



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

[REDACTED]  
Stevie R.,<sup>1</sup>  
Complainant,

v.

John Kerry,  
Secretary,  
Department of State,  
Agency.

Appeal No. 0120143270

Agency No. DOS-F-077-12

DECISION

On September 24, 2014, Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's May 13, 2013<sup>2</sup>, final decision concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 *et seq.* Our review is de novo. For the following reasons, the Commission AFFIRMS the Agency's final decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an entry-level Vice-Consul at the Agency's Consulate General in Karachi, Pakistan. The record reflects that Complainant commenced duty at the Karachi post on July 18, 2011, and was involuntarily curtailed from Karachi on April 7, 2012.

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<sup>1</sup> This 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.

<sup>2</sup> Complainant stated in his appeal brief that he received the FAD on August 25, 2014, after contacting the Agency to inquire about his complaint. Complainant stated that the Agency had originally attempted to serve him with the FAD via an Agency email address he no longer had access to, and had not sent a hard copy to his mailing address. The Agency does not dispute this, therefore we deem Complainant's appeal to be timely filed.

On May 1, 2012, Complainant filed an EEO complaint wherein he claimed that the Agency discriminated against him on the bases of his race (Hispanic), age (40), and in reprisal for his prior protected EEO activity under Title VII and the ADEA when:

1. On January 4, 2012, he was issued a Letter of Admonishment;
2. On April 7, 2012, he was involuntarily curtailed from his Karachi post; and
3. He was subjected to a hostile work environment characterized by, but not limited to, inappropriate and demeaning comments and emails.

The Agency subsequently accepted the following additional claim: 4. On May 15, 2012, Complainant was subjected to reprisal when he was issued a negative Employee Evaluation Report.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested that the Agency issue a final decision. Complainant also raised several concerns with regard to the investigation, and the Agency subsequently conducted a supplemental investigation. In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b).

The Agency determined that Complainant failed to prove that the Agency subjected him to discrimination as alleged. With regard to claim (1), the Letter of Admonishment was issued after Complainant violated the post policy concerning overtime for consular officers. The policy issued June 22, 2011, provided that all consular officers who were eligible for overtime were preauthorized consular-related work up to twenty hours per pay period. Anything related to work outside the Consular Section or for work over twenty hours needed to be preauthorized. The consular officers at Karachi were informed of the policy during a meeting on September 21, 2011. Complainant exceeded twenty hours of overtime without preauthorization when he claimed 23 hours of overtime for a pay period in December 2011.

On December 17, 2011, Complainant's Supervisor (the Consular Section Chief) brought this matter to Complainant's attention and inquired whether he would like to make an adjustment. Complainant responded that he was not going to make an adjustment and he criticized his Supervisor. The Supervisor had previously experienced problems with Complainant and after this exchange she contacted the Agency's Office of Employee Relations. An official in that office advised the Supervisor that it was time to issue Complainant a formal Letter of Admonishment. On January 4, 2012, the Senior Human Resources Officer for the Embassy in Islamabad issued the Letter of Admonishment. The Letter noted Complainant's failure to obtain preauthorization for the additional overtime and the inappropriate tone of Complainant's e-mail response to his Supervisor's inquiry. The Letter stated that Complainant demonstrated a

willful and intentional refusal to comply with a lawful and reasonable instruction by his Supervisor.

With respect to claim (2), the Agency stated that an involuntary curtailment at the Request of the Chief of Mission may occur if the Chief of Mission determines that curtailment of an employee's tour of duty would be in the best interests of the post, the employee, or the employee's dependents, in which case the Chief of Mission may ask that the employee's tour of duty be curtailed immediately. Both the Supervisor and the Consul stated that Complainant sometimes acted insubordinately and refused to accept any corrective feedback from his formal counseling sessions. The Supervisor asserted that when confronted with conduct problems, Complainant became belligerent and condescending.

The Karachi Consul General stated that the curtailment was justified because Complainant was repeatedly insubordinate with his supervisors and he refused to accept feedback and/or guidance. The Consul General noted that making fun of a Foreign Service National was among the inappropriate actions taken by Complainant. The Consul General characterized Complainant as a very disturbing presence in the office. The Embassy Islamabad Consul General stated that he decided to request Complainant's involuntary curtailment and that he sought concurrence of the Deputy Chief of Mission and the Ambassador. The Islamabad Consul General noted that Complainant refused to seek voluntary curtailment and took no responsibility for his actions. According to the Islamabad Consul General, Complainant's repeated insubordination and aggressive behavior toward the consular managers affected their ability to manage and their emotional stability. The Ambassador's cable to Washington requesting the involuntary curtailment stated that during and after each counseling session Complainant threatened he would file a grievance or a lawsuit against his supervisors.

