

APPENDIX

APPENDIX

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APPENDIX A

United States Court of Appeals
for the Fifth Circuit

No. 20-50193
Summary Calendar

DOLORES MACHUCA,

Plaintiff—Appellant,

Versus

LOUIS DEJOY, Postmaster General and Chief
Executive Officer, United States Postal Service,

Defendant—Appellee.

United States Court of
Appeals
Fifth Circuit
FILED
December 16, 2020
Lyle W. Cayce
Clerk

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:17-CV-46

Before Haynes, Willett, and Ho, Circuit Judges.
Per Curiam:*

Dolores Machuca, a mail carrier with the United States Postal Service, sued the Postmaster General for disability discrimination, retaliation, failure to accommodate, and hostile work environment under the Americans with Disabilities

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Act and § 504 of the Rehabilitation Act.¹ The district court granted summary judgment for the Postmaster General, reasoning that ADA claims cannot be maintained against the federal government and that Machuca failed to exhaust her Rehabilitation Act claims. The court also denied Machuca’s belated attempt to bring new claims..

On appeal, Machuca only challenges the ruling on her Rehabilitation Act claims. But she concedes the key point: She failed to exhaust her administrative remedies. She nonetheless argues that her case should proceed as a matter of equity because the Postmaster General did not timely present failure to exhaust as a defense. Specifically, she contends that the Postmaster General should have raised the issue in a motion to dismiss instead of at summary judgment. As support, Machuca relies on *Davis v. Fort Bend County*’s instruction that “[f]ailure to exhaust is an affirmative defense that should be pleaded.” 893 F.3d 300, 307 (5th Cir. 2018), aff’d, 139 S. Ct. 1843 (2019). Machuca’s reliance on *Davis* is misplaced. The Postmaster General pleaded failure to exhaust as an affirmative defense in his answer to Machuca’s second amended complaint. And *Davis* does not address when the defense should be litigated on the merits. After

¹ Postmaster General Louis DeJoy is automatically substituted for Megan J. Brennan as the defendant under Federal Rule of Appellate Procedure 43(c)(2).

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completing the necessary discovery, the Postmaster General moved for summary judgment. There is no authority requiring a defendant to assert an affirmative defense at the motion to dismiss stage, particularly where, as here, discovery is necessary to establish the merits of that defense

Machuca also argues that factual disputes preclude summary judgment. Because Machuca's failure to exhaust is dispositive, the district court did not reach this argument, and neither do we.

AFFIRMED.

United States Court of Appeals
for the Fifth Circuit

No. 20-50193
Summary Calendar

DOLORES MACHUCA,

Plaintiff—Appellant,

Versus

LOUIS DEJOY, Postmaster General and Chief
Executive Officer, United States Postal Service,

Defendant—Appellee.

United States Court of
Appeals
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Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:17-CV-46

Before Haynes, Willett, and Ho, Circuit Judges,

J U D G M E N T

This cause was considered on the record on
appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the
judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that Appellant
pay to Appellee the costs on appeal to be taxed by the
Clerk of this Court.

APPENDIX B

Case 4:17-cv-00046-DC Document 47 Filed 02/13/20

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
PECOS DIVISION

DOLORES MACHUCA,

Plaintiff,

VS.

P:17-CV-00046-DC

MEGAN J. BRENNAN, POSTMASTER
GENERAL AND CHIEF EXECUTIVE
OFFICER, UNITED STATES POSTAL
SERVICE,

Defendant.

FINAL JUDGMENT

On this day, the Court entered an Order Adopting the Report and Recommendation of United States Magistrate Judge David B. Fannin. The Court, in adopting the Report and Recommendation, dismissed with prejudice all of Plaintiff Dolores Machuca's claims against Defendant Megan J. Brennan, Postmaster General and Chief Executive Officer, United States Postal Service. The Court now enters its Final Judgment pursuant to Federal Rule of Civil Procedure 58.

It is therefore ORDERED that Defendant's Motion for Summary Judgment is GRANTED.

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It is further ORDERED that all of Plaintiff's claims against Defendant are DISMISSED WITH PREJUDICE.

It is further ORDERED that the final pretrial hearing set for March 16, 2020, and jury trial set for April 21, 2020, are VACATED.

The Court finally ORDERS the Clerk of the Court to CLOSE this case.

It is so ORDERED.

SIGNED this 13th day of February, 2020

DAVID COUNTS

United States District Judge

APPENDIX C

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

Dolores G. Machuca, a/k/a
Cecile S.,¹
Complainant,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service
(Southern Area),
Agency.

