



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

[REDACTED]
Lonny C.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Appeal No. 2021004333

Agency No. 4J-606-0015-21

DECISION

On July 27, 2021, 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 July 13, 2021, final decision concerning his equal employment opportunity (EEO) complaint alleging 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. For the following reasons, the Commission AFFIRMS the Agency's final decision finding no discrimination.

ISSUE PRESENTED

The issue presented is whether the Agency properly determined that Complainant did not establish that the Agency subjected him to discrimination or harassment based on sex (sexual orientation) and/or reprisal.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a PS-06 Sales, Services/Distribution Associate at the Agency's Cardiss Collins Post Office facility in Chicago, Illinois. Complainant is a gay man and stated that he engaged in protected EEO activity beginning on or about June 1, 2020, when he reported discrimination and harassment, and 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.

he initiated the instant EEO complaint. Report of Investigation (ROI) at 159-60. Complainant initiated contact with an EEO counselor on October 16, 2020. ROI at 25.

On December 10, 2020, Complainant filed an EEO complaint, which he subsequently amended, alleging that the Agency discriminated against him on the bases of sex (male; sexual orientation (gay))² and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 when:

1. On dates to be specified around June and July 2020, he was not paid correctly;
2. On September 30, 2020, and possible other dates to be specified, he was denied training;
3. On October 11, 2020, and possible other dates to be specified, he was denied the opportunity to work special assignments;
4. On October 16, 2020, and possible other dates to be specified, he was moved from his assignment area;
5. On or around October 19, 2020, and possible other dates to be specified, he was not permitted to work his days off, or not permitted to change his start time on his day off;
6. On October 30, 2020, he was not permitted to join a unit party;
7. On October 30, 2020, and possible other dates to be specified, a supervisor (Supervisor-1) yelled at him on the workroom floor;
8. On October 31, 2020, and possible other dates to be specified, he was micromanaged;
9. On dates to be specified, he was denied opportunities;
10. On November 27, 2020, Supervisor-1 stopped his change of schedule;
11. On December 7, 2020, and other dates, he was not allowed to set up the store when he reported early, while a coworker was allowed to do so;
12. On January 6, 2021, Supervisor-1 did not allow him to complete his training on the computer; and
13. On January 9, 2021, he was informed to return to his normal Form 50 starting time, while other individuals were still allowed to report earlier than their standard start times.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

² In Bostock v. Clayton Cty., the Supreme Court held that discrimination based on sexual orientation or transgender status is prohibited under Title VII. 590 U.S. ___, 140 S. Ct. 1731 (2020); see also Baldwin v. Dep't of Transp., EEOC Appeal No. 0120133080 (July 15, 2015) (an allegation of discrimination based on sexual orientation states a claim of sex discrimination under Title VII because sexual orientation is inherently a sex-based consideration).

The instant appeal followed.

ANALYSIS AND FINDINGS

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review “requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker,” and that EEOC “review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission’s own assessment of the record and its interpretation of the law”).

As a preliminary matter, according to Complainant, he was “the only open comfortable LGBT male worker”³ in the unit, and Supervisor-1 was aware of his sexual orientation. ROI at 160, 178. Supervisor-1 denied being aware of Complainant’s sexual orientation. ROI at 326. According to Supervisor-1, she learned that Complainant identified as a member of the LGBTQ+ community during a REDRESS meeting related to this EEO complaint, but he never identified his sexual orientation. ROI at 326. According to the record, REDRESS mediation was held on November 19, 2020. ROI at 27. Complainant alleged that his sexual orientation was common knowledge and that Supervisor-1 did not agree with his “alternative lifestyle.” ROI at 165. While Complainant asserts that Supervisor-1 knew his sexual orientation, he does not state that he told Supervisor-1 about his sexual orientation, identify any comments made by Supervisor-1 about