With respect to his Employee Evaluation Report (EER), Complainant argued that it should have reflected an excellent job performance. The Supervisor, as Complainant's rating officer, stated that she did not have a problem with Complainant's substantive work performance. The Supervisor commended Complainant's intellectual skills and work ethic. However, the Supervisor remarked that the conduct issues were significant and she could not recommend that Complainant be tenured based on his conduct while she supervised him. The Supervisor noted that Complainant informed her that he would not change his behavior.

Complainant maintained that his interpersonal skills were exceptional as reflected in his reviews from his prior posts. The Supervisor, however, asserted that Complainant did not display an ability to work in a team-oriented, collaborative approach with his colleagues. The Supervisor noted that Complainant continuously made disparaging comments about one of his colleagues and suggested on several occasions that this coworker be fired. The Karachi Consul General, as Complainant's review officer, commented that while Complainant is a very intelligent and articulate officer, his inability to compromise and accept supervisory guidance make it unlikely he could succeed in the Foreign Service over the duration of a normal career. The Karachi Consul General explained that Karachi is a post where there are ongoing threats and they work in a constant state of crisis. The Karachi Consul General asserted that

teamwork, sensitivity, and flexibility are critical to maintaining morale and assisting others in dealing with the stress.

The Agency determined that it articulated legitimate, nondiscriminatory reasons for the Letter of Admonishment, the involuntary curtailment, and Complainant's Employee Evaluation Report. With regard to the Letter of Admonishment, the Agency stated that Complainant attempted to establish pretext by arguing that for the pay period in question he received approval from his Supervisor to take extra training which required two hours of overtime. Complainant stated that he believed these two hours were additive to the twenty hours that were already pre-approved. Complainant stated that he tried to contact his Supervisor but could not do so. Complainant maintained that this was his first offense and it did not warrant a Letter of Admonishment. Complainant argued that the Letter of Admonishment and involuntary curtailment were issued in reprisal for him raising his concerns about a hostile work environment with various management officials. As for the Employee Evaluation Report, Complainant asserted that his work performance and interpersonal skills were both exceptional.

The Agency determined that Complainant failed to establish pretext with respect to both the Letter of Admonishment and the involuntary curtailment. The Agency noted that Complainant stated in his affidavit that he did not believe his race and age were factors in the Letter of Admonishment. With respect to Complainant's claim of age discrimination as to the involuntary curtailment, the Agency rejected that argument noting that three of the four management officials named in the complaint are substantially older than Complainant. As to Complainant's claim of reprisal, the Agency discerned no persuasive argument from Complainant to challenge its reasons for the issuance of the Letter of Admonishment and the involuntary curtailment. In terms of the Employee Evaluation Report, the Agency stated that it sees no reason to disbelieve the consistent criticism by three officers in the chain of command regarding Complainant's interpersonal skills.

With respect to Complainant's claim of a hostile work environment, Complainant claimed that he was subjected to a hostile work environment in terms of the curtailment threat, being shunned in the workplace, a focus on documenting all of his actions, scrutiny of his overtime, scrutiny of his rest and relaxation requests, scrutiny of his departure orders and home leave, scrutiny of his compensatory time off, scrutiny of his rest and relaxation travel days and difficulty with each administrative action. According to the Agency, Complainant informed his Supervisor on October 3, 2011, that there was an undercurrent of hostility from the Consul toward him based on his race and age. Complainant also e-mailed the Karachi Consul General the following day to express his concerns about the hostile environment. Further, Complainant raised the issues of intimidation and harassment with the Deputy Chief of Mission in mid-March 2012.

