



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

████████████████████  
Maxine C.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 0120162531

Hearing No. 570-2014-00991X

Agency No. 6Z-000-0024-13

**DECISION**

The Equal Employment Opportunity Commission (EEOC or Commission) accepts Complainant's appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's July 5, 2016 final decision concerning her 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. For the following reasons, the Commission REVERSES the FAD in part and AFFIRMS the FAD in part.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Postal Support Employee (PSE) Lockmaker, P-06/A, at the Agency's Mail Equipment Shop in Washington, D.C. Complainant began working at the facility in April 2013. Complainant alleged that, beginning on or around April 25, 2013, her supervisor began making her feel uncomfortable. Complainant claimed that S1 would offer to buy her lunch or bring food for her daily. Complainant stated that she would sometimes accept S1's offer because she did not have money for food at the time.

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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.

Additionally, Complainant claimed that S1 gave her rides home and to work when she did not have access to a car or money for public transportation. Complainant stated that she would occasionally ask S1 for money and for rides and they discussed him helping her get a car to get to work. Complainant claimed that she experienced health issues in May 2013, which required her to accept rides from S1 more frequently.

In addition, around this time, Complainant alleged that S1 started calling her into his office multiple times a day and coming by her workspace more frequently. Complainant claimed that S1 repeatedly asked her to have sex with him in exchange for a promotion. In May or June 2013, Complainant alleged that S1 called her every day after work to see if she wanted to go to the liquor store and get a hotel room. Complainant was in a relationship with a female Agency employee at another facility, and Complainant claimed that S1 made numerous sexual comments about her sex life. Complainant alleged that S1 told her that if she and her girlfriend had sex with him, he would transfer the girlfriend to the facility where Complainant worked.

Complainant frequently stated that S1 sent her text messages with sexual comments. Complainant alleged that S1 made unwanted advances and graphic sexual comments on a daily basis during this time. Further, Complainant claimed that S1 would call her into his office just to talk about sex or show her pictures of naked women. Complainant alleged that S1 attempted to kiss her on multiple occasions between April and June 25, 2013. Additionally, Complainant claimed that S1 attempted to grope her and put his hands on her breast. On one occasion, Complainant claimed that S1 called her into his office, asked her for a hug, and tried to put her hand on his penis. Complainant stated that she did not immediately report S1's conduct because he had previously talked about his "connections" and she was fearful that he would negatively affect her job.

Complainant claimed that S1's harassment continued in June 2013. Complainant alleged that S1 gave her a ride to her doctor's appointment on June 10, 2013. During this ride, Complainant claimed that S1 told her that he wanted to leave his wife. Complainant stated that she repeatedly told S1 that she was not interested in him whenever he brought up leaving his wife.

On June 25, 2013, Complainant claimed that she sent S1 a text indicating that she was going to be late to work. Complainant later realized that she did not have money for the bus and sent S1 another text stating that she would not make it to work. S1 responded that she was going to get in trouble and came to pick her up even though Complainant had not asked for a ride. When S1 arrived, Complainant and her partner were having an argument. Complainant claimed that when she got in the car, S1 immediately started telling her that she did not need to be with her partner and that she should be with him. When they arrived at work, Complainant alleged that S1 asked her to come to his office to talk, but she went to her desk. Complainant claimed that the Plant Manager (PM) saw that she was upset and advised her to go to S1's office. Complainant asserted that she calmed down, called her father, told him what had been going on, and gave him S1's phone number. Complainant stated that her father called S1 and told him to stay away from Complainant. Complainant asserted that this was the last time S1 provided her a ride.

On or around June 26, 2013, Complainant contacted the Agency's EEO Office and reported her allegations of sexual harassment. On June 30, 2013, S1 was reassigned to the Agency's Headquarters pending an investigation into Complainant's allegations. Complainant stated that S1 had no further contact with her. On or around July 3, 2013, the Agency initiated an Initial Management Inquiry Process into the allegations, and, on July 18, 2013, the Agency initiated a Workplace Harassment Fact-Finding (WHFF) investigation. The investigators issued a WHFF Outcome Memorandum documenting the results of the investigation. On November 5, 2013, PM issued S1 a Notice of Proposed Removal for misconduct. That notice was withdrawn and PM issued S1 a second Notice of Proposed Removal for misconduct based on S1's violation of the Agency's sexual harassment policy. On April 24, 2014, the Asset Management Operations Manager upheld the decision to remove S1 for inappropriate conduct toward a subordinate in violation of the Agency's sexual harassment policy.

