



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

[REDACTED]
Susan A.,¹
Complainant,

v.

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

Appeal No. 2019000891

Hearing No. 532-2016-00106X

Agency No. 4C-450-0070-16

DECISION

On October 30, 2018, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's October 25, 2018 final order concerning an equal employment opportunity (EEO) complaint claiming 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.

BACKGROUND

During the period at issue, Complainant worked as a City Carrier at the Agency's South Columbus Station in Columbus, Ohio.

On April 7, 2016, Complainant filed a formal EEO complaint alleging that the Agency discriminated against her race (African-American) and sex (female) when, on March 1, 2016, Complainant was issued a Letter of Warning for improper conduct.

After an investigation, the Agency provided Complainant the investigation report and a notice of her right to request a hearing before an EEOC Administrative Judge (AJ). Complainant timely requested a hearing. On August 7, 2018, the Agency moved for a decision without a hearing.

¹ 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.

After Complainant did not object, on September 26, 2018 the AJ granted the Agency's motion and issued a decision by summary judgment in favor of the Agency. On October 25, 2018, the Agency subsequently issued a final order adopting the AJ's finding no discrimination.

The instant appeal followed.

ANALYSIS AND FINDINGS

We must determine whether it was appropriate for the AJ to have issued a decision without a hearing. Our regulations allow an AJ to issue a decision without a hearing when she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). EEOC's regulation was patterned after Rule 56 on summary judgment in federal civil procedure. The Supreme Court held summary judgment appropriate where a tribunal determined that, given the substantive legal and evidentiary standards, there existed no genuine issue of material fact. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a motion for summary judgment, the AJ's function was not to weigh the evidence but rather to determine whether there were genuine issues that merited a hearing. Id. at 249. At the pre-summary judgment stage, the non-moving party's evidence must be believed, and all justifiable inferences had to be drawn in the non-moving party's favor. Id. at 255. An issue of fact is "genuine" if the evidence supported a reasonable fact-finder finding in favor of the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A "material" fact has the potential to affect the outcome of a case.

In order to successfully oppose a decision by summary judgment, a complainant must identify, with specificity, facts in dispute either within the record or by producing further supporting evidence and must further establish that such facts are material under applicable law. Here, Complainant has failed to point with any specificity to particular evidence in the investigative file or other evidence of record that indicates such a dispute.

For the reasons discussed below, we find that, even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable fact-finder could not find in her favor. Therefore, we find that the AJ properly issued a decision here by summary judgment.

We analyze Complainant's discrimination claim in accordance with McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). For Complainant to prevail, she had to establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, here that her race was considered a factor in the Agency's disciplinary actions. See McDonnell Douglas, 411 U.S. at 802; Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978). The burden then shifted to the Agency to articulate a legitimate, nondiscriminatory reason issuing the LoW. See Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). Pavelka v. Dep't of the Navy, EEOC Request No. 05950351 (Dec. 14, 1995). To ultimately prevail, Complainant had to prove those Agency explanations were mere pretexts to a preponderance of the evidence. Reeves v. Sanderson Plumbing Prod., Inc., 530 U.S. 133, 143 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993).

Assuming, arguendo, that Complainant established a prima facie case on the raised bases, we agree with the AJ's determination that the Agency established a legitimate, non-discriminatory reason for issuance of the letter of warning. Complainant slipped on snow-covered stairs while delivering her mail and sustained a hand injury. The Agency determined that Complainant failed to follow the Agency's safety procedures, including her delay in contacting her supervisor to report the accident. Moreover, once the matter was reported, a supervisor photographed the accident scene and questioned whether Complainant used a handrail, given the placement of Complainant's footprints. The pertinent provision of the city delivery carrier handbook requires carriers to conduct work in a safe manner so as not to endanger the employee, or others. Complainant has not established that the Agency articulated reason was a pretext for discrimination based on her race or sex. While Complainant did not provide evidence to support her claim of disparate treatment, Agency management produced evidence of other injured employees who similarly received discipline for violations of the safety rules. For example, local management issued a letter of warning to a Caucasian female employee for sustaining a finger injury, and two other male coworkers (one Caucasian and one African American) received discipline for accidents that resulted in their being injured.

CONCLUSION

We AFFIRM the Agency's final order adopting the AJ's finding of no discrimination, without a hearing.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if 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 (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

April 10, 2019

Date