



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

[REDACTED]
Wilburn M.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Southern Area),
Agency.

Appeal No. 2022000095

Agency No. 4G-720-0035-21

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated September 17, 2021, finding no discrimination regarding 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. For the following reasons, we VACATE the Agency's final decision and REMAND the matter for further processing.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Holiday Clerk Assistant at the Main Office Station in Little Rock, Arkansas.

On April 16, 2021, Complainant filed a complaint alleging that the Agency subjected him to discrimination on the basis of religion when:

1. On November 4, 2020, he was not accommodated per his religious beliefs; and
2. On January 21, 2021, he accepted a job offer, but he was not hired.

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.

The Agency investigated Complainant's complaint. The Agency stated in its decision that on July 27, 2021, at the conclusion of the investigation, it provided Complainant with a copy of the report of investigation (ROI) and notice of his right to request a hearing before an EEOC Administrative Judge (AJ) or a final Agency decision within 30 days of receipt of the notice. The Agency stated that when Complainant failed to request either a hearing or a final decision without a hearing, it issued a decision. The Agency's September 17, 2021 final decision found Complainant failed to establish he was subjected to discrimination as alleged.

On appeal, Complainant argues that he did not receive the ROI until October 7, 2021, and thus was unable to submit a request for a hearing before an AJ, prior to the issuance of the Agency's final decision. Complainant states he submitted an online Change of Address Order with the Postal Service requesting his mail be forwarded to his new address on July 11, 2021. Complainant provides a copy of a permanent change of address order requesting his mail start being forwarded on July 11, 2021. Complainant provides a second permanent change of address order requesting his mail start being forwarded on July 29, 2021. He also notes the ROI was returned to sender in July and in August 2021. Complainant requests the Agency's final decision be overturned. He explains he was forced to move and made several attempts to reach out to Agency officials regarding his address change. He states his family was homeless for two weeks after relocating and says he made every attempt to update his address and provides evidence in support of his position.

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.108(f) provides in relevant part that the agency shall provide the complainant with a copy of the investigative file and shall notify the complainant that, within 30 days of receipt of the investigative file, the complainant has the right to request a hearing and decision from an Administrative Judge or may request an immediate final decision pursuant to 29 C.F.R. § 1614.110 from the agency with which the complaint was filed.

Upon review of the record, the Commission is not persuaded that the Agency complied with the requirements above. Furthermore, we find that Complainant in good faith attempted to effectuate an address change. The record contains a copy of the July 27, 2021, Transmittal of Investigative File letter indicating USPS Tracking # 2317 1640 0000 1878 5203, the Request for Hearing form, and the ROI. The record does not, however, contain evidence indicating that the ROI was actually delivered to Complainant. As noted above, Complainant maintained that he did not receive the ROI or notice of his right to request a hearing prior to the Agency's issuance of its decision. Moreover, we note that the record contains USPS Tracking information that Tracking # 2317 1640 0000 1878 5203 was returned to the sender on July 29, 2021. The record also contains a copy of the envelope for USPS Tracking # 2317 1640 0000 1878 5203 with a label dated August 7, 2021, noting "Return to Sender/Vacant/Unable to Forward." The Commission finds the Agency has not refuted Complainant's contention that he did not receive the ROI and notice of right to request a hearing prior to its issuance of a final decision. Complainant has provided evidence that he properly submitted a change of address form to have his mail forwarded prior to the issuance of the ROI.

Although we note that Complainant did not submit documentation showing he notified the Agency's EEO office of his address change, he does claim to have reached out to Agency officials. The Agency, however, has not responded to Complainant's arguments and evidence on appeal regarding his address change.

Given that Complainant has already indicated on appeal that he desires to have a hearing in this case, under the specific circumstances of this case, the Commission will direct the Agency to submit a copy of the complaint file, including the ROI, to the Hearing Unit of the Memphis District office of the Commission.

CONCLUSION

Accordingly, it is the decision of the Commission to VACATE the Agency's decision and REMAND the complaint to the Agency for further processing in accordance with the Order herein.

ORDER

The Agency is directed to provide Complainant with a copy of the ROI, and to submit Complainant's request for a hearing and a copy of the complaint file to the Hearings Unit of the Memphis District office within 30 days of the date this decision is issued. The Agency shall provide written notification to the Compliance Officer at the address set forth herein that the complaint file has been transmitted to the Hearings Unit. Thereafter, the Administrative Judge shall hold a hearing and 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

December 13, 2022
Date