Appeal No. 0120171639

Agency No. 40-780-0024-17

DECISION

Complainant filed a timely appeal with this Commission from the final Agency's decision (FAD) dated March 27, 2017, dismissing her complaint of unlawful employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791

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.

et seq. Upon review, the Commission finds that the Agency's dismissal of the claims on the grounds of untimely EEO Counselor contact and for failure to state a claim was proper and therefore the FAD is AFFIRMED.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier at the Agency's Post Office in Pecos, Texas. On March 7, 2017, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of disability (back) and reprisal for prior protected EEO activity when:

1. On May 26, 2012, Pecos Post Office management improperly completed and/or submitted her paperwork for Occupational Disease and Illness.
2. On August 20, 2013, the Agency changed her employee benefits after she began a Limited Duty/Modified Work Assignment.
3. On April 23, 2014, she was issued a Letter of Demand (702542115) for \$898.25.
4. On May 28, 29, and 30, 2015, the Postmaster required her to work outside of her Limited Duty/Modified Work Assignment and medical restrictions.
5. On June 1, 2015, after a doctor determined her medical conditions had worsened, the Agency reduced her work hours from six hours per day to four hours per day and further reduced her annual leave.
6. On November 10, 2016, the union steward

falsely accused her of holding up the vacation calendar.

7. On November 19, 2016, the officer in charge was unable to provide a sufficient explanation as to why the Postmaster went against her Limited Duty/Modified Work Assignment and medical restrictions, and why her annual leave was reduced.
8. On December 3, 2016, she was informed that the management official who had previously worked on resolving her situation(s) had recently retired, and the officer in charge was unable to provide the name of the management official who would now resolve her situation(s).

On March 27, 2017, the Agency issued a final decision dismissing claims 1, 2, 3, 4, and 5 for untimely EEO Counselor contact pursuant to 29 C.F.R. § 1614.107(a)(2), and dismissing claims 6, 7, and 8 for failure to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1). Claim 3 was also dismissed alternatively on the grounds of failure to state a claim.

ANALYSIS AND FINDINGS

Claims 2, 4, and 5-Untimely EEO Counselor Contact

The regulation set forth at 29 C.F.R. § 1614.107(a)(2) states, in relevant part, that the agency shall dismiss a complaint or a portion of a complaint that fails to comply with the applicable time limits contained in 29 C.F.R. § 1614.105.

Under 29 C.F.R. § 1614.105(a)(1), an aggrieved person must initiate contact with an EEO Counselor within 45 days of the date of the matter alleged to be discriminatory, the effective date of an alleged discriminatory personnel action, or the date that the aggrieved person knew or reasonably should have known of the discriminatory event or personnel action.

The record discloses that claims 2, 4, and 5² occurred on August 20, 2013, May 28, 29, and 30, 2015, and June 1, 2015 respectively. The record also discloses that Complainant did not initiate contact with an EEO Counselor until November 19, 2016, which is beyond the 45-day limitation period.³

On appeal, Complainant has presented no persuasive arguments or evidence warranting an extension of the time limit for initiating EEO Counselor contact. Therefore, the Commission finds that claims 2, 4, and 5 were properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(2) for untimely EEO Counselor contact.

² Claim 5 is not entirely clear and Complainant is herself not clear. However, it appears from reading the record that Complainant is claiming annual leave loss. To the extent that this loss is related to her workers' compensation claim, it does not state a claim under the discrimination statutes.

³ Here, Complainant alleges a denial of an accommodation on the three May 2015 dates but some form of accommodation was given by June 1, 2015. Therefore, the recurring violation approach explained in *Mitchell v. Dep't of Commerce*, EEOC Appeal No. 01934120 (Mar. 4, 1994) would not be applicable.

Claims 1, 3, 6, 7, and 8-Failure to State a Claim

The regulation set forth at 29 C.F.R. § 1614.107(a)(l) states, in relevant part, that an agency shall dismiss a complaint that fails to state a claim. The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994).

Further, a complaint shall be dismissed for failure to state a claim where the complainant impermissibly uses the EEO complaint process to lodge a collateral attack on another forum's proceeding. A claim that can be characterized as a collateral attack, by definition, involves a challenge to another forum's proceeding, such as the grievance process, the workers' compensation process, an internal agency investigation, or state or federal litigation. See Fisher v. Dep't of Defense, EEOC Request No. 05931059 (July 15, 1994). Accordingly, claims 1 and 6 pertained to the grievance and workers' compensation process. In addition, the proper forum for a complainant to raise challenges to the Letter of Demand, as set forth in claim 3, is under the Debt Collection Act process. Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120132152 (Aug. 14, 2015).

