



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

[REDACTED]
Cassy W.,¹
Complainant,

v.

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

Request No. 2019001353

Appeal No. 0120182038

Agency No. 1E-971-0010-18

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Cassy W. v. U.S. Postal Serv., EEOC Appeal No. 0120182038 (Sept. 18, 2018). EEOC Regulations provide that the Commission may, in its discretion, grant a request to reconsider any previous Commission decision issued pursuant to 29 C.F.R. § 1614.405(a), where the requesting party demonstrates 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. See 29 C.F.R. § 1614.405(c).

After reconsidering the previous decision and the entire record, the Commission finds that the request meets the criteria of 29 C.F.R. § 1614.405(c), and it is the decision of the Commission to grant the request.

BACKGROUND

Complainant, a Mail Processing Clerk, filed an EEO complaint in which she alleged that she was subjected to discrimination on the bases of sex (female) and race/national origin (Hispanic) when

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.

on December 18, 2017, her supervisor yelled at her and hit his desk after she had asked him for the overtime desired list. In a statement attached to her EEO complaint, Complainant further alleged that the Supervisor additionally grabbed her by the coat, pulled her up and away, and said in a very loud voice “I am done with you get out of here leave.”

The Agency framed the complaint without mentioning the shoving incident and dismissed the complaint for failure to state a claim. On appeal, based upon the Agency’s initial framing of the complaint, we affirmed the Agency’s dismissal. We found that the yelling incident was an isolated comment unaccompanied by concrete action and was therefore not a direct and personal deprivation sufficient to render her aggrieved. We also found that Complainant failed to show that she suffered harm or loss with respect to a term, condition or privilege of employment for which there is a remedy. Accordingly, we found that the yelling incident was insufficient to state a claim of discriminatory harassment.

In her request for reconsideration, Complainant argues that she did state a claim of discriminatory harassment by virtue of the Supervisor’s physical attack.

After reviewing the previous decision and the entire record, the Commission finds that Complainant’s allegations were incorrectly framed. A fair reading of Complainant’s complaint reveals that the Agency excluded Complainant’s allegation that the Supervisor grabbed her by the coat and shoved her as part of her hostile work environment claim. This alleged physical altercation was mentioned in an attachment to the formal complaint dated April 8, 2018 and referenced elsewhere in the record. Thus, we find that in framing the complaint, the Agency erred in failing to include the grabbing/shoving incident as part of the hostile work environment claim. Since this allegation was inadvertently overlooked, the Commission VACATES the appellate decision and will now address the propriety of the Agency’s dismissal decision

ANALYSIS AND FINDINGS

The matter before is whether the Agency properly dismissed Complainant’s complaint for failure to state a claim. The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that an agency shall dismiss a complaint that fails to state a claim. An agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that agency because of race, color, religion, sex, national origin, age or disabling condition. 29 C.F.R. §§ 1614.103, .106(a). The Commission’s federal sector case precedent has long defined an “aggrieved employee” as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Dep’t of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994). A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the complainant cannot prove a set of facts in support of the claim which would entitle the complainant to relief. The trier of fact must consider all of the alleged harassing incidents and remarks and considering them together in the light most favorable to the complainant, determine whether they are sufficient to state a claim. Cobb v. Dep’t of the Treasury, EEOC Request No. 05970077 (Mar. 13, 1997). While it is well-settled within the Commission’s precedent that a single incident or group of isolated

incidents will generally not be regarded as discriminatory harassment unless the conduct is severe, we have found that under certain circumstances, a single incident could be severe or pervasive enough to give rise to a hostile environment in and of itself. Gregory F. v. Dept. of the Treasury, EEOC Appeal No. 0120141037 (Dec. 2, 2016).

Here, Complainant has alleged that she was discriminated against and subjected to a discriminatory hostile work environment when her supervisor yelled at her, angrily hit his desk, grabbed her by the coat, pulled her up, and pushed her away. Considering the totality of circumstances alleged in the light most favorable to Complainant, a physical altercation accompanied by a loud and angry outburst, we find that Complainant's claim is sufficient to state a viable claim of hostile work environment. Consequently, the Agency's dismissal of Complainant's complaint was improper, as Complainant has shown an injury or harm to a term, condition, or privilege of employment for which there is a remedy. See Diaz v. Dep't of the Air Force, *supra*.

CONCLUSION

After reconsidering the previous decision and the entire record, the Commission finds that complainant's request meets the criteria of 29 C.F.R. § 1614.405(c)(1), and it is the decision of the Commission to GRANT the request. Based on our independent review of the record, the Commission REVERSES the Agency's final decision dismissing Agency No. 1E-971-0010-18 and REMANDS the matter to the Agency for further processing. Since this is the first time the Commission is reviewing the propriety of the dismissal regarding all claims in the complaint, we will include the parties will have the right to request reconsideration.

ORDER (E0618)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request. As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, a copy of complainant's request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

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

May 10, 2019

Date