On or around June 25, 2013, Complainant claimed that she called the EEO automated line to report her sexual harassment allegations. Complainant alleged that after speaking with an EEO Counselor, Agency officials attempted to interfere with her pursuit of an EEO complaint. Complainant claimed that she received EEO intake paperwork, but two Human Resources officials told her that she did not have to complete the paperwork because she had already given her statement to an EEO Counselor. Further, Complainant stated that she believed that her EEO complaint was in process while the Agency was investigating her allegations internally. Complainant alleged that she called to follow up on her complaint and asked for a copy of the statement she gave the EEO Counselor, but she did not receive a follow-up call from the EEO Counselor.

Complainant alleged that her co-workers began spreading rumors about her around May or June 2013. Complainant claimed that one co-worker (CW-1) told other employees that she was "messing around" with S1. Complainant alleged that co-workers stopped talking to her after she reported S1's alleged sexual harassment and blamed her for S1's reassignment. Complainant claimed that, around August 20, 2013, co-workers were alleging that she and her partner "set up" S1 and that she was to blame because he came to her house. Complainant further claimed that her Daily Production Record (108 cards) went missing in July 2013, after she filed her EEO complaint. Complainant believed that co-workers tried to sabotage her work. After she reported to PM that her 108 cards were missing, PM informed her that she would have to start over.

On August 13, 2013, Complainant alleged that PM audited the quality of her and a co-worker's lock-making. Complainant claimed that she was told that they would be terminated if they did not pass the audit. Complainant passed the audit.

On September 28, 2013, Complainant was involved in an incident with a co-worker (CW-2). Complainant was instructed to report for overtime, but failed to report on time. After reporting, Complainant began working on lock orders that were not scheduled. CW-2 attempted to tell Complainant which orders were being processed during overtime and she responded, "Shut the fuck up and go sit your bitch-ass down." PM came over and Complainant continued to be disruptive.

PM instructed Complainant to stop using profanity, but Complainant continued to be disruptive and failed to leave the workroom floor when instructed. PM called the Postal Police, who escorted her out of the building.

Complainant did not return to work until October 15, 2013. When Complainant returned, she attended an investigative interview regarding the incident on September 28, 2013. On October 10, 2013, PM issued Complainant a Seven-Day Suspension for failure to follow instructions and improper conduct (violent or threatening behavior) for her conduct on September 28, 2013. The suspension was effective from October 21, 2013 through October 28, 2013.

On December 19, 2013, Complainant was involved in an incident with the Mail Equipment Shop Manager (M1). M1 was holding a meeting with employees when Complainant began disrupting the meeting. M1 asked Complainant to not be disrespectful. M1 ended the meeting by reminding employees to only use their phones for music on the floor and to refrain from texting or getting on the internet. When M1 returned to the workroom floor, he observed Complainant showing several co-workers something on her phone. M1 later saw Complainant still on her phone and asked that she put the phone away. Complainant ignored his instructions. M1 advised Complainant that if she was not going to follow his instructions, she would need to report to the office. Complainant started yelling and refused to return to work or report to the office. M1 asked Complainant to lower her voice and Complainant continued to be a disruption. M1 gave Complainant final instructions and she continued to yell and be disruptive. M1 then instructed Complainant to clock out and notified her that she was on Emergency Placement. On December 23, 2013, M1 issued Complainant a letter informing her that she had been placed on Emergency Placement without pay as a result of her conduct on December 19, 2013.

In January 2014, Complainant applied for two PSE City Carrier Assistant positions. Complainant received notification that she was selected to undergo drug testing and background investigation. On January 22, 2014, Complainant claimed that she received notification that she had not been selected for the positions because she did not meet "suitability or eligibility" requirements.