³ The record reflects that, during the investigation, the EEO investigator asked the management officials if they were aware whether identified comparators were “LGBT,” which the EEO investigator repeatedly defined in Supervisor-1’s affidavit as standing for “Lesbian, Gay, Bisexual, Transsexual [sic].” See ROI at 336-46, 356-64, 370-83, 392-401, 408, 415-18, 430, 437-39. However, the “T” in LGBTQ+ stands for “transgender,” which is an adjective used to describe “people whose gender identity differs from the sex they were assigned at birth.” GLAAD Media Reference Guide – Glossary of Terms: LGBTQ, 11th Ed., available at <https://glaad.org/reference/terms>. We recommend that the Agency inform its EEO investigators that “transsexual” or “transsexual” is an outdated term and should not be used. The term “transsexual” is an older term that originated in the medical and psychological communities and has largely been replaced by the term “transgender,” and that term therefore should not be used to describe a person “unless it is a word they use to describe themselves.” GLAAD Media Reference Guide – Glossary of Terms: Transgender, 11th Ed., available at <https://glaad.org/reference/trans-terms>; see also Darin B. v. Office of Pers. Mgmt., EEOC Appeal No. 0120161068 n.2 (Mar. 6, 2017) (“Although the term ‘transsexual’ is generally disfavored by the transgender community today, Complainant self-identifies as ‘transsexual’ on appeal and in his formal complaint. Consequently, this decision reflects Complainant’s preference for self-identification.”).

his sexual orientation or “alternative lifestyle,” or provide any additional evidence that Supervisor-1 was aware that he was a member of the LGBTQ+ community before November 19, 2020. Accordingly, Complainant has not established by the preponderance of the evidence in the record that Supervisor-1 was aware of his sexual orientation before the REDRESS mediation. Complainant alleges that Supervisor-1 subjected him to discrimination and harassment. Therefore, Complainant cannot establish a prima facie case of disparate treatment or harassment based on sexual orientation for incidents involving Supervisor-1 that occurred prior to November 19, 2020.

Disparate Treatment

Complainant alleged that he was subjected to discrimination based on sex, sexual orientation, and reprisal. To prevail in a disparate treatment claim, Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). He must generally establish a prima facie case by demonstrating that he was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Co. v. Waters, 438 U.S. 567, 576 (1978). The prima facie inquiry may be dispensed with where the Agency has articulated legitimate and nondiscriminatory reasons for its conduct. See U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 713-17 (1983); Holley v. Dep’t of Veterans Affs., EEOC Request No. 05950842 (Nov. 13, 1997). To ultimately prevail, Complainant must prove, by a preponderance of the evidence, that the Agency’s explanation is a pretext for discrimination. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133 (2000); St. Mary’s Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993); Tex. Dep’t of Cmty. Affairs v. Burdine, 450 U.S. 248, 256 (1981); Holley, supra; Pavelka v. Dep’t of the Navy, EEOC Request No. 05950351 (Dec. 14, 1995).

Complainant alleged that, from June 12 through July 4, 2020, he was not paid correctly and did not receive the out-of-schedule premium pay or Sunday premium pay he was owed for working outside of his schedule during that period. ROI at 162-63. Complainant averred that a supervisor (Supervisor-2) told him that Supervisor-1 would take care of the issue. ROI at 163. Complainant stated that he asked Supervisor-1 about the issue 10 times and was told she was working on it. ROI at 163-64. Complainant averred that he was told that the system was down or not working, but he stated that he did not believe this explanation because everyone else was paid correctly, including his female coworkers and straight coworkers. ROI at 164-65. According to Complainant, on January 22, 2021, he was paid some, but not all, of the premium pay he was owed, and he was still entitled to almost \$2,000. ROI at 162-63.

