



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

[REDACTED]
Dionne W.,¹
Complainant,

v.

Steven T. Mnuchin,
Secretary,
Department of the Treasury
(Internal Revenue Service),
Agency.

Appeal No. 2019005917

Hearing No. 420-2019-00080X

Agency No. IRS-18-0241-F

DECISION

Simultaneously with its September 23, 2019 final order, the Agency filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) pursuant to 29 C.F.R. § 1614.403(a). The Agency requests that the Commission affirm its rejection of a decision by an EEOC Administrative Judge dismissing Complainant's complaint of discrimination as untimely filed.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Revenue Officer at the Agency's SBSE Field Collection facility in Birmingham, Alabama.

On March 11, 2018, Complainant filed a formal EEO complaint alleging the Agency subjected her to unlawful retaliation for engaging in prior protected EEO activity in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., when:

1. In November and December 2017, Complainant's supervisor reassigned Complainant another Revenue Officer's cases that were outside Complainant's

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.

- territory area and then refused to transfer the cases that should not have been assigned to Complainant in the first place.
2. During a team meeting on December 7, 2017, Complainant's supervisor told Complainant that the supervisor could guarantee Complainant she "will be gone by April [2018]."
 3. During a Performance Evaluation Discussion on December 21, 2017, Complainant's supervisor dismissed Complainant's explanation of management-imposed reasons for untimely completion of her cases and threatened to write her up.
 4. On January 31, 2018, and other occasions, members of management sabotaged Complainant's efforts to timely complete her work by not signing summons or processing Complainant's cases, and the supervisor told Complainant it was because no one liked speaking to Complainant.
 5. On February 8, 2018, Complainant's supervisor imposed on Complainant surprise "resolution" meetings with two coworkers with whom Complainant was experiencing work friction.
 6. On February 9, 2018, the group secretary cited Complainant for having insufficient closing time for the week, ostensibly at the supervisor's direction.

The Agency accepted the complaint for processing, conducted an investigation into the claims, and thereafter Complainant requested a hearing.

On September 14, 2019, the EEOC AJ assigned to the case dismissed the complaint, finding the complaint was untimely filed. The AJ determined that Complainant received the notice of right to file on February 23, 2018, but did not file her formal complaint until March 11, 2018, which was 16 days after receipt of the notice, and thus, according to the AJ, one day late.

The Agency rejected the AJ's findings and filed the instant appeal. The Agency argues that the complaint was timely filed and asks that we remand the matter back for a hearing.

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, in turn, requires the filing of a formal complaint within fifteen (15) days of receiving the notice of the right to do so.

Complainant received the notice of right to file a formal complaint on February 23, 2018. The notice indicated, in conformance with EEOC's regulations, that Complainant had to file a formal complaint within fifteen (15) calendar days of its receipt. Therefore, the 15th day fell on Saturday, March 10, 2018. Both Complainant and the Agency agree that Complainant filed her formal complaint one day later, on March 11, 2018.

The Commission's regulation at 29 C.F.R. § 1614.604(d) specifically provides that all regulatory time periods in 29 C.F.R. Part 1614 are to be computed as follows:

The first day counted shall be the day after the event from which the time period begins to run and the last day of the period shall be included, unless it falls on a Saturday, Sunday, or Federal holiday, in which case the period shall be extended to include the next business day.

Here, as noted, Complainant's formal complaint was due March 10, 2018. However, because that date fell on a Saturday, under the regulations the due date was extended to the next business day, in this case, Monday, March 12, 2018. Complainant's formal complaint was filed on March 11, 2018. As such, the complaint was timely filed, and the AJ erred in dismissing it.

CONCLUSION

Accordingly, the Agency's final order rejecting the dismissal by the AJ and finding Complainant's complaint was timely filed is AFFIRMED. The matter is REMANDED back for a hearing as set forth below.

ORDER

Within fifteen (15) calendar days of the date this decision is issued, the Agency shall submit a new hearing request on Complainant's behalf, as well as a copy of the complete complaint file and this appellate decision, to the Hearings Unit of the EEOC's Birmingham District Office. Thereafter, the Administrative Judge shall issue a decision on the complaint in accordance with 29 C.F.R. § 1614.109 and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

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 (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

November 7, 2019

Date