The Commission finds that claims 1, 3, 6, 7, and 8 fail to state a claim under the EEOC regulations because Complainant failed to show that he suffered harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. See Diaz. Therefore, the Commission finds that claims 1, 3, 6, 7, and 8 were properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(l) for failure to state a claim.

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is **AFFIRMED**.

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
(T0610)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. 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 on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. In the alternative, you may file a civil action after one hundred eighty (180) calendar days of the date you

filed your complaint with the Agency, or your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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:

Pet. App. 15

Carlton M. Hadden

Carlton M. Hadden, Director
Office of Federal Operations

Jul 14, 2017

Date

Pet. App. 16

CERTIFICATE OF MAILING

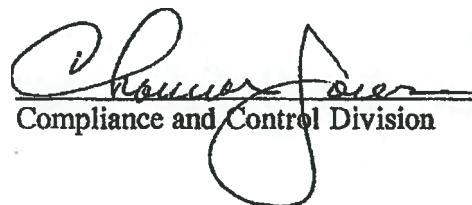
For timeliness purposes, the Commission will presume that this decision was received within five (5) calendar days after it was mailed. I certify that this decision was mailed to the following recipients on the date below:

Dolores G. Machuca
1300 S. Cherry St. #52
Pecos, TX 79772

U.S. Postal Service (Southern)
NEEOISO - Appeals
U.S. Postal Service PO Box 21979
Tampa, FL 33622-1979

Jul 14, 2017

Date



Compliance and Control Division

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

Dolores G. Machuca, a/k/a
Cecile S.,¹
Complainant,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service
(Southern Area),
Agency.

Appeal No. 0120160418

Agency No. 40-780-0182-15

DECISION

Complainant filed a timely appeal with this Commission from the Agency's final decision dated October 15, 2015, 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. § 2000eet seq.

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.

BACKGROUND

During the period at issue, Complainant worked as a City Carrier at the Agency's Pecos, Texas Post Office .

On September 25, 2015, Complainant filed the instant formal complaint. Therein, Complainant alleged that the Agency subjected Complainant to discrimination in reprisal for prior EEO activity when:

1. on an unspecified date, management threatened to charge Absent Without Leave;
2. on July 28, 2015, the supervisor said only English should be spoken at work;
3. on July 31, 2015, Complainant was notified that the Department of Labor's Office of Workers Compensations Program had denied his claim; and
4. on August 29, 2015, the Officer-in-Charge told Complainant that he would help assist in resolving various concerns, but left before doing so.

In its October 15, 2015 final decision, the Agency dismissed the formal complaint for failure to state a claim, pursuant to 29 C.F.R. § 1614.107(a)(1), finding that Complainant was not aggrieved. Regarding claims 1 - 2 and 4, the Agency noted that Complainant was not disciplined or

subjected to any adverse personnel action as a result of the alleged events.

Regarding claim 3, the Agency found that this claim constitutes a collateral attack on Department of Labor's Office of Workers Compensations Program (OWCP) process concerning OWCP claims. The Agency stated that Complainant should have raised allegations through the OWCP process, not through the EEO process.

The instant appeal followed.

ANALYSIS AND FINDINGS

As a threshold matter, we find that the Agency improperly fragmented Complainant's claim of ongoing discriminatory harassment/hostile work environment by dismissing the formal complaint for failure to state a claim. Specifically, the Agency determined that claim 3 was a collateral attack on the OWCP process, and that in regard to claims 1 - 2 and 4, Complainant was not aggrieved. A fair reading of the formal complaint, Complainant claimed to being subjected to a series of related incidents of harassment from June 2015 through present.

In the attachment to the instant formal complaint, Complainant states that management threatened placement on Absence Without Leave "for no reason I [Complainant] had and have a copy of PS Form -3971 approved for my annual leave of 6-15-15 tbru 6-20-15." Complainant also states that when the supervisor mentioned only English

should be spoken at the Pecos Post Office, Complainant asked him "where in the manual does it say no Spanish speaking, [supervisor] said it does say in there. I [Complainant] asked [supervisor] again where at [supervisor] said it is in the big sign when you cross the border coming into the United States of America, it says America English speaking only."

