights and how to pursue [her] complaints to the formal stage yet [she] chose not to advance [her] claims to the formal stage, thus [her] prior complaints are considered abandoned/withdrawn.” Final Agency Decision at 2.

In a footnote, in its final decision, the Agency also set forth that Complainant’s EEO contact on December 1, 2021 was untimely for all incidents raised in the instant complaint.²

The instant appeal followed. On appeal, Complainant asserts that she inquired multiple times about her past EEO cases but did not receive a Notice of Right to File. She asserts further that she had tried to contact her named EEO Counselor associated with her prior EEO cases to no avail. Complainant also includes, on appeal, screenshots which she asserts are attempts at her trying to contact the EEO Counselor involved in her prior EEO cases.

² We advise the Agency to set forth all dismissal grounds in the *body of its final decision*, rather than a footnote, to provide complainants with proper notice of all dismissal grounds and an opportunity to respond.

ANALYSIS AND FINDINGS

Dismissal for Alleging the Same Claim Raised in Prior Complaints

EEOC Regulation 29 C.F.R. § 1614.107(a)(1) provides for the dismissal of complaints that state the same claim as a claim which has already been decided by the agency or the Equal Employment Opportunity Commission. We find that the Agency improperly dismissed the instant formal complaint for having raised the same matters in prior EEO complaints.

We acknowledge the record contains printouts regarding some past EEO activity by Complainant. These printouts contain a chronology of some prior EEO cases. The record contains a printout for Agency Case No. 1J-631-0007-21. According to the printout for this prior EEO case, Complainant alleged harassment based on time and pay issues with a listed incident date of October 30, 2020. We concur with the Agency that these are the same matters raised in incident (1) of the instant complaint. The record also contains an entry that a Notice of Right to File was issued on February 1, 2021, in this matter.

The record also contains a printout containing the chronology of another prior EEO case for Complainant, Agency Case No. 1J-631-0039-21. According to this printout, Complainant alleged that she was harassed and not allowed breaks and lunches, among other claims. In addition, the printouts reflect that another informal complaint, Agency Case No. PRE-007410-2021, was included with Agency Case No. 1J-631-0039-21. Agency Case No. PRE-007410-2021 includes the allegation that on February 10, 2021, Complainant was informed that she was being removed from Agency employment. The record also contains an entry that a Notice of Right to File was issued on May 20, 2021 for this matter. Based on the foregoing, we find that these are the same matters, Complainant raised in incidents (2) and (3) of the instant complaint.

Complainant, however, alleges that she did *not* receive the Notices for Right to File Formal Complaints (Notices) regarding these past EEO cases, Agency Case Nos. 1J-631-0007-21 and 1J-6310039-21.³ We acknowledge that the printouts, referenced above, contain entries that the Agency issued Notices with respect to these past complaint. However, the record does not contain copies of the actual Notices that the Agency sent to Complainant in these past EEO cases. In addition, the record does not contain evidence that Complainant actually *received* the Notices.⁴ Based on the foregoing, we do not find that Complainant abandoned or withdrew these matters.

³ We note that in the EEO Contact Summary Form for the instant matter, Complainant asserts that, “I filed a couple of [cases] and nothing seems to be happening nor have I been able to [reach] anyone about what is going on.”

⁴ Complainant, on appeal, asserts she tried to contact a named EEO Counselor involved in the processing of her past EEO cases. The printouts pertaining to Complainant’s past EEO cases list this EEO Counselor as “inactive.”

Dismissal for 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 a personnel action, within forty-five (45) days of the effective date of the action. The Commission has adopted a "reasonable suspicion" standard (as opposed to a "supportive facts" standard) to determine when the forty-five (45) day limitation period is triggered. See Howard v. Dep't of the Navy, EEOC Request No. 05970852 (Feb. 11, 1999). Thus, the time limitation is not triggered until a complainant reasonably suspects discrimination, but before all the facts that support a charge of discrimination have become apparent.

EEOC regulations provide that the agency or the Commission shall extend the time limits when the individual shows that he was not notified of the time limits and was not otherwise aware of them, that he did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence he was prevented by circumstances beyond his control from contacting the Counselor within the time limits, or for other reasons considered sufficient by the agency or the Commission.

The Agency improperly dismissed the formal complaint for untimely EEO Counselor contact. As set forth above, we find that Complainant previously raised the matters herein in past EEO Cases, Agency Case Nos. 1J-631-0007-21 and 1J-631-0039-21. The record is devoid of evidence that Complainant received Notices regarding these past EEO cases. The documentation on Complainant's past EEO cases reflect that she initiated EEO contact on November 1, 2020 for Agency Case No. 1J-631-0007-21, on February 5, 2021 for Agency Case No. 1J-631-0039-21, and on February 11, 2021 for PRE-007410-2021. In the instant matter, Complainant alleged ongoing discrimination from October 2020-February 2021 when she was informed that the Agency was removing her from Agency employment. Thus, we find that the EEO contact dates associated with her past EEO cases were timely. As set forth above, Complainant asserts that the Agency did not respond to her inquiries regarding her past EEO cases and did not process these matters.

Accordingly, we REVERSE the Agency's final decision dismissing the instant complaint and we REMAND this matter 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

August 17, 2022

Date