



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

████████████████████
Chong T.,¹
Complainant,

v.

Chad Wolf,
Acting Secretary,
Department of Homeland Security,
Agency.

Appeal No. 2019003571

Agency No. HS-HQ-02132-2018

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated March 27, 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.

BACKGROUND

During the period at issue, Complainant worked as a Criminal Investigator, GS-1811-13, at the Agency's Federal Protective Service facility in Newark, New Jersey.

On May 4, 2018, Complainant initiated EEO Counselor contact. Informal efforts to resolve his concerns were unsuccessful.

On August 14, 2018, Complainant filed the instant formal complaint, claiming that the Agency subjected him to discrimination based on race, sex, and color when, in May 2009, he was hired as a Criminal Investigator, GS-11, performing similar duties as a colleague also hired in 2009 as a GS-12 Criminal Investigator.

On March 27, 2019, the Agency issued a final decision. The Agency dismissed the formal complaint for untimely EEO Counselor contact, pursuant to EEOC Regulation 29 C.F.R. §

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.

1614.107(a)(2). The Agency determined that Complainant's contact with an EEO Counselor on May 4, 2018, for an event occurring in 2009 was beyond the applicable time limitations for timely EEO Counselor contact.

This appeal followed.

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 a personnel action, within forty-five (45) days of the effective date of the action. The Commission has adopted a "reasonable suspicion" standard (as opposed to a "supportive facts" standard) to determine when the forty-five (45) day limitation period is triggered. See Howard v. Department of the Navy, EEOC Request No. 05970852 (February 11, 1999). Thus, the time limitation is not triggered until a complainant reasonably suspects discrimination, but before all the facts that support a charge of discrimination have become apparent.

The record discloses that the alleged discriminatory event occurred on or about May 1, 2009, but Complainant did not initiate contact with an EEO Counselor until May 4, 2018, which is well beyond the forty-five (45) day limitation period. Further the Agency established that Complainant was or should have been familiar with the 45-day limitation period. The Agency submitted a copy of Complainant's training records indicating that he completed No Fear Act training on February 16, 2010 and again on January 10, 2014. The Agency stated that as part of the No Fear Act training, employees are informed of the requisite 45-day time limit for initiating an EEO Counselor contact regarding discrimination claims.

On appeal, Complainant has presented no persuasive arguments or evidence warranting an extension of the time limit for initiating EEO Counselor contact. In reaching this decision, we are not persuaded by Complainant's argument that he only recently developed a reasonable suspicion of discrimination on May 4, 2018, when he completed training on workplace harassment. However, it appears Complainant was aware of the difference in grade between himself and his comparator long before the May 2018 training. The Commission has consistently held that a complainant must act with due diligence in the pursuit of his claim or the doctrine of laches may apply. See O'Dell v. Department of Health and Human Services, EEOC Request No. 05901130 (December 27, 1990). The doctrine of laches is an equitable remedy under which an individual's failure to pursue diligently a course of action could bar her claim. Here, Complainant waited years from his recognition of the disparity in grade in their 2009 hiring between himself and his comparator before he finally contacted an EEO Counselor.

CONCLUSION

The Agency's final decision dismissing the instant formal complaint is **AFFIRMED** for the reasons discussed above.

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).

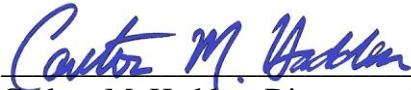
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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:

A handwritten signature in blue ink that reads "Carlton M. Hadden". The signature is written in a cursive style and is positioned above a horizontal line.

Carlton M. Hadden, Director
Office of Federal Operations

December 17, 2019

Date