The record contains a September 27, 2020, Pay, Leave, or Other Hours Adjustment Request form signed by Supervisor-1 that indicates that Complainant should receive 57.82 hours of out-of-schedule premium pay for the second week of pay period 13 in 2020. ROI at 465. The record contains a January 1, 2021, Pay, Leave, or Other Hours Adjustment Request signed by Supervisor-1 that indicates that, for pay period 14 in 2020, Complainant should receive 30.94 hours for the first week of the pay period and 30.62 hours for the second week. ROI at 466-67.

According to the forms, Complainant had already received eight hours of Sunday premium pay for the second week of pay period 13 and both weeks in pay period 14. ROI at 465-67.

Upon review, we do not find that Complainant has established by the preponderance of the evidence in the record that, after January 2021, he was still owed out-of-schedule premium pay or Sunday premium pay. We find that the Agency has provided legitimate, nondiscriminatory explanations for the delays in Complainant receiving the out-of-schedule premium pay. The initial delay in Complainant receiving out-of-schedule premium pay for pay period 13 was because Supervisor-2 did not know how to enter the request for premium pay in the system, so Supervisor-1 submitted it. ROI at 327. There was an additional delay before Complainant received out-of-schedule premium pay for pay period 14 because Supervisor-1 was unaware that he had not received it until he raised it in his EEO complaint. ROI at 327-29. After Supervisor-1 received approval from management to re-enter the request in the new system, Complainant received the out-of-schedule premium pay for pay period 14. ROI at 327-30. As evidence of discrimination, Complainant generally alleged that straight and female coworkers were paid correctly and that Supervisor-1 did not approve of Complainant contacting an EEO counselor. However, Complainant did not specifically identify any coworkers who were treated better. We find that Complainant has not established that the Agency's legitimate, nondiscriminatory reasons were pretextual.

According to Complainant, he was denied training by Supervisor-1 on September 30, 2020. ROI at 166, 214. Complainant stated that, on September 30, 2020, he was denied training on Business Reply Mail, cage, verification, wall mail, and the Caller Counter. ROI at 167. Complainant averred that Supervisor-1 told him she did not need Complainant "over there" and the timing was "not right" for the training, stating that his coworkers received the training on "comfortable" work assignments. ROI at 167-70. The legitimate, nondiscriminatory reason for not providing Complainant training on cage, verification, wall mail, and the Caller Counter at this time was that there was no formal training for these tasks and there was insufficient staffing to allow Complainant to receive on-the-job training. ROI at 331-34. There was formal online Business Reply Mail training, and Supervisor-1 told Complainant to work with someone for on-the job training after he completed the online training and staffing levels allowed it. ROI at 332. Supervisor-1 explained that Complainant was one of only two passport agents at the time, so she could not afford to take him off that assignment. ROI at 333-34. Supervisor-1 stated that Complainant received on-the-job training after the 2020 Christmas rush. ROI at 332-33. As evidence of pretext, Complainant alleged that Supervisor-1 sought female workers for this type of work and wanted him to do the physical labor because he was a man and "let the ladies sit." ROI at 168. Complainant identified seven employees he alleged were treated more favorably than he was. ROI at 170. However, Supervisor-1 denied that she allowed these seven employees or other employees to receive training during the period in question. ROI at 334-49. Complainant has not established by preponderant evidence in the record that the Agency's legitimate, nondiscriminatory explanation for not providing him training in September 2020 was a pretext designed to mask discrimination.

