



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]

Kasie L.,¹
Complainant,

v.

David Steiner,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Appeal No. 2023000616

Hearing No. 530-2019-00039X

Agency No. 1C-451-0059-14

DECISION

Complainant was a new mother working at the Agency's Processing & Distribution Center in Columbus, Ohio. A manager at first allowed Complainant to use a vacant conference room, which was private and clean, to express breast milk for her newborn son as needed. Later, another manager stepped in to exclude Complainant from the conference room. The second manager instructed Complainant to instead use the employee bathroom for her lactation needs.

This appeal asks whether the Agency's decision to relegate Complainant to the bathroom violated Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., and the Pregnancy Discrimination Act (PDA), 42 U.S.C. 2000e(k) (1978).

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.

More specifically, this appeal asks whether the Agency's decision violated Title VII's pregnancy-related provisions as they existed prior to passage of the Pregnant Workers Fairness Act of 2023, 42 U.S.C. § 2000gg et seq. We find it did, and accordingly we REVERSE the Agency's final order.

PROCEEDINGS BELOW

This is the second time this complaint has come before us on appeal. An EEOC administrative judge (AJ) originally granted summary judgment in the Agency's favor on all claims. We reversed and remanded for a full hearing. See Sharonda M. v. U.S. Postal Serv., EEOC Appeal No. 0120180910 (Sept. 27, 2018). After a hearing, the AJ again entered judgment in the Agency's favor on all claims. The instant appeal followed.

STANDARD OF REVIEW

Following a hearing, we ask whether the AJ's factual findings are supported by substantial evidence. See 29 C.F.R. § 1614.405(b). Substantial evidence amounts to "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477 (1951) (citation omitted). We review the AJ's legal conclusions de novo. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI (Aug. 5, 2015).

ANALYSIS

We start with a summary of the facts found by the AJ through the hearing. Complainant is a long-term employee of the Agency at its Processing and Distribution Center in Columbus, Ohio. Complainant gave birth to a son in late 2013 and took several months of maternity leave. She returned to work in December 2013 and at that time started a detail stationed in the administrative wing of the plant. While working in this detail, Complainant's then-manager allowed her to use a vacant conference room to express breastmilk as needed.

Complainant's detail ended in May 2014, and she returned to her incumbent position as a Clerk on the main work floor. Complainant continued using the conference room in the administrative wing for her lactation needs. After about two weeks, a newly installed manager observed Complainant accessing the conference room for this purpose.

The new manager confronted Complainant and later that day revoked Complainant's keycard access to the administrative area of the plant. Forbidden from accessing the conference room, Complainant was instead instructed to use the restroom for lactation. After about two weeks of negotiation with the union, the Agency was able to provide Complainant with an acceptably clean and private alternative space.

The AJ's facts, *supra*, are supported by substantial evidence in the record. However, we find the AJ's ensuing legal analysis was too narrow and failed to consider key material facts.

To begin explaining, we must turn the legal clock back to 2014 when these events occurred. At this point Congress had not yet passed a key piece of legislation, the Pregnant Workers Fairness Act of 2023, 42 U.S.C. § 2000gg et seq., protecting the rights and dignity of pregnant women in the workplace. Complainant's claim instead arose under the older and now largely superseded Pregnancy Discrimination Act of 1978 (PDA) which amended Title VII to clarify that the "ter[m] 'because of sex' . . . include[s] . . . because of or on the basis of pregnancy, childbirth, or related medical conditions." § 2000e(k). Under the PDA, however, an employer did not necessarily have an affirmative duty to provide workplace accommodations for pregnancy-related conditions such as lactation. The Act required only that pregnant employees be "treated the same for all employment-related purposes ... as other persons not so affected but similar in their ability or inability to work." *Id.*

In applying the PDA to Complainant's case, the AJ below relied predominantly on the Supreme Court's decision in Young v. United Parcel Service, Inc., 575 U.S. 206 (2015). There the Court held that a pregnant employee who was denied light duty could raise a prima facie inference of discrimination at summary judgment by showing "that the employer did accommodate others similar in their ability or inability to work." *Id.*, 229. If an employee makes this showing, the decision to grant or deny summary judgment follows the McDonnell Douglas burden shifting choreography. *Id.*

With an eye towards Young, the AJ below determined Complainant had not shown that the responsible management officials had ever granted a similar accommodation to any other employee. We agree this finding is supported by substantial evidence. But while it is true the officials here did not grant similar accommodations, it is also true that no other employee besides Complainant ever asked for this sort of accommodation.

