



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

[REDACTED]
Charles B.,¹
Complainant,

v.

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

Appeal No. 2022003160

Agency No. 4B-117-0074-21

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's April 21, 2022 final decision concerning an equal employment opportunity (EEO) complaint claiming 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

During the period at issue, Complainant worked as a Full-time Carrier Technician at the Agency's Flushing Main Post Office in Flushing, New York.

On September 2, 2021, Complainant filed a formal EEO complaint claiming alleging that the Agency unlawfully retaliated against him for his prior protected EEO activity when:

1. on June 11 and 25, 2021, Complainant had not received the correct amount of FEEL (Emergency Federal Employee Leave) as requested; and

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. on November 2 and 9, 2021, management assigned City Carrier Assistants to perform some of Complainant's work which deprived him of overtime opportunities.

After its investigation into his claims, the Agency provided Complainant with a copy of the report of the investigation and notice of his right to request a hearing before an EEOC Administrative Judge (AJ). The Agency determined that Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f). Therefore, the Agency issued a final decision, pursuant to 29 § 1614.110(b), finding no discrimination.

The instant appeal followed. On appeal, Complainant states that he received the Agency's final decision and he noticed that the final decision indicated that the Agency determined that he had neither requested a hearing nor an Agency final decision. Complainant argues, however, that he submitted a hearing request. Complainant therefore requests that he be allowed to proceed with the case by having an EEOC Administrative Judge adjudicate the matter.

ANALYSIS AND FINDINGS

EEOC regulations provide that an agency shall provide a complainant with a copy of the investigative file and notify them that they have the right to request a hearing and decision from an EEOC Administrative Judge, or an Agency final decision. See 29 C.F.R. § 1614.108(f).

Complainant asserts he submitted a hearing request. The record includes a copy of the transmission of the notice of right to request a hearing, dated February 23, 2022. The notice provided that Complainant had thirty days to either elect a final Agency decision or a hearing before an EEOC Administrative Judge. The notice further provided that Complainant submit his hearing request to the Hearings Unit of EEOC's New York District Office.

On appeal, Complainant submitted USPS tracking confirmation that he mailed his hearing request on March 21, 2022, which was delivered to the EEOC's New York office on March 22, 2022. This evidence confirms that Complainant timely submitted his request within the required thirty days. In response to the appeal, the Agency does not dispute Complainant's assertion that he did, in fact, submit a hearing request. As such, we find no evidence that Complainant failed to request a hearing.

In the interest of fairness and preservation of EEO rights, and because of the lack of persuasive evidence establishing that Complainant submitted a hearing request, we find that the final decision in this matter should be vacated, and the complaint remanded to an EEOC Administrative Judge. See Maxima R. v Department of Veterans Affairs, EEOC Appeal No. 0120171171 (November 9, 2018); Gaye A. v. Department of Agriculture, EEOC Appeal No. 0120161205 (May 23, 2018).

CONCLUSION

The Commission VACATES the Agency's final decision and REMANDS the formal complaint to the Agency in accordance with the ORDER below.

ORDER

Within 15 calendar day of this decision is issued, the Agency shall submit a renewed request for a hearing on Complainant's behalf, as well as uploading the complete complaint file and a copy of this decision, to the Hearings Unit of EEOC's New York District Office. The Agency shall provide written notification to the Compliance Officer at the address set forth below that the complaint file has been transmitted to the Hearings Unit. Thereafter, the Administrative Judge shall issue a decision 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

July 19, 2023
Date