



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

[REDACTED]  
Ramon L,<sup>1</sup>  
Complainant,

v.

Douglas J. Burgum,  
Secretary,  
Department of the Interior,  
Agency.

Appeal No. 2022001314

Hearing Nos. 541-2018-00084X and 541-2019-00137X

Agency Nos. DOI-OS-17-0505 and DOI-OS-19-0085

**DECISION**

On January 11, 2022, Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's December 13, 2021 final order concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission AFFIRMS the Agency's final order.

At the time of events giving rise to this complaint, Complainant worked as a Fiscal Services Specialist, GS-9, in the interior Business Center.

Complainant filed two EEO complaints which were consolidated by the EEOC Administrative Judge (AJ). These complaints are detailed below.

On October 8, 2017, Complainant filed a formal complaint alleging that based on his age the Agency subjected him to hostile workplace

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<sup>1</sup> 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.

discrimination. Complainant specifically alleges that the Team Lead, from approximately mid-2015 to the present, and the Fiscal Services Branch Chief ("Chief"), from August 12, 2016 to the present, subjected him to the following:

1. On an unspecified date in late 2015, the Team Lead excluded from his FY 2015 performance appraisal the work he performed as the lead for the "Tiger Team" created to develop a solution to a problem termed 'CB2/CB3" for the FTC Client;
2. On an unspecified date in October 2015, the Team Lead presented Complainant's work on the Error Correction form as her own and jeopardized its success;
3. On August 19, 2016, Chief intimidated him into dropping his concerns with HR and the Labor Union regarding the tirade he [Gardner] levied on him for allegedly violating the Hatch Act;
4. On September 14, 2016, he received a birthday card emphasizing his age versus an "upbeat" card like "life is Great";
5. On October 28, 2016, Chief refused to remove a negative statement from Complainant's FY 2016 performance appraisal regarding an event that occurred in FY 2015. Complainant's second level supervisor later removed the negative statement;
6. On December 9, 2016, he was called into a meeting with three other attendees; however, he was denied the foreknowledge of knowing the purpose of the meeting whereas the other three were not. The purpose of the meeting was to allow another employee an opportunity to air her grievances with him. The meeting concluded with management stating that the "generational gap" between him and the co-worker created a lack of communication;
7. On an unspecified date in February 2017, after being assured the FTC Client would staff with him in 2017, his responsibilities regarding the FTC Client were removed; and
8. On June 30, 2017, he became aware during an IBC Customer Service Class held on May 16, 2017, his name and age were revealed to the class participants as he was named responsible for the discontent between IBC and the client (FTC).

Complainant also alleged that he was discriminated against and subjected to continued harassment and disparate treatment based on reprisal (EEO activity) when:

9. On multiple dates in October 2017, the Team Lead, who was not Complainant's manager, belittled Complainant and subjected his work to extreme scrutiny.

Complainant finally alleged that he was subjected to discrimination based on age and reprisal when:

10. On or about September 24, 2018, he became aware that he was not selected for the position of Financial Specialist, GS 9-12, under Vacancy Announcement Number IBC-18-MP-10191773SM.

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 EEOC AJ. Complainant requested a hearing. The Agency filed a Motion for Summary Judgment. Both Complainant and the Agency submitted replies. The assigned AJ determined that this matter did not warrant a hearing and over Complainant's objections issued a decision without a hearing on November 22, 2021. The AJ fully adopted the Agency's Motion.

The AJ concluded that the Agency had provided legitimate, nondiscriminatory reasons for its actions. Specifically, concerning claim 1, Complainant's FY 2015 performance appraisal (claim 1), Complainant's first-line supervisor recognized Complainant's involvement in a "Tiger Team" and documented this recognition in the narrative summary for Critical Element 2 in his FY 2015 EPAP, which was a "Superior" rating, contrary to Complainant's bare allegation. Regarding claim 2, the error correction form, Complainant first-line supervisor recognized Complainant's involvement in the creation of the Error Correction Form and documented this recognition in the narrative summary of Critical Element 4 in his FY 2016 EPAP, a "Superior" rating. With respect to claim 3, an alleged Hatch Act violation, Chief was required to exercise his managerial authority to inform a supervisee (Complainant) on the potential violation of the Hatch Act. Concerning claim 4, the Birthday Card, it was a common occurrence for Complainant's co-worker to purchase birthday cards for all employees' birthdays in the workplace. Further, neither Complainant's first-line supervisor nor the co-worker believed the birthday card was disrespectful, and Complainant did not complain to him about the birthday card.

