



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

[REDACTED]
Rosie T,¹
Complainant,

v.

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

Appeal No. 2019002265

Agency No. 4B105000119

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated January 31, 2019, dismissing a formal complaint of unlawful employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

BACKGROUND

During the period at issue, Complainant worked as a Rural Carrier at the Agency's Pound Ridge New York Post Office in Pound Ridge, New York.

On January 12, 2019, Complainant filed a formal complaint. As summarized by the Agency, Complainant claimed that she was subjected to discriminatory harassment based on sex (female), age (YOB: 1951), and in reprisal for prior protected EEO activity when the Postmaster yelled at Complainant and treated Complainant less favorably than Complainant's male co-workers.

On January 31, 2019, the Agency dismissed the formal complaint for failure to state a claim, pursuant to 29 C.F.R. § 1614.107(a)(1), finding that Complainant was not aggrieved, and the

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.

alleged incident was not sufficiently severe or pervasive to support an actionable harassment claim.

The instant appeal followed. On appeal, Complainant identifies other alleged incidents she had with the Postmaster beyond the one identified by the Agency. Complainant states that she had asked the Postmaster to fix a “problem with heat in [her] truck” since June 2018 and she needed to take a sick day on September 10, 2018 “due to heat exhaustion.” Complainant also states that she contacted the employee assistance program on January 7, 2018, because she experienced work-related stress, and the Postmaster “rais[ed] his voice” when Complainant informed him that there were no bags for packages. Complainant further claims that on January 28, 2019, the Postmaster directed her move a hamper indoors, even though the hamper contained parcels which were over Complainant’s head which Complainant determined to be a “safety issue.” Complainant also claims that on February 6, 2019, the Postmaster prevented Complainant from turning on the overhead fan because he was cold even though Complainant contends that the Postmaster could have sat in his office while Complainant worked on the floor. Finally, Complainant states that working at the Agency “has been the worst environment she has come across.”

ANALYSIS AND FINDINGS

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).

The formal complaint was improperly dismissed pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim. Our review of the record indicates that Complainant alleged that she was subjected to ongoing harassment involving incidents beyond the one identified by the Agency in its dismissal decision. While section 15 of the formal complaint form indicates that the alleged discriminatory event occurred in September 2018, the related EEO Counselor’s Report details the circumstances surrounding this alleged incident by stating that Complainant claimed that the Postmaster allegedly yelled at her after she asked for a status update regarding fixing a “heat problem” with her Agency vehicle which she had requested to be fixed “for several months.” We note that the EEO Counselor’s Report and an EEO Counselor’s letter, dated January 4, 2019, indicates that Complainant raised two additional alleged incidents of harassment based on her sex and age occurring after the September 10, 2018 incident.²

² Complainant alleges that (1) on September 11, 2018, Complainant stated the air conditioning in the office had not worked for the past month and the office was very hot. Complainant further stated that because the heat had not been fixed in her Agency vehicle, she sat in her personal vehicle with the air conditioning on for a few minutes until the Postmaster knocked on the window and demanded to know what she was doing; and (2) Complainant stated the Postmaster

Moreover, on appeal, Complainant also includes additional incidents to support her claim that she was subjected to ongoing harassment. In sum, we find that a fair reading of the complaint, in conjunction with the related EEO counseling report and Complainant's statement on appeal, show that she is raising a claim of ongoing discriminatory harassment sufficient state a claim and allege 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, EEOC Request No. 05931049 (Apr. 21, 1994). Upon remand, the Agency should consider all allegations provided in the pre-complaint proceedings and Complainant's statements on appeal.

We REVERSE the Agency's final decision dismissing the formal complaint. We REMAND this matter to the Agency for further processing in accordance with the ORDER below.

ORDER (E0618)

The Agency is ordered to process the remanded claim (ongoing harassment) in accordance with 29 C.F.R. § 1614.108 et seq. 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.

asked if she could come in to work on Christmas Eve even though Complainant had already had approved vacation time beginning on December 22, 2018. Complainant stated that she agreed to deliver mail on Christmas Eve only if she had a clean route (i.e. a route without leftover mail that had not been delivered from the previous day), however, Complainant stated that on December 24, 2018, her route was the only route with leftover mail. Complainant then stated that the Postmaster accused her of threatening him when she informed him that she had requested a clean route.

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)

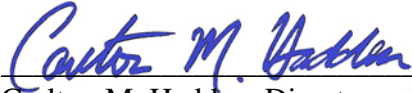
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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