



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

[REDACTED]
Pamula W.,¹
Complainant,

v.

William P. Barr,
Attorney General,
Department of Justice
(Federal Bureau of Investigation),
Agency.

Appeal No. 2019004234

Agency No. FBI-2019-000077

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated May 21, 2019, dismissing her 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.

BACKGROUND

During the period at issue, Complainant worked for the Agency as an Intelligence Analyst in Washington, D.C.

On December 6, 2018, Complainant initiated EEO Counselor contact. Informal efforts to resolve her concerns were unsuccessful.

On January 7, 2019, Complainant filed the instant formal complaint. Complainant claimed that the Agency subjected her to discrimination based on race and in reprisal for prior EEO activity when, between October 3 and 14, 2018, she was harassed during the New Intelligence Analyst Training (NIAT), and she was constructively discharged from NIAT on October 15, 2018.

In its May 21, 2019 final decision, the Agency dismissed the formal complaint for untimely EEO

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.

Counselor contact, pursuant to 29 C.F.R. § 1614.107(a)(2). The Agency determined that Complainant's initial EEO Counselor contact on December 6, 2018, was beyond the 45-day limitation period for initiating timely contact.

The instant appeal followed. On appeal, Complainant states that on December 5, 2018, she had a discussion "about my discrimination experience at the FBI Academy and my constructive discharge with a family friend of over forty years who had retired from a leadership position with the Federal Aviation Administration." She said that her friend informed her that if she felt she had been discriminated against she had the right to file a complaint with the EEO. More significantly, Complainant further stated that following her discussion with her friend, she researched the federal EEO complaint process and "*discovered the 45-day time limit*. The next day, December 6th, [2018], I initiated EEO contact. [emphasis added]"

The Agency did not respond to Complainant's appeal.

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination should be brought to the attention of the Equal Employment Opportunity Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within forty-five (45) days of the effective date of the action. Failure to bring an alleged discriminatory matter to the attention of an EEO Counselor in a timely manner pursuant to regulation, and absent circumstances requiring extension, see 29 C.F.R. § 1614.105(a)(1) mandates dismissal of complaints for untimeliness. 29 C.F.R. § 1614.107(a)(2).

We note that Complainant, on appeal, argues that she had no actual or constructive knowledge of the limitation period for contacting an EEO Counselor. We also note that in its final decision, the Agency determined that Complainant told the EEO Counselor that she did not initiate counseling within 45 days because she was "not used to seeing Caucasian people file EEO," and that she "did not know [she] had the right to file until talking to a family member in December." Where, as herein, 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." Guy v. Department of Energy, EEOC Request No. 05930703 (January 4, 1994) (quoting Williams v. Department of Defense, EEOC Request No. 05920506 (August 25, 1992)). In addition, in Ericson v. Department of the Army, EEOC Request No. 05920623 (January 14, 1993), the Commission stated "the agency has the burden of proving evidence and/or proof to support its final decisions," see also Gens v. Department of Defense, EEOC Request No. 05910837 (January 31, 1992).

In the instant case, we find that the Agency provided no documentation reflecting Complainant's actual or constructive knowledge of the 45-day limitation period. Complainant expressly indicated that she was unaware of the EEO Counselor contact filing period until she learned of this issue on her own in December 2018. We are therefore persuaded by Complainant's assertions that she had no knowledge of the limitation period until more than 45 days after the

most recent discriminatory event purportedly occurred. Therefore, the Agency improperly dismissed the formal complaint for untimely EEO Counselor contact.

The Agency's dismissal of the formal complaint final decision dismissing Complainant's formal complaint for untimely EEO Counselor contact is REVERSED. 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. 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 CFR § 1614.503(f) for enforcement by that agency.

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).

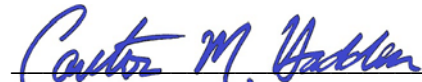
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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

September 6, 2019

Date