

6.0 | BRIEFS INVOLVING APPEALS FROM PROCEDURAL DISMISSALS

If the Agency or AJ dismissed a complaint on “procedural” grounds (such as untimely EEO Counselor contact, failure to state a claim, etc.), rather than making a determination as to whether or not discrimination occurred (on the “merits”), you should not argue the merits of the complaint in your brief. Rather, you should focus on what you believe is improper about the Agency’s procedural dismissal.

For example, if the agency dismissed your complaint on the grounds that the formal complaint was not filed within 15 days of receipt of the Notice of Right to File, you should clearly state in your brief why your formal complaint should be considered timely by clearly identifying significant dates, such as receipt of the Notice of Right to File and the manner and date that the formal complaint was filed. If you have proof of those dates (such as a certified-mail receipt or a copy of an e-mail), attach a copy to your brief and “cite” or reference it in the brief.

Please refer to Attachment I for a sample brief involving an appeal from a procedural dismissal.

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