



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

[REDACTED]  
Catherina B.,<sup>1</sup>  
Complainant,

v.

Merrick B. Garland,  
Attorney General,  
Department of Justice  
(Drug Enforcement Administration),  
Agency.

Appeal No. 2022004083

Agency No. DEA-2022-000638

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated June 30, 2022, dismissing a formal complaint alleging 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 the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

**BACKGROUND**

During the period at issue, Complainant worked as an Administrative Officer for the Agency's Drug Enforcement Administration and was stationed at the U.S. Embassy in Bogota, Columbia.

An EEO Counselor with the Department of State who was on-site in Columbia conducted the EEO counseling in this matter. On April 27, 2022, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of race (Asian), sex (female), and age.

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<sup>1</sup> 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.

In its final decision, dated June 30, 2022, the Agency dismissed the formal complaint on the grounds the formal complaint was untimely filed. The Agency reasoned that Complainant received the Notice of Right to File a Formal Complaint (Notice) on February 2, 2022, but that she did not file a formal complaint until April 27, 2022, outside of the applicable time period.<sup>2</sup>

The Agency acknowledged that the EEO Counselor did not provide Complainant a formal complaint form with the Notice. The Agency specifically stated “[w]e note that although the EEO Counselor did not provide [Complainant] with DS-3079 (formal complaint form) at the time of issuing [her] the Notice, [she] did not raise the oversight with the EEO Counselor at any time.” Final Agency Decision at 3. The Agency further stated that Commission regulations do not require that complainants submit a specific form to file a formal complaint. *Id.* Finally, the Agency found that Complainant did not provide sufficient justification for extending the applicable time limit.

The instant appeal followed. On appeal, Complainant addresses the alleged incidents that form the basis of her complaint.

In response, the Agency requests that we affirm its final decision. The Agency reiterates that the Commission does not require complainants to use a specific form to file a formal complaint and that Complainant did not specifically raise with the EEO Counselor his oversight of not providing her a formal complaint form.

### ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.106(b) requires the filing of a written complaint with an appropriate agency official within fifteen (15) calendar days after receipt of the notice of the right to file a formal complaint. 29 C.F.R. § 1614.107(a)(2) provides that the agency shall dismiss a complaint that fails to comply with the applicable time limits contained in §§ 1614.105, 1614.106, and 1614.204(c), unless the agency extends the time limits in accordance with § 1614.604(c).

The Agency improperly dismissed Complainant’s complaint on the grounds her formal complaint was untimely filed. The record reflects that Complainant received the Notice from the Department of State Office of Civil Rights (S/OCR) on February 2, 2022. The Notice provided, in pertinent part, that: “[i]f you decide to file a formal complaint, it *must* be submitted (to S/OCR) on the attached DS-3079 Formal Complaint of Discrimination Form within 15 calendar days of your receipt of this Notice.” (emphasis added). The Notice provided the email address and mailing address for the State Department’s Office of Civil Rights to file the formal complaint.

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<sup>2</sup> The Agency’s final decision noted that if Complainant attempted to file a formal complaint with the Department of State’s Civil Rights Office, it would have been transferred to DEA.

The Agency acknowledges that the EEO Counselor did not provide a formal complaint form with the Notice. The record contains an email to Complainant from an EEO Specialist/Informal Team Lead with the Department of State dated April 25, 2022. Therein, the EEO Specialist states “I was just made aware that the [Notice] was issued to you on February 2, 2022, however [the EEO Counselor] neglected to provide you a blank formal complaint form. I do [apologize] and wanted to correct this error as soon as I found out...In this email I’m attaching DEA’s EEO Office formal complaint of discrimination form, since your allegation of discrimination was against another DEA employee and not [a Department of State, DOS] employee. Once the Notice of Right to File form is issued, and if you wish to elect to file a formal EEO complaint, you have 15 calendar days from when you receive the [Notice] to file a formal complaint of discrimination directly with DEA’s EEO Office...please make sure to submit...an explanation why you didn’t file a formal complaint 15 days after receiving the [Notice] and reason for not following up with the EEO Counselor after you received the Notice...”<sup>3</sup> The record reflects that two days later, on April 27, 2022, Complainant filed a formal EEO complaint with DEA.

We concur with the Agency that Commission regulations do not require complainants to use a specific form to file a formal complaint. However, the Notice sent by the EEO Counselor to Complainant in February 2022 indicated that a specific formal complaint form needed to be submitted to the State Department (“[i]f you decide to file a formal complaint, it *must* be submitted (to S/OCR) on the attached DS-3079 Formal Complaint of Discrimination Form within 15 calendar days of your receipt of this Notice.”) In addition, the Notice indicated that a formal complaint form was attached but the Agency and the EEO Counselor acknowledge that a formal complaint form was not sent with the Notice.<sup>4</sup> The Agency’s final decision placed the burden on Complainant to follow up with the EEO Counselor or with DEA regarding this defect with the Notice. We disagree.<sup>5</sup> The defect to the Notice was cured when a Department of State EEO Specialist sent a formal complaint form to Complainant via email on April 25, 2022. Complainant submitted her formal complaint two days later, on April 27, 2022. Based on these circumstances, we find that Complainant’s April 27, 2022 formal complaint was timely filed.

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<sup>3</sup> In an email dated May 4, 2022, Complainant stated it was her first time filing a complaint and she thought that the State Department would handle the submission to DEA.

<sup>4</sup> In an email dated May 11, 2022, the EEO Counselor stated that he did not provide Complainant with a blank formal complaint form. In addition, the EEO Counselor stated that he “got quite confused. I thought that DEA would take over [Complainant’s] case after her and her manager couldn’t find an agreement.”

<sup>5</sup> On March 29, 2022, Complainant, via email, asked the EEO Counselor if he “heard anything about [her] case?” On March 29, 2022, the EEO Counselor responded “no, I haven’t heard anything since I submitted back in February [2022].” The record does not reflect that the EEO Counselor sent Complainant a formal complaint form at that time.

We REVERSE the Agency's final decision dismissing Complainant's 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).

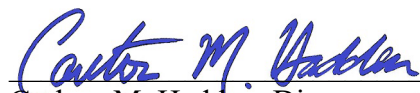
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

October 31, 2022

Date