



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

[REDACTED]
Erick K.,¹
Complainant,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service,
Agency.

Appeal No. 0120142888

Hearing No. 471-2013-00089X

Agency No. 4J-487-0025-12

DECISION

Complainant filed an appeal from the Agency's July 17, 2014 final order concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. The Commission deems the appeal timely and accepts it for de novo review pursuant to 29 C.F.R. § 1614.405(a). For the following reasons, the Commission AFFIRMS the Agency's final order.

BACKGROUND

Complainant worked as a Maintenance Mechanic at the Agency's Metroplex facility in Pontiac, Michigan. On December 27, 2012, he filed an EEO complaint in which he alleged that members of a promotion panel discriminated against him on the bases of race (Caucasian), sex (male), and age (59) by rating him ineligible for promotion following a pair of interviews held on July 18, 2012. At the conclusion of the ensuing investigation, the Agency notified Complainant of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing, but over his

¹This 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.

objections, the AJ assigned to the case granted the Agency's September 30, 2013, motion for summary judgment and issued a decision on June 30, 2014, without holding a hearing. The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

On July 18, 2012, Complainant was interviewed for the promotion eligibility roster for the positions of Building Equipment Mechanic, Area Maintenance Specialist, and Area Maintenance Technician. The interview panel consisted of a Maintenance Engineering Support Manager (P1), a Maintenance Operations Support Manager (P2), and a Human Resources Generalist Principal (P3). Later that day, he was interviewed by a second panel for the promotion eligibility roster for the M27 and M30 Electronic Technician Positions. The Panelists included P1, P3, and another panelist whose title was not disclosed (P4). Complainant received the following ratings based on his performance during the two interviews:

<u>Competencies</u>	<u>Panel 1 (P1, P2, P3)</u>	<u>Panel 2 (P1, P3, P4)</u>
Information Usage	2 out of 5	2 out of 5
Safe Work Habits	2 out of 5	1 out of 5
Analytical Problem Solving	2 out of 5	1 out of 5
Organizational Citizenship	2 out of 5	2 out of 5
Electronics Knowledge	2 out of 5	2 out of 5
Skilled Trades	1 out of 5	N.A.

On the basis of his interview scores, he was rated as ineligible for both promotion rosters. Investigative Report (IR) 67, 71-72, 85-90.

ANALYSIS AND FINDINGS

The Commission cannot second-guess an Agency's personnel decisions involving promotions unless there is evidence of a discriminatory motivation on the part of the officials responsible for making those decisions. See Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 259 (1981). Therefore, in order to warrant a hearing on his disparate treatment claim, Complainant would have to present enough evidence to raise a genuine issue of material fact as to whether any of the panelists unlawfully took his race, sex, or age into consideration when determining that he failed the maintenance promotion interviews. See 29 C.F.R. § 1614.109(g); Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 143 (2000).

In circumstantial-evidence cases such as this, Complainant can raise a genuine issue of material fact as to the existence of an unlawful motivation by presenting documents or sworn testimony showing that the reasons articulated by the panelists for failing Complainant are pretextual, i.e., not the real reason but rather a cover for race, sex, or age discrimination. St. Mary's Honor Society v. Hicks, 509 U.S. 502, 515 (1993) citing Burdine, 450 U.S. at 253. Evidence of pretext can include discriminatory statements or past personal treatment attributable to one

or more of the panelists, comparative or statistical data revealing differences in treatment across racial, gender, or age-related lines, unequal application of Agency policy, deviations from standard procedures without explanation or justification, or inadequately explained inconsistencies in the evidentiary record. Mellissa F. v. United States Postal Service, EEOC Appeal No. 0120141697 (November 12, 2015).

When asked by the investigator why he believed that the panels took his race, sex, and age into account when interviewing him, Complainant responded with generalized assertions, such as “I was told that all white males were passed over,” “most of the women passed but none of the men,” and “all employees that passed were younger than me.” IR 57-58. His entire claim appears to be rest on the notion that the acts complained of in and of themselves are sufficient to establish motive. This is simply not true. The laws the Commission enforces cannot prevent an employer from making decisions with which its employees disagree unless those decisions are rooted in a statutorily proscribed motivation. And on this crucial issue, Complainant did not provide evidence of any of the indicators of pretext described above. He has not submitted any sworn statements from other witnesses or documents that contradict the explanation provided by the four panelists or which call their veracity into question. We therefore find, as did the AJ, that no genuine issue of material fact exists with respect to Complainant’s discrimination claim in connection with not being selected for the two promotion rosters.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, we **AFFIRM** the Agency’s final order.

STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0815)

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-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, 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. See 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).

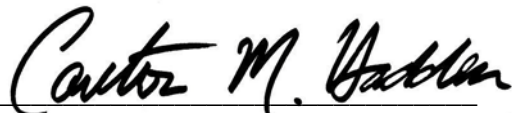
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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. 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:



Carlton M. Hadden, Director
Office of Federal Operations

January 14, 2016
Date