On October 8, 2013, Complainant filed a formal complaint, which was subsequently amended on March 5, 2014, alleging that the Agency discriminated against her and subjected her to a hostile work environment on the basis of sex (female) when her supervisor sexually harassed her on multiple occasions. For example, Complainant alleged that S1 asked her to lunch; sent unwelcome emails, texts, and made phone calls; showed Complainant pictures of him with naked women; made unwelcome visits to Complainant's work space and made unwelcome comments of a graphic and sexual nature; stuck his tongue out at Complainant, blew kisses, and whispered things to her; he repeatedly called Complainant into his office and attempted to grope her, asked for hugs and touched her breasts; he put Complainant's hand on his thigh, and grabbed her hand and shoved it down his pants; asked Complainant to have sex with him in hotel rooms, and had conversations with her about leaving his wife; asked Complainant about her lesbian partner and sexual experiences; offered Complainant rides to work and to her doctor's appointments, and offered her money for food and transportation; came to Complainant's house to pick her up for

work, told her that she should be with him instead of her partner, and asked her to come to his office.

In addition, Complainant alleged that the Agency subjected her to discrimination and a hostile work environment on the bases of sex (female) and in reprisal for prior protected EEO activity as evidenced by multiple incidents including, inter alia, Complainant's co-workers spread rumors about her; Complainant learned that her 108 cards were missing and she had to start all over; the quality of Complainant's lock-making work was audited, and she was threatened with termination if she did not pass the audit; Complainant was escorted out of the facility and she has not been allowed back to work; she was issued a seven-day suspension; management attempted to dissuade her from filing an EEO complaint; she was ordered out of the facility and received a letter placing her on Emergency Placement without pay; and she became aware that she was not selected for two City Carrier Assistant positions.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). Complainant timely requested a hearing, but subsequently withdrew her request. Consequently, the Agency issued a FAD pursuant to 29 C.F.R. § 1614.110(b).

In the FAD, with respect to Complainant's sexual harassment claim, the Agency determined that the record showed that S1 purchased or provided lunch for Complainant on approximately 10 occasions; sent her inappropriate text messages; and drove her to work approximately 10 times. The Agency found that those actions were inappropriate for a supervisor; however, it found that the record did not support a finding that Complainant was subjected to any unwelcome verbal or physical conduct as alleged. The Agency noted that Complainant admitted to instigating and/or actively participating in some of the allegations, including asking S1 to buy her lunch; telling him that she had no money to pay for public transportation; exchanging text messages with him; and accepting rides to her medical appointments. The Agency added that Complainant admitted that she was not uncomfortable with S1's questions about her relationship with her partner and was interested in the pictures S1 showed her on his phone. Accordingly, the Agency concluded that Complainant failed to show that she was subjected to sexual harassment.

Even assuming that the incidents occurred as Complainant alleged, the Agency found that there was no basis for imputing liability to it. As soon as Complainant reported the allegations, management undertook a thorough investigation and the alleged harasser was reassigned and subsequently removed. Further, the Agency noted that it had an effective policy to prevent sexual harassment. As a result, the Agency found that there was no basis for imputing liability and that Complainant's sexual harassment claim failed.

Regarding her non-sexual harassment hostile work environment claim, the Agency determined that the alleged incidents were insufficiently severe or pervasive. Further, the Agency found that there was no evidence that the conduct at issue was based on her protected classes. For instance, as to Complainant's claim that co-workers spread rumors about her, CW-1 denied telling anyone that Complainant was having an affair with S1.

CW-1 stated that there were rumors about how close they were, but Complainant told her the rumors were untrue. PM stated that he only received complaints from employees that Complainant was often missing from her workstation, late, or did not show up to work. With respect to her 108 cards, PM acknowledged that Complainant brought to his attention that her cards were missing and he told her that he needed the missing information. PM stated that Complainant advised him that she kept a personal record of all of her production and hours and he told her to transfer that information to 108 cards. PM noted that Complainant suspected that some of the craft employees might have removed her 108 cards from the collection box, but there was no evidence to support this suspicion.

