

103 LRP 9964

Richard I. Jones, Complainant, v. John E. Potter, Postmaster General, United States Postal Service, Agency.

**Equal Employment Opportunity
Commission-OFO**

Appeal No. 01A22051

Agency No. ID-231-0051-01

March 4, 2003

Related Index Numbers

1.334 Standing

4.0072 Representation, During Formal Complaint Process

Ruling

The EEOC affirmed the agency's decision to dismiss the complaint after noting the complainant did not have standing to raise allegations concerning the denial official time.

Meaning

The right to official time for an EEO representative flows from the complainant, and therefore the denial of such time can only be raised by the complainant.

Case Summary

The complainant, who was acting as a representative, did not have standing to raise a complaint alleging he was denied official time and space for a pre-hearing conference.

The complainant, a general expediter, alleged he was subjected to unlawful discrimination when he was denied a room and a telephone for a pre-hearing conference, as well as official time to attend the conference.

The agency found the complainant failed to state a claim because he was the representative of the employee whose complaint was scheduled for the pre-hearing conference and he therefore suffered no employment-related harm or loss. The agency noted the meeting was ultimately held via teleconference from the complainant's home, and that the complainant was not denied official time because he

was not on regular duty status at the time the conference was scheduled.

On appeal, the EEOC found the complainant did not have standing to pursue this complaint because a representative's right to official time flows from an EEO complainant, and therefore such a denial can only be raised by the complainant. The EEOC noted the complainant could also be dismissed as alleging dissatisfaction with the EEO process. Accordingly, it affirmed the agency's decision to dismiss the complaint.

However, the EEOC pointed out its Management Directive states that if complaint-related meetings are scheduled outside of the complainant's or the representative's normal work hours, the agency should adjust the complainant's or representative's work schedule to coincide with such meetings or hearings, or grant compensatory time or official time in connection with the meeting.

Full Text

Decision

Complainant timely initiated an appeal from a final agency decision (FAD) concerning 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. The appeal is accepted pursuant to 29 C.F.R. § 1614.405. For the following reasons, the Commission **AFFIRMS** the agency's final decision.

The record reveals that during the relevant time, complainant was employed as a General Expediter at the agency's Richmond, Virginia facility. Complainant sought EEO counseling and subsequently filed a formal complaint on February 3, 2001, alleging that he was discriminated against on the bases of race (African-American), sex (male), age (D.O.B. 8/4/29), and reprisal for prior EEO activity when on January 30, 2001, he was denied a room and telephone for a pre-hearing conference scheduled for

February 7, 2001.

At the conclusion of the investigation, complainant was informed of his right to request a hearing before an EEOC Administrative Judge or alternatively, to receive a final decision by the agency. Complainant requested that the agency issue a final decision.

In its FAD, the agency concluded that the complaint failed to state a claim because complainant failed to establish how he suffered a harm with respect to a term, condition or privilege of employment. In that regard, the agency noted that complainant served as a representative for another complainant's EEO complaint which was scheduled for a telephonic pre-hearing conference before an EEOC Administrative Judge. Ultimately, complainant and his client met with the EEOC Administrative Judge via teleconference from complainant's home. Complainant states that he requested the agency's conference room and speaker phone for the pre-hearing conference, but was denied the space official time to attend the conference. However, the agency found complainant failed to state a claim because the meeting was ultimately held, and complainant was not denied official time because he was not in a regular duty status when the pre-hearing conference was scheduled.

The agency also found that complainant failed to establish a prima facie case of discrimination because he failed to produce any evidence of similarly situated individuals outside of his protected classes who were treated more favorably. Furthermore, the agency found that it articulated a legitimate, nondiscriminatory reason for denying complainant the office space and phone, namely, that the agency was not required to provide the space.

Upon review of the record, we observe that complainant contends that his requests for official time pertained to EEO activities as a representative for another EEO complainant. The Commission has held that the right to official time for a representative flows from the EEO complainant, and therefore, a denial of official time for a representative is properly

raised by the EEO complainant, and not the representative. *Lambert v. Social Security Administration*, EEOC Request No. 05970586 (October 8, 1998). Therefore, we find that since complainant acted as a representative on behalf of another individual, he does not have standing to raise the issue of being denied official time.

In the alternative, we also find that the complaint could have been dismissed for alleging dissatisfaction with the EEO Process. EEOC Regulation 29 C.F.R. 1614.107(a)(8) provides that the agency shall dismiss an entire complaint that alleges dissatisfaction with the processing of a previously filed complaint.

We do note for the agency's information that the if meetings, conferences, and hearings are scheduled outside of the complainant's or the representative's normal work hours, agencies should adjust or rearrange the complainant's or representative's work schedule to coincide with such meetings or hearings, or grant compensatory time or official time to allow an approximately equivalent time off during normal hours of work. Management Directive 110 (MD-110) at p. 6-18 (November 9, 1999).

Therefore, after a careful review of the record, including and arguments and evidence not specifically addressed in this decision, we affirm the FAD.

Statement of Rights -- On Appeal Reconsideration (M0701)

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 or within twenty (20)

calendar days of receipt of another party's timely request for reconsideration. *See* 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), 9-18 (November 9, 1999). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, D.C. 20036. 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 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 (S0900)

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 (Z1199)

If you decide to file a civil action, and if you do not have or cannot afford the services of an attorney,

you may request that the Court appoint an attorney to represent you and that the Court permit you to file the action without payment of fees, costs, or other security. *See* Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791, 794(c). The grant or denial of the request is within the sole discretion of the Court. Filing a request for an attorney does not extend your time in which to file a civil action. Both the request and the civil action must be filed within the time limits as stated in the paragraph above ("Right to File A Civil Action").

Regulations Cited

29 CFR 1614.107(a)(8)

Cases Cited

EEOC Request No. 05970586