



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

[REDACTED]
Jerold Y.,¹
Complainant,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service
(Southern Area),
Agency.

Appeal No. 2019002463

Agency No. 6I000000117

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated December 3, 2018, 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. For the reasons set forth below, we AFFIRM the Agency's final decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Lead Automotive Technician at the Agency's Greens North Vehicle Maintenance facility in Houston, Texas. On November 15, 2018, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the basis of race (African-American) when:

1. On July 28, 2018, the Selecting Official (SO) notified Complainant that he did not select him for the Supervisor, Vehicle Maintenance position at the Agency's Central Vehicle Maintenance Facility.
2. On September 26, 2018, the SO notified Complainant that he did not select him for the Supervisor, Vehicle Maintenance position at the Agency's Greens North Vehicle Maintenance Facility, and a witness overheard the SO say that Complainant needs to "read more." The SO selected a white male for the position.

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.

The Agency dismissed the complaint pursuant to 29 C.F.R. § 1614.107(a)(2) due to Complainant's untimely filing of the formal complaint. The Agency found that Complainant's formal complaint was postmarked on November 15, 2018, two days after the fifteen-day limitation period. The record indicates that Complainant received the Notice of Final Interview on October 29, 2018. The instant appeal followed.

ANALYSIS AND FINDINGS

The regulation set forth at 29 C.F.R. § 1614.107(a)(2) states, in pertinent part, that an agency shall dismiss a complaint which fails to comply with the applicable time limits contained in 29 C.F.R. § 1614.106, which requires complainants to file a formal complaint within fifteen (15) days of receiving notice of the right to do so.

The Agency has the burden to provide sufficient evidence to support a reasonable determination as to timeliness. Williams v. Dep't. of Def., EEOC Appeal No. 05920506 (Aug. 25, 1992). The Commission's regulations are satisfied if a "person of suitable age and discretion" receives and signs for the notice. Bauchand v. U.S. Postal Service, EEOC Request No. 05920389 (May 29, 1992). Complainant may rebut the presumption of constructive receipt by showing that the person who signed for the notice is not a family member or member of the household of suitable age and discretion. Sherita V. v. U.S. Postal Serv., EEOC Appeal No. 0120180359 (Jan. 31, 2018).

The Agency stated that Complainant received notice of the right to file a formal complaint on October 29, 2018, as the notice arrived at his address on that date. The Agency provided postal service tracking information showing that someone received and signed for the notice at Complainant's address on October 29th. Therefore, 29 C.F.R. § 1614.106 obligated Complainant to file his formal complaint between October 30, 2018 and November 13, 2018. The Agency provided a copy of the envelope that contained Complainant's formal complaint showing that it was postmarked on November 15, 2018, two days after the fifteen-day limitation period expired. Complainant does not dispute this fact. We find that the Agency has met its burden to provide sufficient evidence that the formal complaint was untimely and properly dismissed.

On appeal, Complainant and his wife submitted a letter acknowledging and offering justification for the delay. The letter stated that his wife received and signed for the notice on October 29, 2019. Complainant's wife lost the notice among the rest of her mail and accidentally brought it to College Station, Texas. She gave the unopened notice to Complainant on November 1, 2017.

In cases where a complainant's spouse signs for the notice of the right to file a formal complaint, even when the complainant asserts that they did not obtain it until a later date, the Commission has consistently held that the complainant constructively received the notice on the date the spouse signed for it. See Stella B. v. U.S. Postal Serv., EEOC Appeal No. 0120142802 (Jan. 7, 2016); Dollander v. Dep't of Veterans Affairs, EEOC Appeal No. 01A55737 (January 20, 2006); Cobb v. U.S. Postal Serv., EEOC Appeal No 01A20439 (July 24, 2002). Complainants have rebutted the presumption of constructive receipt by showing that the individual who received the notice was not a family or household member of suitable age and discretion.

Kurzava v. U.S. Postal Serv., EEOC Appeal No. 01955150 (July 16, 1996) (youngest child signed for the notice); Flood v. Department of Veterans Affairs, EEOC Appeal No. 0120131796 (August 28, 2013) (receptionist signed for the notice).

The Commission presumes that Complainant received the notice when it arrived and was signed for at his address on November 29, 2018. Like previous Complainants whose spouses signed for the notices, Complainant cannot rebut the presumption of constructive receipt. Complainant's wife is a family member and member of the household. Therefore, we affirm the Agency's dismissal of his complaint for untimeliness, as he filed his formal complaint two days outside the time limitation period.

Accordingly, the final agency decision dismissing Complainant's complaint is **AFFIRMED**.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which 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 to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in 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). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your 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 (S0610)

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. 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:



Carlton M. Hadden, Director
Office of Federal Operations

June 18, 2019

Date