

2. Your personal items and household effects were not timely shipped to you.

ROI, Issues To Be Investigated at 1 of 7.

Complainant was simultaneously informed via a Notice of Dismissed Allegations, dated November 22, 2010, that the Agency was dismissing the following specific claim, pursuant to 29 C.F.R. § 1614.107(b):

Because of your age (DOB: 05/15/1953) and reprisal (opposing discriminatory policies or practices), you were denied tenure on April 27, 2010.

ROI, Issues To Be Investigated (Notice of Dismissed Allegations) at 5 of 7. The Agency explained that this claim was dismissed because Complainant had failed to timely contact an EEO Counselor within 45 calendar days from the date of the alleged action, as required under 29 C.F.R. § 1614.105(a)(1). *Id.* While EEOC regulations permit an agency to extend the 45-day time limit in certain limited circumstances, *see* 29 C.F.R. §1614.105(a)(2), the Agency found that Complainant had failed to produce credible evidence that warranted such an extension:

Based on a review of your formal complaint, it appears that you were aware of the time limits, knew that alleged discriminatory action occurred, and were not prevented by circumstances outside your control. You have failed to establish that you meet any of the four possible exceptions to the 45-day period.

ROI, Issues To Be Investigated (Notice of Dismissed Allegations) at 5 of 7. Accordingly, Complainant's claim was dismissed.

DISCUSSION

The Agency properly dismissed Complainant's untimely claim that he was denied tenure on April 27, 2010, because of his age and in reprisal for his prior opposition to discriminatory policies or practices. Pursuant to 29 C.F.R. § 1614.105(a)(1), "[a]n aggrieved person must initiate contact with a Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within 45 days of the effective date of the

action.” An agency may extend the 45-day time limit if the complainant can establish that he/she: was not aware of the time limit; did not know and reasonably should not have known that the discriminatory matter or personnel action occurred; was prevented by circumstances beyond his/her control from contacting the EEO Counselor within the time limit, despite due diligence; or for other reasons considered sufficient by the agency or Commission. 29 C.F.R. § 1614.204(c). EEOC regulation 29 C.F.R. § 1614.107(a)(2) states that the Agency shall dismiss a complaint, or portion thereof, that fails to comply with the applicable time limits contained in, *inter alia*, 29 C.F.R. § 1614.105(a)(1), unless the Agency extends the time limits in accordance with 29 C.F.R. § 1614.105(a)(2).

In this case, Complainant did not initiate contact with an EEO Counselor until August 4, 2010 – well after the 45-day deadline for initiating contact in connection with the alleged denial of tenure, which Appellant learned of on April 27, 2010 and which was officially announced on May 1, 2010. *See* ROI, EEO Counselor’s Report at 2 of 5 (“The aggrieved was made aware of the fact that he wasn’t tenured on April 27, 2010 (the official tenure list was published on May 1, 2010)”). Complainant failed to provide any reason to extend this deadline. The Agency therefore properly found that none of the circumstances for extensions delineated in the regulations applied and correctly dismissed Complainant’s claim as untimely.

Complainant has not shown otherwise in his “Memorandum Appealing Dismissal,” dated December 12, 2011.¹ Complainant does not provide any credible evidence that he timely initiated contact within the 45-day deadline nor does he demonstrate that an extension of that deadline is warranted under EEOC regulations. Rather, Complainant appears to mistakenly

¹ Complainant hand-delivered the December 12, 2011 Memorandum to Agency counsel on or about December 12th. Complainant did not serve a copy of the Memorandum via electronic mail, as required by local rules, nor did Complainant indicate in his Certificate of Service that a copy of the Memorandum was filed with Administrative Judge Kevin C. Rung. It is therefore unclear whether Complainant filed this Memorandum with the EEOC. The Agency nonetheless briefly addresses the assertions made therein.

contend that a discussion he alleges he had with the Embassy's Deputy Chief of Mission and a Human Resources Technician at the Freetown Embassy satisfied the EEOC's timeliness requirement. *See* Compl.'s Mem. at 3. EEOC regulations, however, require that a complainant timely initiate contact with an EEO Counselor. 29 C.F.R. § 1614.105(a)(1).² This Complainant has not shown. His claim of denial of tenure was therefore appropriately dismissed as untimely.

CONCLUSION

For the reasons set forth above, the Agency respectfully submits that the Agency properly dismissed Complainant's denial of tenure claim as untimely.

Respectfully submitted,

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² Complainant contends that he was unable to timely present evidence of this discussion with Embassy officials to the Agency's Office of Civil Rights because necessary documents supporting his assertions were located in his personal effects, to which he did not have access. For this reason, Complainant requests that his complaint be amended to add a claim of "obstruction," based on his apparent belief that the Agency purposefully withheld his personal effects to prevent him from demonstrating timeliness. Compl.'s Mem. at 6. Complainant, however, has pointed to no evidence that supports a finding that his regarding denial of tenure was timely; his allegation that the Agency therefore obstructed his ability to demonstrate timeliness is without merit. Complainant has not shown that amendment is appropriate.

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Discovery Requests to be served on December 29, 2011, as follows:

Complainant

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