



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

[REDACTED]

Del V.,¹
Complainant,

v.

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

Appeal No. 2023001622

Agency No. 1F-441-0338-22

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision, dated December 29, 2022, dismissing 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. The Commission accepts the appeal in accordance with 29 C.F.R. § 1614.405.

BACKGROUND

Complainant was formerly employed as a Mail Processor assigned to the Agency's facility in Lexington, Kentucky. His employment ceased in August 2009.

At the time he left the Agency, he had filed a CA-2 form² with the Office of Workers' Compensation Programs (OWCP). According to the instant record, the paperwork was not processed at that time, but was received by Department of Labor in May 2022.

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.

² Notice of Occupational Disease and Claim for Compensation form.

On June 12, 2022, Complainant asked the Agency's Manager Occupational Health Claims (hereinafter "Claims Manager") to send all documentation relating to his CA-02 to the local union. He also asked that all medical information be redacted. When he learned that the documentation provided to the union contained his medical information, Complainant contacted an EEO Counselor.

On December 16, 2022, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of race (African American), sex (male), color (Black), disability, age (born 1977), and reprisal for prior protected EEO activity when on or around August 12, 2022, his unredacted OWCP information was shared with others.

The Agency dismissed the case for failure to state a claim, pursuant to 29 C.F.R. 1614.107(a)(1). The Agency reasoned that Complainant's complaint was an impermissible collateral attack on the OWCP process and he should have raised his concerns within that process. Complainant filed the instant appeal.

ANALYSIS AND FINDINGS

An agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that agency because of race, color, religion, sex, national origin, age or disabling condition. 29 C.F.R. §§ 1614.103, .106(a) The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Department of the Air Force, EEOC Request No. 05931049 (April 21, 1994). The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that an Agency shall dismiss a complaint that fails to state a claim.

On appeal, Complainant argues that his EEO complaint is not about his OWCP claim but rather the impermissible disclosure of his medical information by the Agency Claims Manager. Additionally, he asserts that the Claims Manager also provided a copy of his prior EEO complaint (Case No. 1C-404-006-10) to other employees in an effort to deter him from engaging in protected activity.

While the Agency decision identifies the claim as set forth above, a review of the formal complaint reveals that Complainant also explicitly stated: "I am claiming unlawful disclosure of medical information in violation of the Rehabilitation Act. I am also claiming reprisal for engaging in prior protected activity." He reiterates this assertion on appeal, alleging that his medical information, including his prognosis, was provided to individuals that did not have a need to know, in violation of the Rehabilitation Act.

The Rehabilitation Act provides for the confidentiality of medical records, in pertinent part as follows: "Information obtained... regarding the medical condition or history of any employee shall ... be treated as a confidential medical record, except that supervisors and managers may be informed regarding necessary restriction on the work or duties of the employee and necessary

accommodation.” 29 C.F.R. § 1630.14(c); see also Valle v. United States Postal Service, EEOC Request No. 05960585 (September 5, 1997), Short v. Department of the Air Force, EEOC Appeal No. 01980456 (October 7, 1999). Moreover, we note that the confidentiality obligation remains regardless of whether an applicant is eventually hired or the employment relationship ends. See ADA Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations, at 18 (Oct. 10, 1995) (Guidance II). These requirements apply to confidential medical information from any applicant or employee and are not limited to individuals with disabilities. See Higgins v. Dep’t of the Air Force, EEOC Appeal No. 01A13571 (May 27, 2003); Hampton v. U.S. Postal Serv., EEOC Appeal No. 01A00132 (April 13, 2000).

Here, while Complainant’s contention that the decisions regarding his removal and OWCP claims were incorrect are not properly before us, we find that he has stated a viable claim regarding medical confidentiality. See Eggleston v. United States Postal Service, EEOC Appeal No. 0120120834 (Dec. 20, 2012) (dismissing claims regarding salary offsets under the Debt Collection Act, but finding that claim regarding the Agency’s improper submission of medical information to the Agency’s Debt Court stated a claim); see also Celine D. v. United States Postal Service, EEOC Appeal No. 0120152203 (Feb. 5, 2016) (complaint alleging request for “office files” contained various medical records stated a claim of a violation of the Rehab Act’s confidentiality provisions).

CONCLUSION

The Agency’s decision dismissing the complaint is REVERSED. The case is REMANDED to the Agency for further processing in accordance with this decision and 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:



Carlton M. Hadden, Director
Office of Federal Operations

April 3, 2023
Date