Since the responsible officials never had an opportunity to grant or deny a similar accommodation request, the fact that no other employee received this sort of accommodation doesn't move the needle either way.

The AJ erred, however, by treating the lack of a comparator as effectively dispositive of the case. The standard articulated in Young is not mandatory. The Court made it clear it is only demarcating one way in which a plaintiff "may make out a prima facie case" at summary judgment. Young, 575 U.S. at 229 (emphasis added). Although the comparator-centric path charted in Young was closed to Complainant here, she could still rely on other evidence to meet her burden to prove "discrimination vel non." U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 714-715 (1983). The AJ should not have stopped her analysis at Young, and she should have more fully considered Complainant's other evidence. We have done so, and we are persuaded that the Agency acted unlawfully.

The strongest evidence in Complainant's favor is that it is deeply offensive on its face to force a nursing mother to use a public restroom to lactate. Unsurprisingly, Complainant found the experience humiliating. The manager's callous disregard to Complainant's circumstances by itself supports an inference of discriminatory bias against new mothers.

Next, we consider that the manager's purported justification does not hold water. The manager couched her decision to oust Complainant from the conference room by explaining that security concerns mandated that only those assigned to work in the administrative wing could have access to the administrative wing. Since Complainant's detail to the administrative wing had ended, she was—by the manager's reasoning at least—a security threat. While we do not doubt that the Agency has a strong interest in protecting its administrative operations, we find that the manager's articulation of the policy is suspiciously heavy-handed.

The manager's bright-line rule excluding non-administrative employees is not, in fact, an accurate picture of the Agency's policy. The Agency's policy, as gleaned from the record, is simply that no unauthorized persons may enter the administrative wing. It is certainly foreseeable that non-administrative employees could receive authorization to access the administrative wing. The record demonstrates that the Agency did just that. Non-administrative personnel would come and go for all sorts of reasons, to have lunch with colleagues, fill out paperwork, attend to EEO matters, etc. And in this case, Complainant did have authorization from the previous manager to use the conference room.

The previous manager never stipulated that Complainant's access was tied to the term of her detail, nor did the manager ever rescind authorization once the detail ended. The question then is, why did the second manager so suddenly and forcefully revoke Complainant's authorization? Given that Complainant was undisputedly using the conference room for a benign and legitimate purpose, the second manager's swiftness and vehemence in expelling Complainant strikes us as suspiciously punitive and disproportionate, akin to "swatting a fly with a sledgehammer." Stalter v. Wal-Mart Stores, Inc., 195 F.3d 285, 290 (7th Cir. 1999) (holding that discrimination could be inferred from employer's disproportionate decision to terminate employee for eating a handful of chips). The overall picture to emerge is that the manager went out of her way to be especially harsh towards Complainant. And the only thing distinguishing Complainant from other employees was the fact that she was a nursing mother.

Even assuming the manager was correct that the Agency's policy forbade Complainant from continuing to access the administrative wing after her detail even for the legitimate purpose of lactation, we would still find discriminatory bias from the fact that the manager selectively declined to follow other Agency policies that favored Complainant as a nursing mother. At this time, it was in fact the Agency's policy to provide nursing employees with a space other than a bathroom to express breastmilk. See U.S. Postal Service Employee and Labor Relations Manual 55, Section 441 (making it the "policy" of the Postal Service to "comply with the Fair Labor Standards Act (FLSA)"); 29 U.S.C. § 207(r) (FLSA provision requiring covered employers to provide suitable pumping space other than a restroom) (repealed and superseded by Pump for Nursing Mothers Act, Pub. L. No. 117-328, Division KK, 136 Stat 4459, 6093 (Dec. 29, 2022)). The manager knowingly violated this policy by banishing Complainant to a restroom to lactate, further demonstrating that her decision was tainted by discriminatory bias.