Complainant stated that the Karachi Consul General referred to him as Señor. Complainant explained that this reference could be perceived as demeaning his standing in the community and stated that after some time he objected to the term. With regard to the Consul,

Complainant claimed that he sought to elicit much information from him that was not directed toward a professional goal. Complainant maintained that the Consul was intimidated and threatened by his experience and made him feel uncomfortable by frequently asking him why he was in Karachi. According to the Supervisor, when she asked Complainant for examples of harassment by the Consul, Complainant stated that the Consul watched him too much and asked him why he joined the Foreign Service. The Karachi Consul General denied that Complainant raised a hostile work environment with him but acknowledged that Complainant was unhappy with Consular Section operations. The Karachi Consul General stated that he urged Complainant to make efforts to get along with management but that Complainant responded he had the ability to operate the Section more effectively than management. The Embassy Islamabad Consul General stated that he believed Complainant created a hostile work environment for his bosses and was not himself suffering from a hostile work environment.

The Agency noted that only one witness recommended by Complainant supported his description of the work environment. This witness stated that after Complainant spoke with the Deputy Chief Mission on March 12, 2012, the Supervisor began to question him to a larger extent than the other officers and otherwise shunned him. According to this witness, the Supervisor created a hostile work environment but not based on Complainant's race or age. The witness stated that all of the Foreign Service Officers in the Section told him that the Supervisor mismanaged the Section. With regard to Complainant's style of interpersonal communication, the witness stated that some of Complainant's peers found him abrasive and unnecessarily argumentative. The witness added that Complainant was sometimes abrasive with his supervisors.

#### CONTENTIONS ON APPEAL

On appeal, Complainant contends that the Agency's investigation of his complaint was flawed. Complainant criticizes the investigation for not focusing on how the Karachi Consular Section operated. Complainant claims that there is no evidence that he was in danger of being removed from his post until he spoke to the Deputy Chief Mission. Complainant maintains that his curtailment and the EER performance review do not comport with his interim reviews. According to Complainant, his job performance was excellent based on the counseling certifications issued on September 30, 2011, and February 8, 2012. Complainant argues that his prior EERs are relevant because they show he was an exceptional performer at his prior posts and that it is likely he maintained that level of performance. The Agency did not submit a brief or statement in opposition to Complainant's appeal.

#### ANALYSIS AND FINDINGS

To prevail in a disparate treatment claim such as this, Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). He must generally establish a prima facie case by demonstrating that he was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Co. v. Waters, 438 U.S. 567, 576 (1978). Proof

of a prima facie case will vary depending on the facts of the particular case. McDonnell Douglas, 411 U.S. at 802 n. 13. To establish a prima facie case of reprisal, Complainant must show that (1) he engaged in protected EEO activity; (2) the Agency was aware of the protected activity; (3) subsequently, he was subjected to adverse treatment by the Agency; and (4) a nexus exists between his protected activity and the adverse treatment. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000).

The prima facie inquiry may be dispensed with where the Agency articulated legitimate and nondiscriminatory reasons for its conduct. See U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 713-17 (1983); Holley v. Dep't of Veterans Affairs, EEOC Request No. 05950842 (Nov. 13, 1997). To ultimately prevail, Complainant must prove, by a preponderance of the evidence, that the Agency's explanation is a pretext for discrimination. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993); Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 256 (1981); Holley, *supra*; Pavelka v. Dep't of the Navy, EEOC Request No. 05950351 (Dec. 14, 1995).

Initially, we take note of Complainant's contention on appeal that the Agency did not conduct an adequate investigation. Upon review of the record, we observe that the Agency conducted an investigation, and after Complainant raised certain issues, a supplemental investigation. We discern no reasonable basis to challenge the quality of the Agency's investigation.

We shall assume *arguendo* that Complainant set forth a prima case of discrimination under each of the alleged bases as to claims (1-2) and the basis of reprisal with regard to claim (4). The Agency stated as to claim (1) that Complainant was issued the Letter of Admonishment because he violated the post policy concerning overtime for consular officers. The policy provided that all consular officers who were eligible for overtime were preauthorized consular-related work up to twenty hours per pay period. Anything related to work outside the Consular Section or for overtime work over twenty hours needed to be preauthorized. Complainant did not receive preauthorization for the extra three hours of overtime that he worked. As for the involuntary curtailment at issue in claim (2), the Agency stated it was justified because Complainant was repeatedly insubordinate with his supervisors and he refused to accept feedback and/or guidance. We find that the Agency articulated legitimate, nondiscriminatory reasons for its issuance of the Letter of Admonishment and the involuntary curtailment.