Complainant stated that on October 11, 2020, October 16, 2020, and on an ongoing basis starting around November 19, 2020, Supervisor-1 denied him the opportunity to work special assignments, such as the wall mail lockbox, unique flats, unique Priority, counting the Business Reply Mail, and stocking the retail store. ROI at 171-72. According to Complainant, although he was certified to do the special assignments and other senior employees in his unit did not want to work these assignments, Supervisor-1 ignored his requests to work these assignments or told him the timing was not right. ROI at 171-73. The Agency's legitimate, nondiscriminatory explanation was that Complainant's primary assignment was window clerk, and Supervisor-1 instructed him to work there because that was where he was needed. ROI at 354-55. Supervisor-1 denied that there were "special assignments," stating that she assigned clerks work within their job bid based on the needs of the Agency on a particular day, including staffing levels. ROI at 352-53. Again, as evidence of pretext, Complainant stated that Supervisor-1 canvassed straight and/or female employees to perform these assignments and alleged that Supervisor-1 wanted him to do the more physical labor because he was a man and "let the ladies sit." ROI at 173. However, Complainant does not dispute that working as a window clerk was within his job description, nor has he shown that Supervisor-1's legitimate, nondiscriminatory explanation for assigning him to work at the window was a pretext for discrimination based on sex, sexual orientation, and/or reprisal.

Complainant averred that, every day in September and October 2020, he was moved from his assignment area by Supervisor-1 and assigned to the bank room. ROI at 176-77. Complainant stated that his regular assignment was Lockbox 80 Retail Services, wall mail, unique Priority, bank room, unique flats, Lockbox 80 Flats, and Lockbox 80 Priority. ROI at 177. According to Complainant, Supervisor-1 did not give a reason for moving him, and Supervisor-1 did not move female and/or straight employees. ROI at 177-78. The Agency's legitimate, nondiscriminatory reason for Supervisor-1 moving Complainant was that, although his primary assignment was working the window, because of Covid-19-related staffing problems, she assigned him for a period to the bank room, an area to handle secured mail for businesses, including banks. ROI at 369. According to Supervisor-1, she needed to move Complainant back to the window when people called in sick. ROI at 369. Although Complainant objected to being moved to the bank room and back to the window, he has not established that the Agency's legitimate, nondiscriminatory reason was pretextual.

Complainant alleged that during the months of October, November, December 2020, and January 2021, he was not permitted to work his days off, not permitted to change his start time on his day off, and/or denied overtime opportunities. ROI at 180, 194. Complainant averred that straight and/or female employees with less seniority were working six or seven days per week. were allowed to change their start times when they worked on their days off, and were working overtime. ROI at 182-84. Complainant stated that he was on the Overtime Desired List yet was denied overtime while employees with less seniority were working penalty overtime, alleging that Supervisor-1 allowed female employees to work seven days a week and unlimited overtime, up to 16 hours per shift. ROI at 195-97. Complainant's days off were Mondays and Tuesdays, and his regular start time was 7:30 a.m. ROI at 180-81.

The record contains an October 18, 2020, note signed by Complainant requesting to be removed from the 12-hour shift for the fourth quarter 2020 overtime desired list. ROI at 471.

The Agency has provided legitimate, nondiscriminatory explanations for overtime assignments and for not allowing Complainant to change his start time on certain days off, and Complainant has not shown that the Agency's proffered explanations were pretextual. Supervisor-1 averred that she normally scheduled overtime a day in advance and offered overtime in order of seniority to people interested in working overtime. ROI at 388. According to Supervisor-1, in November 2020, she issued a blanket overtime call list with the names of people who agreed to work overtime on one of their scheduled days off, which served as the approval for working overtime on one of their scheduled days off. ROI at 388. Supervisor-1 stated that workers were only eligible to work on one of their scheduled days off because otherwise it would go into penalty overtime. ROI at 388. Supervisor-1 explained that, in November and December 2020, there was significant overtime, and she assigned Complainant overtime whenever he was available, but he was not at work for the majority of December 2020 and therefore not available for overtime. ROI at 414. Supervisor-1 stated that in January 2021 she was directed to reduce the amount of overtime and returned to selecting people for overtime based on seniority. ROI at 388. According to the Acting Manager, Complainant told her that he was unfairly denied the opportunity to work pre-tour overtime when employees from other shifts were working pre-tour overtime. ROI at 454-56. The Acting Manager stated that she explained to Complainant that overtime was assigned based on the needs of the service, not to accommodate an employee's schedule. ROI at 455. According to Supervisor-1, she provided Complainant his requested change of schedule until November 27, 2020, when all employees were required to work their standard schedule due to workload and staffing pressure. ROI at 389-90. Supervisor-1 denied that other employees were able to change their start time in December 2020. ROI at 393-404. Complainant has not shown that the Agency's legitimate, nondiscriminatory explanations regarding overtime were pretextual.

