

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 24 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JULIAN R. HOOD, JR.,

Plaintiff-Appellant,

v.

UNITED STATES POSTAL SERVICE,

Defendant-Appellee.

No. 16-56053

D.C. No. 3:16-cv-01312-JAH-JLB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
John A. Houston, District Judge, Presiding

Submitted April 11, 2017**

Before: GOULD, CLIFTON, and HURWITZ, Circuit Judges.

Julian R. Hood, Jr., appeals pro se from the district court's judgment dismissing his employment action against the United States Postal Service. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii). *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Cir. 1998) (order). We affirm.

The district court properly dismissed as untimely Hood's action because Hood failed to initiate contact with the Equal Employment Opportunity ("EEO") Counselor within 45 days of the alleged discriminatory incident. *See* 29 C.F.R. § 1614.105(a)(1) ("An aggrieved person must initiate contact with a Counselor within 45 days of the date of the matter alleged to be discriminatory[.]"); *see also Lyons v. England*, 307 F.3d 1092, 1105 (9th Cir. 2002) (failure to comply with this 45 day requirement is "fatal to a federal employee's discrimination claim").

We do not consider any claims that Hood did not raise before the district court. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Hood's opposed "Motion Requesting Court to Take Judicial Notice of Additional Medical Exhibits" (Docket Entry No. 3) is denied.

Hood's request for reimbursement of costs, set forth in his opening brief, is denied.

AFFIRMED.