



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Leisa C.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2023004541

Agency No. 4G-752-0135-23

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated July 10, 2023, dismissing a formal 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., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

**BACKGROUND**

During the period at issue, Complainant worked as a Rural Carrier at the Agency's facility in Arlington, Texas.

On June 22, 2023, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on race (African American), age, and reprisal for prior protected EEO activity. In its July 10, 2023 final decision, the Agency determined that the formal complaint was comprised of the following claims:

1. Beginning on or about November 8, 2022, and ongoing, [Complainant] alleged [she was] harassed about [her] leav[ing] the office and return to the office time, bullied and intimidated.

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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.

2. On or about January 10, 2023, [she] alleged [she was] sent home after reporting to work after 8:00 a.m.
3. On March 10, 2023, [she was] issued a 14-day suspension because [she] refused to allow another carrier assist with [her] route.
4. On or about March 16, 2023, [she was] given a Day of Reflection.
5. On or about March 16, 2023, [she] alleged [a name supervisor] invaded [her] personal space.
6. On unspecified dates, she alleged [she was] issued a Letter of Warning, 7-Day Suspension and a 14-Day Suspension.
7. On unspecified dates, [she] alleged on several occasions management called her sub to deliver [her] route when [she was] scheduled to work.
8. On unspecified date(s), [Complainant] alleged [she was] not allowed to report to work after [her] start time.
9. On unspecified dates, [she] alleged the union failed to properly represent [her].

The Agency dismissed Complainant's complaint in its entirety on the grounds her formal complaint was untimely filed. The Agency reasoned that the Notice of Right to File a Formal Complaint (Notice) was delivered to Complainant's address of record on April 8, 2023. However, Complainant did not file her formal complaint until June 22, 2023, which the Agency found was outside of the applicable time period.

The Agency also dismissed claims (1), (5), (6), (7), (8), and (9) on the grounds that Complainant did not raise these matters with an EEO Counselor and that these claims are not like or related to the matters raised with the EEO Counselor.

Finally, the Agency dismissed claim (9) for failure to state a claim reasoning that this matter was a collateral attack on the grievance process.

The instant appeal followed. On appeal, Complainant requests that we reverse the Agency's final decision dismissing her complaint. Complainant asserts that in June 2023, she contacted the EEO Counselor because she did not receive the package containing the formal complaint form. Complainant asserts that the EEO Counselor informed her it was mailed in April 2023. Complainant states that she found out that her mail carrier signed for the Notice and delivered it to the wrong mailbox. Complainant states that she informed the EEO Counselor of this and the EEO Counselor sent out the formal complaint package again with no signature request.

### ANALYSIS AND FINDINGS

#### *Dismissal of Claim (9)-Failure to State a Claim*

The Agency properly dismissed claim (9), alleging that the union failed to properly represent her. 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 Def., EEOC Request No. 05970596 (July 30, 1998); Kleinman v. U.S. Postal Serv., EEOC Request No. 05940585 (Sept. 22, 1994); Lingad v. U.S. Postal Serv., EEOC Request No. 05930106 (June 25, 1993). The proper forum for Complainant to have raised her challenges to actions which occurred during the negotiated grievance process is within that forum itself. See Stelzner v. U.S. Postal Serv., EEOC Appeal No. 0120081513 (April 24, 2008) (Commission does not have jurisdiction over union representation claims). It is inappropriate to now attempt to use the EEO process to collaterally attack actions which occurred during the negotiated grievance process.

#### *Dismissal for Failure to Raise Matters During EEO Counseling-Various Claims*

EEOC Regulation 29 C.F.R. § 1614.107(a)(2) states, in pertinent part, that an agency shall dismiss a complaint which raises a matter that has not been brought to the attention of an EEO Counselor, and is not like or related to a matter on which the complainant has received counseling. A later claim or complaint is "like or related" to the original complaint if the later claim or complaint adds to or clarifies the original complaint and could have reasonably been expected to grow out of the original complaint during the investigation. See Scher v. U.S. Postal Serv., EEOC Request No. 05940702 (May 30, 1995); Calhoun v. U.S. Postal Serv., EEOC Request No. 05891068 (Mar. 8, 1990).

The Agency improperly dismissed various claims for failure to raise these matters with an EEO Counselor or not being like or related to the matters raised during EEO Counseling. Upon review of the EEO Counselor's Report and other pre-complaint documents, we find that Complainant is raising an ongoing harassment/hostile work environment claim. In the EEO Counselor's Report, the requested resolution is, in pertinent part, "for management to stop creating a hostile work environment." We find that the matters at issue are incidents comprising Complainant's ongoing hostile work environment claim which she raised during EEO Counseling.

#### *Dismissal For Untimely Filing of the Formal Complaint*

EEOC Regulation 29 C.F.R. § 1614.106(b) requires the filing of a written 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, 1614.106, and 1614.204(c), unless the agency extends the time limits in accordance with § 1614.604(c).

We find that the Agency improperly dismissed Complainant's entire complaint on the grounds the formal complaint was untimely filed. The record contains a copy of the Notice dated April 7, 2023, sent via certified mail, and setting forth that Complainant has 15 days from the date of receipt of the Notice to file her formal complaint. In addition, the record contains a USPS printout reflecting that the Notice was delivered to Complainant's address of record on April 8, 2023. However, Complainant asserts, on appeal, that she did not receive the Notice on this date and contacted the EEO Counselor in June 2023 inquiring about the status of her formal complaint package. Complainant states that after the EEO Counselor stated that the Notice was delivered to her address in April 2023, she discovered that her mail carrier had signed for the Notice and delivered the Notice to the wrong mailbox. Complainant states that the EEO Counselor sent out another formal complaint package, with no signature request, and that she quickly filed her formal complaint after receiving the Notice.

The record contains a copy of the signed receipt for the Notice that was delivered on April 8, 2023, which was signed by an individual other than Complainant. The Agency does not address Complainant's assertion that her mail carrier signed the Notice, delivered the Notice to the wrong mailbox, and the Agency sent out another copy of the Notice without a signature request. In addition, Complainant signed the Notice and indicated that she received the Notice on June 12, 2023. The record reflects that she subsequently filed her formal complaint on June 22, 2023.

Where as here, there is an issue of timeliness, "[a]n agency always bears the burden of obtaining sufficient information to support a reasoned determination as to timeliness." See Guy v. Dep't of Energy, EEOC Request No. 05930703 (Jan. 4, 1994) (quoting Williams v. Dep't of Defense, EEOC Request No 05920506 (Aug. 25, 1992)). In addition, in Ericson v. Dep't of the Army, EEOC Request No. 05920623 (Jan. 14, 1993), the Commission stated that "the agency has the burden of providing evidence and/or proof to support its final decision. See also Gens v. Dep't of Defense, EEOC Request No. 05910837 (Jan. 31, 1992). In the instant matter, we find the Agency has not met its burden that Complainant's formal complaint was untimely filed.

Accordingly, we AFFIRM the Agency's final decision dismissing claim (9) for alleging a collateral attack on the grievance process. However, we REVERSE the Agency's dismissal of the remainder of Complainant's complaint, defined herein, as a hostile work environment claim, and we REMAND this matter 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.

#### 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 (T0610)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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. If you file a request to reconsider and also file a civil action, **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:



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Carlton M. Hadden, Director  
Office of Federal Operations

October 18, 2023  
Date