Complainant alleged discrimination in connection with Supervisor-1 stopping his change of schedule on November 27, 2020, and directing him to return to his official Form 50 starting time of 7:30 a.m. on January 9, 2021, while other individuals were still allowed to report earlier than their standard start times. ROI at 199, 217-22. In September 2020, Supervisor-1 adjusted Complainant's work schedule to accommodate his class schedule. ROI at 200, 423-24. According to Complainant, in November 2020, Supervisor-1 told him that there were no schedule changes permitted in the month of December and that he had to return to his official start time even though his classes were not over. ROI at 200. The record contains an image of a sign dated January 8, 2021, signed by Supervisor-1 that stated that there was no overtime unless posted, including on regular days off and before and after tours, and that all employees should clock in at their scheduled reporting time. ROI at 258. The Agency's legitimate, nondiscriminatory explanation is that, on November 27, 2020, it was announced that all employees would have to return to their bid schedule in December due to the needs of the service. ROI at 389-90, 423-24. Supervisor-1 averred that Complainant was off work for most of December 2020 and that she granted Complainant's subsequent request for a change in start time on or about March 31, 2021. ROI at 389-90.

Supervisor-1 stated that one female employee (Comparator-1) was a “nifty” employee who was allowed to be assigned wherever she was needed and to whatever tour times she was needed to work without the need for a formal change of schedule form. ROI at 391. Complainant was not a “nifty” employee. Complainant alleged that Supervisor-1 allowed female coworkers and straight coworkers to stay on details that included a change of schedule. ROI at 200-01. However, Complainant was not assigned to a detail, so he was not similarly situated to detailed employees. Complainant has not established by preponderant evidence in the record that the Agency’s legitimate, nondiscriminatory reason for stopping his change of schedule or directing him to report to work at his scheduled time was pretext for discrimination based on sex, sexual orientation, and/or reprisal.

Complainant averred that during December 2020, January, and February 2021, he was not allowed to set up the store when he reported to work early, but a straight female coworker (Comparator-2) was permitted to do so. ROI at 210-12. According to Complainant, Supervisor-1 would meet him at the clock and instruct him to throw P.O. box mail right after clocking in. ROI at 210. Complainant stated that Comparator-2 was allowed to hit the clock and go to the locker room without Supervisor-1 instructing her what to do. ROI at 212-13. The Agency’s legitimate, nondiscriminatory explanation is that all the clerks except Comparator-2 were instructed to case the Post Office boxes first upon reporting to work because that was the top priority, whereas the Comparator-2 was responsible for other preparatory tasks, including setting up the retail store and work on the computer. ROI at 428-30. Supervisor-1 noted that Complainant should not be reporting to work before his scheduled start time because that could result in unauthorized overtime. ROI at 428. Complainant has not shown that the Agency’s legitimate, nondiscriminatory reason was pretextual.

Complainant stated that, on January 6, 2021, Supervisor-1 would not allow him to complete the Retail Associate Cyber/Daily Update training on the computer and told him he was needed at the Post Office boxes. ROI at 167, 214-15. According to Complainant, he later completed the training when he told another supervisor that he had not completed the required training. ROI at 215. Supervisor-1 stated that everyone was required to complete the training to maintain computer access. ROI at 332. The Agency’s legitimate, nondiscriminatory explanation was that the date in question was Complainant’s first day at work after an absence, and Supervisor-1 told him that there was not enough time for him to complete the training that day. ROI at 332-33, 432-33. Complainant alleged that Supervisor-1 did not stop the female or straight workers in his unit from completing the training. ROI at 216. However, Complainant does not specifically allege that any female or straight coworkers were trying to complete the training at the same time he was, nor has he otherwise established pretext for discrimination.

