



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

[REDACTED]
Cleveland C.,¹
Complainant,

v.

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

Appeal No. 2019003536

Hearing No. 480-2016-00330X

Agency No. 1F-901-0120-15

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated March 22, 2019, 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., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Laborer/Custodian at the Agency's P&DC facility in Los Angeles, California.

On November 2, 2015, Complainant filed a formal complaint alleging that the Agency subjected him and a class of similarly situated employees (all his Tour 1 co-workers) to discrimination on the bases of race (African-American), sex (male), and age when, on July 7, 2015 and ongoing, Tour 1 employees were denied overtime while employees on Tours 2 and 3 were granted overtime work.

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.

Because Complainant raised a class claim, the matter went to an EEOC Administrative Judge (AJ). On March 19, 2019, the AJ dismissed the individual and class complaint for failure to state a claim, finding the matter was a generalized grievance. Thereafter the Agency issued a final order implementing the AJ's decision.

The instant appeal followed.

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.204 provides that an EEOC Administrative Judge (AJ) may dismiss a class complaint on procedural grounds for any of the reasons listed in 29 C.F.R. § 1614.107(a). Here, under this authority, the AJ dismissed both Complainant's class and individual claims, pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim.

Complainant is alleging that workers on other tours received overtime, while he and those on his tour did not. The AJ correctly determined that Complainant cannot pursue a generalized grievance that members of one employee group are afforded benefits not offered to another groups, unless he further alleges some injury to himself and the other purported class members as a result of an alleged *discriminatory* practice. See Crandall v. Dep't of Veterans Affairs, EEOC Request No. 05970508 (Sept. 11, 1997) (claim that nurse practitioners in one unit received more favorable treatment than nurse practitioners in other units was a generalized grievance). Working on a particular tour is not a class protected by the anti-discrimination statutes. We note that Complainant has **not** raised a claim of disparate impact – that the seemingly neutral practice was having a disparate impact on older African American males.

Accordingly, the Agency's final decision adopting the AJ's decision dismissing Complainant's class and individual 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)

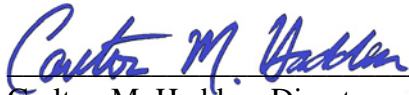
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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

August 23, 2019

Date