



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

[REDACTED]
Pamela W.,¹
Complainant,

v.

Richard Tischner,
Director,
Court Services and Offender Supervision Agency,
Agency.

Appeal No. 2019003663

Agency No. CSOSA-EEO-F-18-0003

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated April 18, 2019, dismissing a formal 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 Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

BACKGROUND

During the period at issue, Complainant worked for the Agency as a Contract Specialist, GS-12 in Washington, D.C.

On February 12, 2018, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on (African-American), sex (female), color (black), disability (PTSD and a heart condition) and in reprisal for prior protected EEO activity when:

1. on October 19, 2017, she was reassigned to another Agency location because of her alleged disruptive behavior on October 17, 2017;
2. on November 30, 2017, she was not informed by a named individual, that her alternative work schedule had been reinstated, or that information about her report

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.

to work time had been mentioned indicating that employees did not have to worry about being late provided their tour of duty was complete; and

3. on December 26, 2017, she was further harassed, retaliated against, and bullied in the work environment when she was notified by the Office of Professional Responsibility that they were conducting an administrative inquiry into her use of official time.

The subject claims were accepted for investigation, and an investigator assigned to the case initiated a variety of email correspondence with Complainant from October to December 2018. In late January 2019, the investigator submitted to Complainant a draft affidavit, with follow-up emails requesting a signed affidavit. On February 25, 2019, a “15-day clarification letter” was sent via Fed Ex to Complainant requesting the affidavit “for a final time.” When no response was received, the investigator unsuccessfully attempted to contact Complainant via telephone and email.

In its final decision, the Agency dismissed the instant complaint for failure to cooperate pursuant to EEOC Regulation 29 C.F.R. § 1614.107(a)(7). Specifically, the Agency determined that Complainant failed to respond to the 15-day clarification letter from the investigator assigned to Complainant’s complaint. The Agency found that the letter informed Complainant that her failure to respond to the request for clarification of her claims of discrimination could result in the dismissal of her formal complaint.

This appeal followed.

ANALYSIS AND FINDINGS

In cases where the complainant has engaged in delay or contumacious conduct and the record is insufficient to permit adjudication, the Commission has allowed a complaint to be dismissed for failure to cooperate. See Card v. United States Postal Service, EEOC Request No. 05970095 (April 23, 1998); Krotten v. United States Postal Service, EEOC Request No. 05940451 (December 22, 1994). However, the Commission has held that an Agency should not dismiss a complaint when it has sufficient information upon which to base an adjudication. See Ross v. United States Postal Service, EEOC Request No. 05900693 (August 17, 1990); Brinson v. United States Postal Service, EEOC Request No. 05900193 (April 12, 1990).

Here, the record contains no evidence that the complaint did not contain sufficient information upon which to base an adjudication on the merits of Complainant’s claims. A review of the instant formal complaint indicates that Complainant provided sufficient information to the EEO Counselor about her allegations of discrimination. Specifically, Complainant alleged that she was subjected to discrimination and harassment by the Director of Procurement when she was assigned to another duty station, not informed that her alternative work schedule had been reinstated, and when her use of official time was investigated.

The record further reflects the name of the alleged discriminatory official, as well as the time frame the alleged discrimination occurred. We conclude that this was sufficient information for the Agency to complete its investigation without an affidavit from Complainant and to issue a decision on the merits rather than dismissing the formal complaint for failure to cooperate. In adjudicating the claims, the Agency shall consider the evidence, or lack thereof, proffered by Complainant in support of her claims.

CONCLUSION

The Agency final decision dismissing the formal complaint is REVERSED. The formal complaint is REMANDED to the Agency for further processing in accordance with the ORDER below.

ORDER

The Agency is ORDERED to resume processing of the underlying complaint from the point where processing ceased. The Agency shall acknowledge to Complainant that it has reinstated the complaint and resumed its processing.

A copy of the Agency letter to Complainant of resumed processing must be sent to the Compliance Officer as referenced below.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0618)

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.

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 (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

August 22, 2019

Date