CONCLUSION

Having fully considered the evidence overlooked by the AJ below, we conclude the decision to exclude Complainant from the conference room and relegate her to a bathroom was not "free from discrimination" based on her pregnancy. 42 U.S.C. § 2000e-16. We reverse in part and remand to the Agency for proceedings on relief and damages per the orders below.

ORDER

The Agency shall take the following remedial actions:

1. Within **120 calendar days** of the date this decision is issued, the Agency shall conduct and complete a supplemental investigation to determine whether Complainant is entitled to compensatory damages. In so doing, the Agency shall:

a. Issue a notice to Complainant of her right to submit evidence based on our guidance in Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993) and request evidence from Complainant in support of compensatory damages. The Notice shall provide Complainant with **30 calendar days** to respond (with an option and instructions to request an extension in the case of extenuating circumstances). Complainant has a duty to cooperate with Agency's investigation to determine compensatory damages, including responding to agency requests for documentation or completing agency forms.

b. Issue a new final agency decision ("Compensatory Damages FAD") based on the findings of the supplemental investigation. The Compensatory Damages FAD shall state the amount (if any) of compensatory damages owed to Complainant and explain how the Agency determined that amount. The Compensatory Damages FAD shall include appeal rights to the Commission.

c. Within **60 calendar days** of the date the Compensatory Damages FAD is issued, the Agency shall pay Complainant the amount of compensatory damages it determined are owed. If there is a dispute over the exact amount of compensatory damages owed, the Agency shall pay the undisputed amount to Complainant. If Complainant disagrees with the Agency's award, they may challenge the Agency's decision on the amount of compensatory damages by filing an appeal of the Compensatory Damages FAD with the Commission. Instructions on how to appeal, including the deadline to file, will be included in the appeal rights portion of the Compensatory Damages FAD.

2. Within **90 calendar days** of the date this decision is issued, the responsible management officials shall complete four hours of online or live training on the Agency's obligations under Title VII and the PWFA. For assistance in obtaining the necessary training, the Agency may contact the Commission's Outreach, Training and Engagement Division via email, at FederalTrainingandOutreach@eeoc.gov.

The Agency shall provide the Compliance Officer with proof of attendance, as well as the contents and materials it used for the training. If the responsible management officials have left the Agency's employment, then the Agency shall furnish documentation of his/her/their departure date.

3. Within **120 calendar days** from the date this decision is issued, the Agency shall consider disciplining the responsible management officials for their actions violating Title VII found to have occurred in this decision. *The Commission does not consider training to be disciplinary action.* The Agency shall report its decision to the Compliance Officer. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If these individuals have left the Agency's employ, the Agency shall furnish documentation of their departure dates.

4. Within **30 calendar days** of the date this decision is issued, the Agency shall post a notice in accordance with the section listed below, entitled "Posting Order." The Agency shall provide the Compliance Officer with the original signed and dated notice, reflecting the dates that the notice was posted, along with evidence that the notice was physically posted at the facility and electronically.

POSTING ORDER (G0617)

The Agency is ordered to post, at its Processing & Distribution Center located in Columbus, Ohio, 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 (H0124)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), they are 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 receipt of this decision. 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 (K0719)

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.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0425)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that 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 for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.** A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within 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).

Complainant should submit their request for reconsideration, and any statement or brief in support of their request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>. Alternatively, Complainant can submit their request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files their request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the 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(f).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0124)

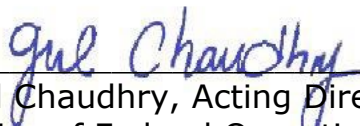
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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 their 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:



Gul Chaudhry, Acting Director
Office of Federal Operations

August 4, 2025
Date