

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-2966

Michelle Denise Lingo,

Appellant,

v.

John Potter, Postmaster General,
United States Postal Service,

Appellee.

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* Appeal from the United States
* District Court for the
* Eastern District of Missouri.
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* [UNPUBLISHED]
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Submitted: September 29, 2006

Filed: October 3, 2006

Before MURPHY, BYE, and MELLOY, Circuit Judges.

PER CURIAM.

Michelle Denise Lingo appeals the district court's¹ grant of United States Postmaster General John E. Potter's motion to dismiss her Title VII employment-discrimination lawsuit for failure to exhaust administrative remedies. We conclude dismissal was proper because the complaint and attached exhibit indicated that Lingo contacted an Equal Employment Opportunity (EEO) counselor more than forty-five days after the discriminatory actions alleged in her complaint; the pleadings did not

¹The Honorable Charles A. Shaw, United States District Judge for the Eastern District of Missouri.

assert a basis for the delay; and Lingo did not respond to the motion to dismiss, which raised the timeliness issue. See 29 C.F.R. § 1614.105(a) (2005) (stating Title VII 45-day requirement and exceptions); Burkett v. Glickman, 327 F.3d 658, 660 (8th Cir. 2003) (holding employment-discrimination claim was barred where record revealed discriminatory event did not occur within 45 days preceding consultation with EEO counselor). We decline to consider the tolling arguments Lingo presents for the first time on appeal. See Briley v. Carlin, 172 F.3d 567, 571 (8th Cir. 1999). Accordingly, we affirm the district court except that the judgment shall be modified to indicate that the dismissal is without prejudice.