As to the lock-making audit, PM confirmed that Complainant was audited on August 13, 2013. PM denied threatening Complainant with termination if she did not pass; rather, he expressed to her that employees were randomly selected each month for an audit to comply with mandatory reporting procedures. PM noted that six employees were audited on or around the same date. Regarding her claim that she was escorted out of the facility, PM confirmed that Complainant was escorted out of the facility on September 28, 2013, based on her conduct including failing to follow instructions; being disruptive; and using profanity in the workplace. PM stated that Complainant was subsequently issued a seven-day suspension based on her conduct during that incident.

With respect to her claim that management attempted to dissuade her from filing an EEO complaint, the Agency determined that there was no evidence that any management official did so. The Agency concluded that Complainant appeared to misunderstand the roles of the EEO officials involved. The individuals conducting the Initial Management Inquiry had no role in the EEO complaint process and Complainant had already made contact with an EEO Counselor at Headquarters. The Agency noted that any delay in processing the EEO complaint was perhaps due to an ongoing, more detailed inquiry which would have been relevant to the EEO complaint.

Regarding the Emergency Placement, M1 affirmed that he ordered Complainant out of the facility and placed her on Emergency Placement after she failed to follow instructions; disrupted the operation; and was insubordinate on December 19, 2013. M1 stated that he had no other option based on Complainant's conduct. Finally, with respect to her non-selection for two City Carrier Assistant positions, both PM and M1 denied any knowledge regarding this issue. Complainant acknowledged in her pre-hearing deposition that her non-selection was due to a licensing issue.

The Agency concluded that Complainant failed to show that management's reasons for its actions were pretextual. As a result, the agency found that Complainant had not been subjected to discrimination, reprisal, or a hostile work environment as alleged. The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that the record shows that she was subjected to sexual harassment by her supervisor. Complainant argues that the Commission should consider evidence and testimony from S1's Merit Systems Protection Board (MSPB) case regarding his removal from the Agency, which she maintains supports her sexual harassment claim. Complainant argues that she was subjected to unwanted sexual text messages, inappropriate conduct, and touching, and that S1 took advantage of her financial situation and youth. Complainant argues that the Agency is liable for the harassment she suffered. Complainant claims that S1 was allowed to weigh in on possible discipline when she was facing a suspension, which makes the Agency automatically liable for the harassment. Even apart from the tangible employment act, Complainant contends that the Agency has not met both prongs of its affirmative defense. In particular, Complainant argues that the Agency failed to restore the leave she was forced to take or otherwise compensate her for her losses to correct the effects of the harassment. Complainant claims that her seven-day suspension was retaliatory and that she was provoked into an altercation with CW-2. Finally, Complainant contends that the Agency should be sanctioned for providing additional documentation for the record prior to issuance of the FAD that it did not provide to her. Accordingly, Complainant requests that the Commission reverse the FAD.

In response, the Agency argues that Complainant and S1 had a consensual, personal relationship outside of work. The Agency claims that Complainant and S1 openly talked about sex and that Complainant contributed to S1's misconduct. The Agency claims that Complainant was unoffended by S1's sexual advances as she often laughed or "thought it was funny." The Agency notes that Complainant freely engaged in communications and frequently interacted with S1 for approximately two months without notifying any Agency officials that she felt sexually harassed. Even assuming that S1's conduct amounted to sexual harassment, the Agency argues that there is no basis for imputing liability to the Agency. The Agency contends that Complainant unreasonably failed to take advantage of preventative or corrective opportunities or to avoid harm otherwise. Additionally, the Agency notes that it took prompt, appropriate actions to address Complainant's allegations after she reported them by initiating an investigation; reassigning S1; and subsequently removing him. In addition, the Agency argues that Complainant's non-sexual harassment hostile work environment claim must fail as she failed to show that any of the actions at issue were abusive or offensive, or that they were taken due to her protected classes. Finally, the Agency contends that sanctions are not appropriate as the only additional documentation it provided for the record was a copy of Complainant's deposition testimony, of which Complainant already had a copy. Accordingly, the Agency requests that the Commission affirm the FAD.

