



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

[REDACTED]
Royce O.,¹
Petitioner,

v.

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

Petition No. 2022004657

MSPB No. DE-0351-16-0401-I-1

DECISION

On July 25, 2022, Petitioner filed a timely petition with the Equal Employment Opportunity Commission (EEOC or Commission) asking for review of a Final Order issued by the Merit Systems Protection Board (MSPB) concerning his claim of discrimination in violation of the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

BACKGROUND

At the time of events giving rise to this complaint, Petitioner worked as a Postmaster at the Agency's facility in Tucson, Arizona. On June 30, 2015, the Agency issued Petitioner a notice of a "Reduction-in-Force" to be effective October 16, 2015. On September 9, 2015, the Agency sent Petitioner that due to the reduction in force, he would be released from his position and offered placement by demotion effective November 14, 2015, to the position of Manager of Customer Service for the San Xavier Carrier Annex. On October 9, 2015, Petitioner signed an application for immediate retirement, requesting that his annuity begin on January 1, 2016. His retirement was effective December 31, 2015.

On February 23, 2016, Petitioner filed a formal EEO complaint alleged that the Agency discriminated against him on the basis of age when, effective December 31, 2015, he involuntarily retired.

¹ This case has been randomly assigned a pseudonym which will replace Petitioner's name when the decision is published to non-parties and the Commission's website.

Petitioner filed a mixed case complaint and the Agency issued a decision finding that Petitioner was not discriminated against as alleged. Thereafter Petitioner filed an appeal with the MSPB and an MSPB AJ issued a decision on August 9, 2016, finding that the matter was not within the MSPB's jurisdiction. Petitioner sought review of the Initial Decision by the full Board. However, on July 5, 2022, the Board issued a Final Order denying his petition and affirming the Initial Decision dismissing the matter for lack of jurisdiction.

This petition follows.

ANALYSIS AND FINDINGS

EEOC Regulations provide that the Commission has jurisdiction over mixed case appeals and complaints on which the MSPB has issued a decision that makes determinations on allegations of discrimination. 29 C.F.R. § 1614.303 et seq. However, when the MSPB, as it did here, denies jurisdiction, the Commission has held that there is little point in continuing to view the matter as a "mixed case" as defined by 29 C.F.R. § 1614.302(a), because the MSPB did not address any matters within the Commission's jurisdiction. Therefore, the Commission finds that it has no jurisdiction to review Petitioner's petition. This matter will be considered a "non-mixed" case and processed accordingly. See generally Schmitt v. Dep't of Transp., EEOC Appeal No. 01902126 (July 9, 1990); Phillips v. Dep't of the Army, EEOC Request No. 05900883 (October 12, 1990); 29 C.F.R. § 1614.302(c)(2)(i) and (ii).

In accordance with these principles, Petitioner's request for review is DENIED and Petition No. 2022004657 is hereby administratively closed. MSPB No. DE-0351-16-0401-I-1 is referred to the Agency for further processing as outlined below.

ORDER

Petitioner is advised by operation of 29 C.F.R. § 1614.302(b) that the Agency, if it has not already done so, is required to process his allegation of discrimination. Because Petitioner filed a mixed case complaint with the Agency, the Agency, pursuant to 29 C.F.R. § 1614.108(f), shall, within 30 calendar days of its receipt of this decision, notify Petitioner of the right to elect between a hearing before an EEOC Administrative Judge or an immediate final decision on his discrimination claim pursuant to 29 C.F.R. § 1614.110.

A copy of the notification shall be provided to the Compliance Officer listed below.

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 Petitioner and his/her representative.

If the Agency does not comply with the Commission's order, the Petitioner may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Petitioner 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 Petitioner 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 Petitioner 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 CFR § 1614.503(f) for enforcement by that agency.

PETITIONER'S RIGHT TO FILE A CIVIL ACTION (W0610)

This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court, based on the decision of the Merit Systems Protection Board, **within thirty (30) calendar days** of 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.

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 Petitioner's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

September 7, 2022

Date