



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

[REDACTED]
Nobuko M.,¹
Complainant,

v.

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

Appeal No. 2023000106

Agency No. 4B120013922

DECISION

Complainant appealed to the Equal Employment Opportunity Commission (“EEOC” or “Commission”), from the Agency's September 14, 2022 dismissal of 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 Supervisor, Customer Service, EAS-17, at the West Seneca Post Office in West Seneca, New York.

On August 27, 2022, Complainant filed a Formal EEO Complaint alleging that the Agency subjected her to discrimination on the bases of race (African American), color (Black/dark skin) and sex (female). The Agency framed her allegation as follows:

On June 2, 2022, Complainant became aware that the West Seneca Station Manager (“Manager”) signed a grievance settlement (“Agreement”) that banned Complainant from interacting with Clerk Craft employees.

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.

Complainant's formal EEO complaint and the EEO Counselor's Report clarify that as a result of the alleged discriminatory act, Complainant experienced multiple adverse employment actions. Specifically, Manager limited Complainant's duty hours, reassigned a substantial portion of her supervisory responsibilities to the two other Supervisors (male, non-African American), and "secretly disciplined" Complainant by placing a copy of the Agreement in her personnel file. Complainant also claims that Manager subjected her to a hostile work environment because, by stripping her of her supervisory duties, she cannot respond to "rampant insubordination" directed toward her by Clerk Craft employees.

Complainant asserts, with respect to the grievance process, that Manager did not inform her and initially lied to her about signing the Agreement, Manager failed to communicate any issues leading up to a grievance agreement and failed to allow Complainant an opportunity to submit a statement during a grievance proceeding that concerned her. She further asserts that Manager would not have responded in this manner or signed the Agreement if the grievance concerned either of the other Supervisors, Customer Service, who are both male and are not African American.

The Agency determined that Complainant's allegation constituted a collateral attack on the grievance process and dismissed the matter, pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim.

The instant appeal followed.

ANALYSIS AND FINDINGS

Under 29 C.F.R. § 1614.107(a)(1) an agency shall dismiss a complaint that fails to state a claim. This Commission has generally held that complaints involving other administrative proceedings, including those involving negotiated grievance procedures and related processes, do not state a claim within the meaning of its regulations. See Hogan v. Dep't of the Army, EEOC Request No. 05940407 (Sept. 29, 1994); Heard v. Dep't of Justice, EEOC Appeal No. 0120092680 (Aug. 27, 2009). The Commission has held that an employee cannot use the EEO complaint process to lodge a collateral attack on another proceeding. See Wills v. Dep't of Defense, EEOC Request No. 05970596 (Jul. 30, 1998); Kleinman v. United States Postal Serv., EEOC Request No. 05940585 (Sept. 22, 1994). A claim that can be characterized as a collateral attack, by definition, involves a challenge to another forum's proceeding. See Lingad v. United States Postal Serv., EEOC Request No. 05930106 (Jun. 23, 1994) (challenge to evidentiary ruling in grievance process fails to state a claim as an EEO complaint). Moreover, it is well-settled that an EEO complaint which alleges that discriminatory actions have been taken to influence the outcome of a decision rendered under a negotiated grievance procedure is outside the purview of EEOC regulations and should be rejected. Except in limited circumstances, the EEO process is not a mechanism to attack negotiated grievance procedures. Ellis v. United States Postal Serv., EEOC Request No. 05920011 (Mar. 12, 1992).

However, an allegation that the negotiated grievance process was applied discriminatorily by the agency while the grievance decision was still within its control is clearly a cognizable claim before the Commission because it alleges discrimination by the agency concerning a term, condition, or privilege of employment. Lucas-Edwards v. United States Postal Serv., EEOC Request No. 05900296 (Jun. 14, 1990). Nothing in the Commission's regulations or prior decisions prohibits a complainant from challenging the discriminatory application of the grievance process. See Cron v. United States Postal Serv., EEOC Request No. 05890272 (July 27, 1989).

Thus, while the Commission will not review allegations related to how a grievance was ultimately decided, the Commission will review allegations of discrimination that an agency's grievance process was administered in a discriminatory fashion, or that a grievance resolution is discriminatory in its implementation. See Bowie v. United States Postal Serv., EEOC Request No. 05910802 (Feb. 4, 1992). For example, in Bellantoni v. Dep't of the Navy, Appeal No. 01983836 (Sept. 9, 1999), the Commission determined that the complainant's allegation that he was denied an extension of time to file his grievance because of his protected classes stated a claim because it concerned discrimination in the administration of the grievance process, not the outcome of the grievance.

Here, Complainant's formal EEO complaint makes it clear that she believes Manager's actions for the duration of the internal processing of the grievance were discriminatory, as was Manager's implementation of the Agreement. As such, we find that this case fits into an exception to the general rule concerning claims involving the grievance process and therefore states a viable claim of discrimination that requires investigation.

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is REVERSED. We hereby REMAND the matter to the Agency for further processing in accordance with this decision and the following Order.

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.

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 22, 2022
Date