



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

[REDACTED]  
Lyn H.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2022004796

Agency No. 6U-260-0001-22

**DECISION**

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated August 29, 2022, dismissing her 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.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Business Service Network Representative, E-16, at the Agency's Processing & Distribution Center in Milwaukee, Wisconsin.

On August 11, 2022, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of race (not specified)<sup>2</sup> when:

1. On March 28, 2022, Complainant's manager ("Manager") improperly disclosed

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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.

<sup>2</sup> Complainant only checked the box for race on the formal complaint. According to the EEO Counselor's Report, Complainant also alleged discrimination on the bases of color (black), sex (female), and reprisal for prior protected EEO activity.

Complainant's medical information when Manager left Complainant's medical documents in plain view on Manager's desk during a meeting with other employees.

2. On March 31, 2022, and other dates, Manager requested additional documentation to substantiate Complainant's sick leave request, and subsequently, Manager changed some of Complainant's previously approved leave from scheduled to unscheduled.
3. On or about April 7, 2022, Complainant was removed from her detail assignment.

The Agency dismissed the complaint as untimely filed, pursuant to 29 C.F.R. §1614.107(a)(2). The instant appeal followed.

### ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.106(b) requires the filing of a 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, .106, and .204(c), unless the agency extends the time limits in accordance with § 1614.604(c).

Here, the record establishes that Complainant received the notice of the right to file a formal complaint (Notice of Right to File) on July 13, 2022. The Notice of Right to File informed Complainant that she had to file a formal complaint within fifteen (15) calendar days of her receipt of the Notice of Right to File for the complaint to be timely and that she had to complete, sign, and date her complaint. In concluding that Complainant's complaint was untimely, the Agency found that the timeframe within which Complainant had to file the complaint was from July 14 to 28, 2022, and Complainant's complaint was postmarked August 11, 2022.

On appeal, Complainant acknowledges that she received the Notice on July 13, 2022. However, she asserts that she submitted documents expressing her intent to file a formal complaint to the Agency on July 27, 2022, but the Agency sent her letter, dated August 1, 2022, instructing her to complete and return the Agency's Form 2565 within 15 days of its receipt, which she did, on August 11, 2022. In support of her appeal, Complainant submits U.S. Postal Service tracking records that show she sent a letter to the Agency on July 27, 2022. She also submits a copy of a letter from the Agency, dated August 1, 2022, informing her that the Agency was in receipt of her correspondence requesting to file her formal complaint, but she did not include the Agency's Form 2565 Formal Complaint. The letter also requests that Complainant describe her allegations, as discussed with the EEO Counselor, and provide any additional information, and completely fill out, sign, and return Form 2565 within 15 calendar days of receipt of the letter.<sup>3</sup>

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<sup>3</sup> EEOC Regulation 29 C.F.R. § 1614.106(c) provides, in part, that a complaint must contain a signed statement from the person claiming to be aggrieved or that person's attorney. This

It also advises that her failure to respond within 15 days of receipt of this notice would result in the dismissal of the complaint. The Agency and Complainant acknowledge that Complainant submitted the Form 2565 on August 11, 2022, which is within 15-days of the notice provided in the letter dated August 1, 2022, but more than 15 days after the Notice of Right to File.

The Commission has held that, prior to refusing to accept the filing of a complaint for a deficiency, the Agency should request that the complainant cure such deficiency before dismissing the complaint. See Ramsay v. Unites States Postal Service, EEOC Appeal No. 01A43841 (November 22, 2004). Here, the record establishes that Complainant submitted a document sufficient to convey her intent to file a formal complaint, but it was not on the Agency's Form 2565. The Agency provided Complainant with an opportunity to cure that defect within 15 days of receipt of the Agency's letter dated August 1, 2022. The record establishes that Complainant submitted the Agency's Form 2565 on August 11, 2022, within that 15-day period, curing that defect. To the extent Complainant's initial correspondence expressing her intent to file a formal complaint was insufficient to satisfy the regulatory requirements, we apply equitable tolling to find the complaint was not untimely. See 29 C.F.R. § 1614.604(c) (provides that time limits are subject to waiver, estoppel, and equitable tolling).

Accordingly, we REVERSE the Agency's dismissal and REMAND 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.

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statement must be sufficiently precise to identify the aggrieved individual and the agency and to describe generally the action(s) or practice(s) that form the basis of the complaint.

### 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 5, 2022

Date