Regarding claim 4 (which the Agency found addressed an OWCP matter), Complainant expressly detailed the event of August 29, 2015, the Officer-in-Charge indicated that he would help Complainant resolve various concerns, but left before doing so. Complainant indicated that there were unsuccessfully attempts to raise this matter to the attention of other Agency officials since the Pecos Post Office had at least five different Officers-in-Charge this year.

As a remedy, Complainant requested "to be treated in a right manner and not to be retaliated or threaten by any managers or upper management just because there is no record keeping for me (Complainant] in the United States Post Office of Pecos, TX. 79772" and compensatory damages. These matters, taken together, state a justiciable harassment claim. See Cervantes v. USPS, EEOC Request No. 05930303 (November 12, 1993).

Finally, however, to the extent that Complainant claimed that the OWCP claim was denied (as identified in claim 3), such matters constitute a collateral attack on the OWCP grievance process. An employee cannot use the EEO complaint

process to lodge a collateral attack on another proceeding. See *Wills v. Department of Defense*. EEOC Request No. 05970596 (July 30, 1998); *Kleinman v. United States Postal Service*. EEOC Request No. 05940585 (September 22, 1994); *Lingad v. United States Postal Service*, EEOC Request No. 05930106 (June 24, 1993). The proper forum for Complainant to have raised challenges to actions which occurred during the OWCP process is within that process itself.

The Agency's final decision dismissing claim 3 is **AFFIRMED**. We **REVERSE** the Agency's final decision dismissing the remaining claims, defined herein as a harassment/hostile work environment claim), and we **REMAND** this matter to the Agency *for* further processing in accordance with the **ORDER** below.

ORDER (B0610)

The Agency is ordered to process claims 1 - 2 and 4 (harassment/hostile work environment) in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall acknowledge to the Complainant that it has received the remanded claim within thirty (30) calendar days of the date this decision becomes final.

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 the date this decision becomes final, 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.

A copy of the Agency's letter of acknowledgment to Complainant and a copy of the notice that transmits the investigative file and notice of rights must be sent to the Compliance Officer as referenced below.

IMPLEMENTATION OF THE COMMISSION'S DECISION
(K0610)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report **within thirty (30) calendar days** of the completion of all ordered corrective action. The report shall be submitted to the Compliance Officer, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 77960, Washington, DC 20013. The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. 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. § 1614.407(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 (M0610)

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-11 0), at 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 77960, Washington, DC 20013. 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. 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
(T0610)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. 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 on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative proceeding. In the alternative, you may file a civil action after one hundred and eighty (180) calendar days of the date you filed your complainant with the Agency, or your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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 Complainants Right to File a Civil Action for the specific time limits).



Carlton M. Hadden,
Director Office of Federal Operations
Apr 08 2016
Date

Pet. App. 26

CERTIFICATE OF MAILING

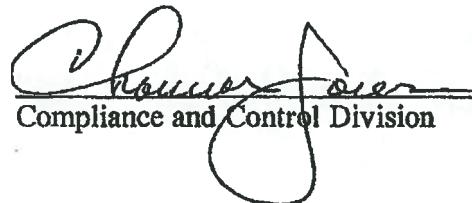
For timeliness purposes, the Commission will presume that this decision was received within five (5) calendar days after it was mailed. I certify that this decision was mailed to the following recipients on the date below:

Dolores G. Machuca 1300 S.
Cherry St. #52
Pecos, TX 79772

U.S. Postal Service (Southern)
NEEOISO - Appeals
U.S. Postal Service PO Box
21979
Tampa, FL 33622-1979

Apr 08 2016

Date



Compliance and Control Division

APPENDIX D

42 U.S.C. § 12101

(a) Findings

The Congress finds that-

(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

42 U.S.C. § 12102

(1) Disability

The term "disability" means, with respect to an individual-

- (A)** a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B)** a record of such an impairment; or
- (C)** being regarded as having such an impairment (as described in paragraph (3)).

42 U.S.C. § 12111

(8) Qualified individual

The term "qualified individual" means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation

The term "reasonable accommodation" may include-

- (A)** making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
- (B)** job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the

provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

42 U.S.C. § 12112

(a) General rule No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

42 U.S.C. § 12133

The remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.

APPENDIX E

29 U.S.C. § 794

(a) Promulgation of rules and regulations

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(d) Standards used in determining violation of section

The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510,¹ of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.