With respect to the Employee Evaluation Report at issue in claim (4), the Supervisor explained that Complainant's conduct issues were significant and she could not recommend that Complainant be tenured based on his conduct while she supervised him. The Supervisor stated that Complainant did not display an ability to work in a team-oriented, collaborative approach with his colleagues. The Supervisor noted that Complainant informed her that he would not change his behavior. We find that the Agency articulated legitimate, nondiscriminatory reasons for the content within Complainant's Employee Evaluation Report.

Complainant attempts to establish pretext as to claim (1) by arguing that for the pay period in question he received approval from his Supervisor to take extra training which required two hours of overtime. Complainant states that he believed these two hours were additive to the twenty hours that were already pre-approved. Complainant's recalcitrant attitude when asked if he wanted to make an adjustment on his overtime request also contributed as justification for the Letter of Admonishment. As for the involuntary curtailment, Complainant argues that this action was not reflective of his strong interim reviews. Complainant also claims that he was not at risk for losing his post until he spoke to the Deputy Chief Mission. There is no dispute that Complainant was effective in performing most of his substantive job duties. However, both the Supervisor and the Consul stated that Complainant sometimes acted insubordinately and refused to accept any corrective feedback from his formal counseling sessions. The Supervisor asserted that when confronted with conduct problems, Complainant became belligerent and condescending. We find that Complainant has not established that the Agency's stated reasons for the Letter of Admonishment and involuntary curtailment were pretext intended to hide discriminatory motivation.

With regard to Complainant's Employee Evaluation Report, Complainant argues that this also was not indicative of his performance based on his interim reviews at Karachi and his performance at his prior posts. Complainant maintains that he had strong interpersonal skills. The record, however, does not support Complainant's contention. His difficulties in getting along with management officials and at times strained relations with coworkers negated to a significant extent his strong substantive skills. Complainant's performance at his prior posts may have been exceptional but that does not necessarily mean he maintained that level of performance and cooperation in the highly stressful Karachi post. We find that Complainant has not established that the Agency's explanation for his Employee Evaluation Report was pretext intended to mask discriminatory motivation.

Complainant claims that he was subjected to harassment by management officials. To establish this claim, Complainant must show that: (1) he belongs to a statutorily protected class; (2) he was subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on his statutorily protected class; (4) the harassment affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability. See Henson v. City of Dundee, 682 F.2d 897 (11<sup>th</sup> Cir. 1982). In determining that a working environment is hostile, factors to consider are the frequency of the alleged discriminatory conduct, its severity, whether it is physically threatening or humiliating, and if it unreasonably interferes with an employee's work performance. See Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993); EEOC Enforcement Guidance at 6 (March 8, 1994).

With respect to Complainant's claim of a hostile work environment, Complainant claimed that he was subjected to a hostile work environment in terms of the curtailment threat, being shunned in the workplace, a focus on documenting all of his actions, scrutiny of his overtime, scrutiny of his rest and relaxation requests, scrutiny of his departure orders and home leave,

scrutiny of his compensatory time off, scrutiny of his rest and relaxation travel days and difficulty with each administrative action. Complainant stated that the Karachi Consul General referred to him as Señor, and that the Consul watched him too much and asked him why he joined the Foreign Service. We observe that only one witness supported Complainant's account of his work environment and that this witness did not believe the Supervisor's treatment of Complainant was based on his race or age. Complainant has not submitted persuasive evidence that the Agency's scrutiny of various aspects of his work, the comments at issue, and his leave were greater than that of any of his colleagues or that the scrutiny was based on his age, race, or prior EEO activity. It appears that Complainant's Supervisor may have had problems managing the Section, but those difficulties and her treatment of Complainant were not attributable to an impermissible discriminatory motivation. Complainant in turn engaged in interpersonal communication that was abrasive and unnecessarily argumentative with both management officials and coworkers, and the Embassy Islamabad Consul General believed that Complainant created a hostile work environment for management officials in Karachi. We find that Complainant did not establish that he was subjected to a legally hostile work environment based on his race, age or in reprisal for his protected EEO activity.

### CONCLUSION

The Agency's determination that no discrimination occurred is **AFFIRMED**.

### STATEMENT OF RIGHTS - ON APPEAL

#### RECONSIDERATION (M0416)

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. The requests may be submitted via regular mail to P.O. Box 77960,



Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. 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).

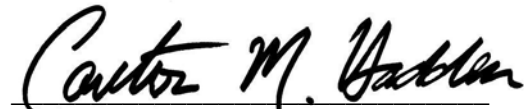
#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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 24, 2017

Date