



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

[REDACTED]
Eryn O.,¹
Complainant,

v.

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

Appeal No. 2019002286

Agency No. 1F-901-0036-19

DECISION

Complainant filed this appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated January 23, 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.

BACKGROUND

During the period at issue, Complainant worked as a Mail Handler, PS-4 at the Agency's Processing and Distribution Center (P&DC) in Los Angeles, California.

Upon Complainant's initiation of EEO Counselor contact, Complainant underwent EEO counseling, alleging discrimination in reprisal for prior protected activity, regarding the following matters:

- 1) on October 29, 2018, Complainant's co-worker made physical threats to women and minorities; and
- 2) on January 7, 2019, the Plant Manager stalked and physically intimidated Complainant on the workroom floor.

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.

Informal efforts at resolution were not successful. On January 9, 2018, Complainant filed the instant formal complaint.

On January 23, 2019, the Agency issued a final decision. The Agency dismissed the complaint for failure to state a claim, under 29 C.F.R. 1614.107(a)(1). Specifically, the Agency stated the subject claims constituted a generalized grievance, and were insufficiently vague to state an actionable harassment claim.

The instant appeal followed. On appeal and through counsel, Complainant provides additional details regarding the claims. Complainant states that, in late October 2018 and months thereafter, she had reported to numerous Agency officials that a specific coworker had disparaged and threatened women and minorities. Complainant further states that, beginning in January 2019 and ongoing, the P&DC manager engaged in retaliatory harassment by spying on Complainant and by assigning an additional supervisor to her work area. Complainant asserts that an Agency official physically intimidated Complainant by using a cellphone to conduct video surveillance, and that the official's conduct of Complainant "changed after [Complainant] complained of a hostile work environment." Complainant also states that, to make matters worse, the Agency officials assigned an additional supervisor to "intimidate, harass, and create fear amongst employees on the workroom floor."

ANALYSIS AND FINDINGS

Consistently, the Commission held the Agency should not dismiss for failure to state a claim unless it appeared beyond doubt that no set of facts could entitle Complainant to relief. Cobb v. Dep't of the Treasury, EEOC Request No. 05970077 (Mar. 13, 1997). Moreover, we consider reprisal claims with a broad view of coverage. Carroll v. Dep't of the Army, EEOC Request No. 05970939 (Apr. 4, 2000). For purposes of claiming retaliation, an agency's adverse actions need not be "ultimate employment actions" that materially affect terms and conditions of employment. Lindsey v. U.S. Postal Serv., EEOC Request No. 05980410 (Nov. 4, 1999). See also EEOC Enforcement Guidance on Retaliation and Related Issues, No. 915.004 (Aug. 25, 2016).

Here, a fair reading of the record, as reinforced by appellate arguments, reflects that Complainant raised an actionable harassment claim, as discussed above. Complainant has sufficiently alleged that the P&DC manager aggressively scrutinized her work because she had reported a coworker's possible EEO violations.

CONCLUSION

We **REVERSE** the Agency's final decision dismissing Complainant's formal complaint defined herein as a harassment claim, and we **REMAND** the formal complaint to the Agency for further processing in accordance with the **ORDER** below.

ORDER (E0618)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall acknowledge to 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 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 Complainant's request for a hearing, a copy of Complainant's request for a final agency decision, 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 Complainant and his/her representative.

If the Agency does not comply with the Commission's order, Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). 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, 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 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 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)

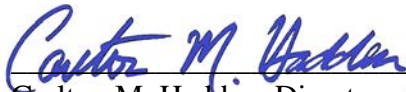
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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 7, 2019

Date