### ANALYSIS AND FINDINGS

As an initial matter, the Commission will address Complainant's request for sanctions against the Agency. Complainant claims that the Agency engaged in "ex parte communications" prior to the issuance of the FAD by providing additional documentation to the Agency's National EEO Investigative Services Office for inclusion in the record, but did not submit this documentation to her. Complainant appears to be challenging the Agency's inclusion of her deposition in the record. The Agency notes that Complainant was accompanied by her attorney to the deposition and undoubtedly received a copy during discovery. Further, Complainant did not claim that she did not receive a copy of her deposition or was somehow prevented from obtaining a copy of her deposition. While the deposition is cited in the FAD, Complainant has not presented any persuasive evidence that she was in any way prejudiced by its inclusion in the record. Accordingly, the Commission declines to issue sanctions against the Agency in the instant matter.

#### *Hostile Work Environment – Sexual Harassment*

To establish a claim of sexual harassment, Complainant must show that: (1) she belongs to a statutorily protected class; (2) she was subjected to unwelcome conduct related to her sex, including sexual advances, requests for favors, or other verbal or physical conduct of a sexual nature; (3) the harassment complained of was based on sex; (4) the harassment had the purpose or effect of unreasonably interfering with her work performance and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer, in other words, did the agency know or have reason to know of the sexual harassment and fail to take prompt remedial action. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); Humphrey v. U.S. Postal Serv., EEOC Appeal No. 01965238 (Oct. 16, 1998). The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the complainant's circumstances. Enforcement Guidance on Harris v. Forklift Systems Inc., EEOC Notice No. 915.002 (Mar. 8, 1994).

In the instant case, the record is clear that S1 engaged in numerous instances of unwelcome sexually-related conduct toward Complainant, including sending her inappropriate and sexually-charged text messages; making sexually-explicit comments and sexual advances toward her; and engaging in unsolicited, nonconsensual touching. The Agency argues that Complainant and S1's relationship was consensual, that Complainant never indicated to S1 that his conduct was unwelcome, and that Complainant never asked S1 to stop his behavior. The Commission disagrees. The challenged conduct must be unwelcome in the sense that the employee did not solicit or incite it, and in the sense that the employee regarded the conduct as undesirable or offensive. EEOC Policy Guidance on Current Issues of Sexual Harassment, No. N-915-050, at Guidance, § A. (Mar. 19, 1990). Here, there is no evidence that Complainant solicited S1's sexual comments, advances, or physical contact. The Agency claimed that Complainant sometimes laughed at S1's sexual advances rather than "rebuffing" them, which did not place S1 on notice that his conduct was unwelcome. Complainant stated that her laughter was her way of letting him know that she was not interested.



The record evidence reveals that Complainant did not reciprocate S1's sexual advances or participate in S1's sexual conversations and often either ignored or redirected his attention to other matters. Additionally, there is no evidence that Complainant solicited or in any way encouraged the pictures S1 showed her on his phone or encouraged S1's inappropriate touching and hugging. Thus, the Commission finds that Complainant has established that she was subjected to unwelcome sexual conduct from S1 which created an offensive and hostile work environment.

The Commission will now turn to whether there is a basis for imputing liability to the Agency. With respect to element (5), described above, an employer is subject to vicarious liability for harassment when it is created by a supervisor with immediate (or successively higher) authority over the employee. See Vance v. Ball State Univ., 133 S. Ct. 2434, 2443 (2013); Burlington Indus., Inc., v. Ellerth, 524 U.S. 742 (1998); Faragher v. City of Boca Raton, 524 U.S. 775 (1998). Where the harassment results in a tangible employment action, such as a supervisor disciplining an employee for refusing the supervisor's advances, the action of the supervisor is viewed as the action of the employer, and strict liability attaches. See, e.g., Ellerth, 524 U.S. at 762-63. Here, where the harassment does not result in a tangible employment action, the employer can raise an affirmative defense, which is subject to proof by a preponderance of the evidence, by demonstrating: (1) that it exercised reasonable care to prevent and correct promptly any harassing behavior; and (2) that the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. See Burlington Indust., *supra*; Faragher, *supra*; Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors, EEOC Notice No. 915.002 (June 18, 1999).