Hostile Work Environment

Complainant also alleged that he was subjected to harassment based on sex, sexual orientation, and reprisal. To establish a claim of harassment a complainant must show that: (1) he belongs to a statutorily protected class; (2) he was subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based

on the statutorily protected class; (4) the harassment affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982). Further, the incidents must have been “sufficiently severe or pervasive to alter the conditions of [complainant’s] employment and create an abusive working environment.” Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993). The harasser’s conduct should be evaluated from the objective viewpoint of a reasonable person in the victim’s circumstances. Enforcement Guidance on Harris v. Forklift Systems Inc., EEOC Notice No. 915.002 at 6 (Mar. 8, 1994).

Reprisal claims are considered with a broad view of coverage. See Burlington Northern and Santa Fe Ry. Co. v. White, 548 U.S. 53, 67-68 (2006); see also, Carroll v. Dep’t of the Army, EEOC Request No. 05970939 (Apr. 4, 2000). Retaliatory actions which can be challenged are not restricted to those which affect a term or condition of employment. Id. Rather, a complainant is protected from any discrimination that is reasonably likely to deter protected activity. Id.; see also, Carroll, supra. To ultimately prevail on a claim of retaliatory harassment, Complainant must show that he was subjected to conduct sufficient to dissuade a “reasonable person” from making or supporting a charge of discrimination. See Burlington Northern and Santa Fe Ry. Co. v. White, 548 U.S. 53, 57 (2006); EEOC Enforcement Guidance on Retaliation and Related Issues, EEOC Notice No. 915.004, § II(B)(3) & n. 137 (Aug. 25, 2016).

Complainant stated that around October 15-20, 2020, he was not permitted to join a unit birthday party. ROI at 188. According to Complainant, while others were allowed to enjoy food and drinks during the party even if it was not their break, Supervisor-1 singled him out and told him to return to work. ROI at 188-89. Complainant alleged that Supervisor-1 allowed several female employees to decorate for the party and that “all straight workers were able to party.” ROI at 189. Supervisor-1 stated that employees attended the birthday celebration for an employee in the Lockbox area as their breaks allowed and denied that any window clerks were permitted to leave their duties to attend the celebration. ROI at 406. Complainant has not established by preponderant evidence that Supervisor-1 told him to return to work based on his membership in any protected class.

Complainant alleged that Supervisor-1 yelled at him on the workroom floor during the first week of October 2020, on October 30, 2020, on or about November 14, 2020, on or about November 21, 2020, and on or about February 5, 2021. ROI at 207. According to Complainant, in early October, he was working the unique flats when Supervisor-1 told him to work the bank room and, when he asked why he was the only employee who was moved around, she yelled, “I am instructing you to work the bank room.” ROI at 207. Complainant alleged that Supervisor-1 did not yell at any female or straight coworkers. ROI at 209. Supervisor-1 denied ever yelling at Complainant and stated that she did not remember any interaction with Complainant in the first week of October 2020 when she instructed him to work in the bank room. ROI at 409. As discussed above, the Agency provided a legitimate, nondiscriminatory reason for assigning Complainant to work in the bank room.

We find that the preponderance of the evidence in the record does not establish a connection between the alleged harassment and Complainant's sex and/or prior protected EEO activity.

Complainant stated that on October 30, 2020, Supervisor-1 yelled at him and threatened to write him up for some unscanned mail from the previous day. ROI at 207. Supervisor-1 stated that, one day, Complainant told her as she was leaving the facility that something was wrong with the printer and he could not get a firm sheet to print out, so she suggested he speak to another supervisor. ROI at 409. According to Supervisor-1, the next day a supervisor told her that she had printed out the firm sheet for Complainant, who threw it in the garbage, so she informed Complainant that he could be written up for that and that their conversation was his official discussion. ROI at 409. Supervisor-1 denied yelling and averred that Complainant tried to argue with her as she walked away. ROI at 409. Complainant has not established that this instance of harassment occurred as alleged. Moreover, Complainant has not shown that Supervisor-1 informed him that he could be written up for throwing away the firm sheet because of his sex and/or prior protected EEO activity.