The Agency argues that it should not be held liable for the actions of S1 because it had an anti-harassment policy and procedure in place, Complainant unreasonably delayed notifying the Agency of her allegations, and once it was informed of S1's conduct, it took prompt action to correct the actions of S1, including reassigning him and subsequently removing him. While the record is clear that no further harassment occurred, Complainant contends that the Agency still did not take sufficient remedial measures and corrective action. For example, Complainant argues that the Agency failed to restore the sick leave and leave without pay that she used as a result of S1's harassment. Further, Complainant claims that the Agency took no steps to correct other harm she experienced following S1's conduct.

The Agency is under an obligation to do "whatever is necessary" to end harassment, *to make a victim whole*, and to prevent the misconduct from recurring. See EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, EEOC Notice No. 915.002 (June 18, 1999) (stating that "remedial measures should be designed to stop the harassment, *correct its effects on the employee*, and ensure that the harassment does not recur") (emphasis added). Restoration of leave and correction of any other harm caused by the harassment are specific examples of measures to correct the effects of the harassment. *Id.* Taking only some remedial action does not absolve the agency of liability where that action is ineffective. See Logsdon v. Dep't of Agric., EEOC Appeal No. 07A40120 (Feb. 28, 2006).

Accordingly, as the record suggests that the Agency's actions have not fully and effectively corrected the effects of the discriminatory harassment on Complainant, the Agency has not satisfied the element of its affirmative defense. This finding is consistent with liability standards under the anti-discrimination statutes which generally make employers responsible for the discriminatory acts of their supervisors. Harassment is the only type of discrimination carried out by a supervisor for which an employer can avoid liability, and that limitation must be construed narrowly. Accordingly, because the Agency cannot establish its affirmative defense, the Commission finds that it is liable for the hostile and offensive work environment created by S1.

#### *Hostile Work Environment – Non-Sexual Harassment*

To establish a claim of harassment a complainant must show that: (1) she belongs to a statutorily protected class; (2) she 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 her 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 to the employer. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982). Further, the incidents must have been “sufficiently severe or pervasive to alter the conditions of [complainant's] employment and create an abusive working environment.” Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993).

Therefore, to prove her harassment claim, Complainant must establish that she was subjected to conduct that was either so severe or so pervasive that a “reasonable person” in Complainant's position would have found the conduct to be hostile or abusive. Complainant must also prove that the conduct was taken because of her protected classes. Only if Complainant establishes both of those elements, hostility and motive, will the question of Agency liability present itself.

The Commission notes that Complainant chose to withdraw her request for a hearing; therefore, the Commission can only evaluate the facts based on the weight of the evidence presented. Here, Complainant asserted that based on her protected classes, management officials subjected her to a hostile work environment. Complainant alleged several incidents of what she believed to be discriminatory and retaliatory harassment. The Commission finds that Complainant has not shown that she was subjected to conduct sufficiently severe or pervasive to create a hostile work environment.

Moreover, even assuming that the alleged conduct was sufficiently severe or pervasive to create a hostile work environment, Complainant failed to show that the Agency's actions were based on discriminatory or retaliatory animus. For example, with respect to her 108 cards, PM explained that Complainant brought the matter to his attention and he advised her to transfer the information from her personal record and turn it in to him. ROI, at 363. PM stated that Complainant suspected that some of the regular craft employees had removed the cards from the collection box and he approved her request to turn her 108 cards in directly to him. Id. As to the

August 2013 audit, PM affirmed that audits were conducted monthly on randomly selected employees for reports sent to Headquarters. Id. at 364. PM noted that Complainant was one of six employees selected for an audit around that time. Id. at 365.

With regard to the September 28, 2013 incident and subsequent suspension, PM asserted that Complainant reported late for duty and started working on lock orders that were not scheduled for that day. ROI, at 367. CW-1, the Team Lead, attempted to tell Complainant what work was being processed and Complainant became loud, disruptive, and used profanity at him. Id. PM stated that when he came out on to the workroom floor, Complainant continued to use profanity and refused to follow his instructions. Id. PM emphasized that he called Postal Police after Complainant refused to leave the building, and she was escorted out. Id. PM stated that he held an investigative interview with Complainant and subsequently issued her a seven-day suspension for failure to follow instructions and improper conduct (violent or threatening behavior) for her conduct on September 28, 2013. Id. at 369-70, 542-43.