On or about November 14 or 21, 2020, Complainant alleged that Supervisor-1 yelled at him to stay with his trainer (Trainer-1) and told Trainer-1 not to let Complainant out of their sight. ROI at 207. According to Supervisor-1, Complainant had been asking to train on the Caller Counter, and, on the date in question, she finally had enough clerks working the window so she could let Complainant work alongside Trainer-1 at the Caller Counter. ROI at 409. Supervisor-1 explained that, when Trainer-1 went upstairs to pick up the mail, she told Complainant he should have followed her to learn the Caller Counter procedure. ROI at 409. We find that the preponderance of the evidence in the record does not establish that the alleged harassment was based on Complainant's sex, sexual orientation, and/or prior protected EEO activity.

Complainant averred that, on February 5, 2021, Supervisor-1 yelled at him "to quit focusing on her" and to do his job. ROI at 207. Supervisor-1 stated that, on the date in question, a customer came to the window to pick up a package and, rather than getting information from the customer to locate the package, Complainant came to Supervisor-1's desk and asked her to look up a package number for him. ROI at 410. According to Supervisor-1, she told Complainant that she was busy and he could look it up on the computer, but Complainant responded that it was Supervisor-1's job and gave the customer Supervisor-1's phone number. ROI at 410. Supervisor-1 averred that, upon asking the customer for basic information, she realized that the customer should not have received a notice for the item in question in the P.O. box, which made the customer "very angry." ROI at 410. Supervisor-1 denied yelling, stating that she told Complainant that, if he had been focused on doing his job, he would have realized the error and been able to resolve the issue without the customer needing to wait to talk to Supervisor-1. ROI at 410. Complainant has not established by preponderant evidence that Supervisor-1 yelled at him on this date as alleged, nor has he shown that Supervisor-1 told him that he should have focused on his job based on sex, sexual orientation, and/or reprisal.

Finally, according to Complainant, on or about October 30, 2020, and from January 6, 2021, through February 2021, Supervisor-1 micromanaged him. ROI at 191.

Complainant stated that Supervisor-1 followed him from room to room or sent employees to assign him work or stand side by side with Complainant. ROI at 191-92. Supervisor-1 denied micromanaging Complainant as alleged. ROI at 411. According to Supervisor-1, because she was the only supervisor on duty, she routinely walked around the facility to observe employees as part of her duties and would tell employees she observed not working to get back to work. ROI at 411. Supervisor-1 stated that she did not tell anyone to stand side by side with Complainant, noting that social distancing for Covid-19 and staffing shortages would have prevented her from having another employee stand next to Complainant to observe him. ROI at 411. Complainant has not established that Supervisor-1 singled him out for observation, observed him based on his membership in any protected class, or assigned employees to work side by side with Complainant.

Because Complainant has either not established that the alleged harassment occurred as alleged and/or that the alleged harassment was based on his membership in any protected class, he cannot establish that he was subjected to a hostile work environment.

CONCLUSION

Upon careful review of the Agency's decision and the evidence of record, as well as the parties' arguments on appeal, including those not specifically addressed herein, we find that the Agency correctly analyzed the facts and law of this case to determine that Complainant did not establish that the Agency subjected him to discrimination and/or harassment based on sex, sexual orientation, and/or reprisal as alleged. Accordingly, we AFFIRM the Agency's final decision finding no discrimination.

STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0124.1)

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 (S0124)

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 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:



Carlton M. Hadden, Director
Office of Federal Operations

January 24, 2024

Date