As to her claim that management officials attempted to dissuade her from filing an EEO complaint, PM and M1 denied doing so. M1 added that he had very little communication with Complainant as he did not directly supervise her. ROI, at 411. The record indicates that Complainant spoke with Human Resources officials during the Agency's Initial Management Inquiry, which was unrelated to her EEO complaint. Id. at 110. Both officials stated that they did not discuss any EEO matters with Complainant, only the issues related to their inquiry. Id. Later, during the WHFF, non-Agency independent investigators again advised Complainant that they were not involved with her EEO complaint and that if she wished to file an EEO complaint, she should complete and return paperwork to the EEO Office. Id. There is no evidence that any official attempted to dissuade or otherwise interfere with Complainant's filing of an EEO complaint.

Regarding the December 2013 Emergency Placement, M1 affirmed that Complainant was disruptive and insubordinate following a meeting and refused to follow his instructions. ROI, at 411. M1 stated that he asked Complainant multiple times to lower her voice and leave the floor to discuss the matter, but she refused and continued to disrupt the operation. Id. at 412. As a result, Complainant was escorted to clock out and was issued an Emergency Placement in Off-Duty Status. Id. at 419-22.

Finally, with respect to her non-selection for two City Carrier Assistant positions, Complainant acknowledged that she was not selected for those positions due to issues related to her driver's license. Complainant's Dep., at 345, 374. Complainant confirmed that she did not believe that her non-selection was motivated by her prior protected EEO activity. Id. at 374.

The Commission finds no persuasive evidence that Complainant's protected classes were a factor in any of the Agency's actions. Aside from her bare assertions, Complainant has not provided any evidence to rebut the Agency's asserted legitimate, nondiscriminatory reasons for its actions.

At all times, the ultimate burden remains with Complainant to demonstrate by a preponderance of the evidence that the Agency's reasons were not the real reasons and that the Agency acted on the basis of discriminatory or retaliatory animus. Complainant failed to carry this burden. Therefore, the Commission finds that Complainant has not established that he was subjected to reprisal or a hostile work environment as alleged.

### CONCLUSION

After a review of the record in its entirety, including consideration of all statements submitted on appeal, it is the decision of the Equal Employment Opportunity Commission to REVERSE the Agency's final decision as to Complainant's sexual harassment claim and AFFIRM the Agency's final decision as to Complainant's non-sexual harassment hostile work environment, discrimination, and reprisal claims. The Commission REMANDS the matter for further processing in accordance with the Order below.

### ORDER

1. Within 90 calendar days of the date this decision is issued, the Agency shall conduct a supplemental investigation into Complainant's entitlement to compensatory damages and shall issue a new agency decision with appropriate appeal rights awarding compensatory damages to Complainant as appropriate. Complainant shall cooperate in the Agency's efforts to compute the amount of compensatory damages to which she is entitled. The Agency shall pay Complainant the determined amount of compensatory damages within 30 calendar days of the date of the determination.
2. Within 60 days of the date this decision is issued, the Agency shall restore to Complainant any leave used as the result of the unlawful discriminatory harassment, and shall compensate Complainant for any leave without pay taken as the result of the discriminatory harassment. Complainant shall cooperate with the Agency and provide it with information respecting what leave and leave without pay she took as a result of the harassment.
3. Within 90 calendar days of the date this decision is issued, the Agency shall provide eight hours of in-person or interactive training to all management staff in the Mail Equipment Shop in Washington, D.C. with a focus on preventing sexual harassment in the workplace and management's obligation after receiving a complaint of sexual harassment.
4. The Agency shall post a notice in accordance with the Order below.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Mail Equipment Shop in Washington, D.C. copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

ATTORNEY'S FEES (H1016)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of the date this decision was issued. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0618)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. **Within seven (7) calendar days** of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408.

A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

STATEMENT OF RIGHTS - ON APPEAL  
RECONSIDERATION (M0617)

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. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in which to submit a brief or statement in opposition. 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. Complainant's request 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 agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). 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).

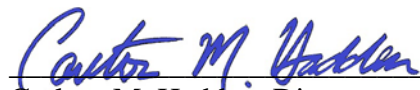
COMPLAINANT’S RIGHT TO FILE A CIVIL ACTION (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. 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. **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

September 12, 2018

Date