Regarding claim 5, Complainant's FY 2016 appraisal, once Complainant notified his immediate supervisor that the referenced negative comment occurred in the prior performance year, the supervisor agreed to remove this comment before his FY 2016 EPAP was finalized. Further, Complainant received an overall "Superior" rating on his FY 2016 EPAP. With respect to claim 5, the December 9, 2016 meeting, Complainant's immediate supervisor's legitimate reason for the meeting was because a co-worker had reported to him that she felt disrespected and disregarded by Complainant. Complainant's supervisor was merely attempting to resolve a workplace dispute to ensure the efficient and orderly operation of the Office. Concerning claim 7, the FTC client, Complainant's immediate supervisor's legitimate reason for changing Complainant's primary duties for the FTC client was to ensure he knew how to perform the duties for all nine clients, and not just the FTC client. At the time of the change, Complainant did not have much experience as the backup and there were only two certifiers and nine clients. Regarding claim 8, the IBC Customer Service Class, Complainant's immediate supervisor did not take any action because the incident occurred in a training class, Complainant did not attend, and the class Instructor did not feel the need to end the discussion. Further, Agency HR did report her concerns to the IBC Training Officer to prevent a similar situation from recurring in future training sessions. With respect to claim 9, purported belittlement of Complainant, the Agency noted that receiving a large volume of e-mails, being admonished for responding late to an inquiry, and being admonished by being written up for two error reports cannot be considered a hostile work environment. Complainant is attempting to use the EEO process to espouse every incident that makes him unhappy in the workplace, but claims of harassment are not intended to rid the workplace of every unpleasantry, insensitive comment, or workplace slight. However, even if Complainant has met the *prima facie* elements for a hostile work environment, the Agency has proven legitimate, nondiscriminatory reasons for its actions. Namely, the Team Lead sent Complainant e-mails as a part of her regular duties, Complainant did not respond to an inquiry for two weeks, and he made two errors that were written up.

Finally, concerning claim 10, Complainant's nonselection for the Financial Specialist vacancy, the Agency explained that the Selecting Official clearly articulated why the Selectee was the superior candidate. The Selecting Official followed Agency policy when determining who to interview for the position. The Selecting Official created a Subject Matter Expert (SME) panel of two persons to review the resumes of the best qualified candidates and select 10 applicants for interview. This SME panel selected nine applicants to be interviewed (one candidate withdrew).

The nine applicants were then interviewed by a four-person interview panel, including the Selecting Official. The nine persons interviewed were asked the same five questions and the Selection Panel ranked the applicants based on a rubric provided, scoring each answer from zero to three on a spreadsheet. The scores were then consolidated to determine the highest numerically scored candidate. The Selecting Official determined the Selectee answered all questions thoroughly, clearly, to the point, and provided examples. In comparison, she determined Complainant did not answer the questions clearly or deviated from the question asked with a lengthy response that did not answer the question directly. The Selecting Official also considered that Complainant brought additional materials to the interview that could not be considered as they were outside the hiring process parameters and would have disadvantaged other applicants. This demonstrated an inability to follow instructions. Further, the Selecting Official called the references of both Complainant and the Selectee, and the Selectee received a higher rating. Lastly, the Selectee received an overall score of 42 compared to Complainant's overall score of 25, which made Complainant the fifth-choice applicant. The AJ determined that Complainant could not show discriminatory pretext for any of the reasons provided by the Agency. Further, because the Agency had stated legitimate, nondiscriminatory reasons for all of its actions, Complainant could not establish a case for hostile workplace discrimination.

In his appeal submissions, Complainant mainly asserts earlier arguments. Complainant maintains that a hearing is warranted in this matter.

The Commission's regulations allow an AJ to grant summary judgment when he or she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). An issue of fact is "genuine" if the evidence is such that a reasonable fact finder could find in favor of the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A fact is "material" if it has the potential to affect the outcome of the case. In rendering this appellate decision we must scrutinize the AJ's legal and factual conclusions, and the Agency's final order adopting them, *de novo*. See 29 C.F.R. § 1614.405(a)(stating that a "decision on an appeal from an Agency's final action shall be based on a *de novo* review..."); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110), at Chap. 9, § VI.B. (as revised, August 5, 2015)(providing that an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed *de novo*).

We find the record in the present case was fully developed. While Complainant asserts on appeal that he provided evidence that would materially change the outcome in this matter, we disagree. Having reviewed the entire record before us, we do not find an abuse of discretion by the AJ in both her consideration and analysis of pertinent evidence.

In order to successfully oppose a decision by summary judgment, a complainant must identify, with specificity, facts in dispute either within the record or by producing further supporting evidence, and must further establish that such facts are material under applicable law. Such a dispute would indicate that a hearing is necessary to produce evidence to support a finding that the agency was motivated by discriminatory animus. Here, however, Complainant has failed to establish such a dispute. Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable fact-finder could not find in Complainant's favor.

Upon careful review of the AJ's decision and the evidence of record, as well as the parties' arguments on appeal, we conclude that the AJ correctly determined that the preponderance of the evidence did not establish that Complainant was discriminated against by the Agency as alleged.

As the AJ correctly noted, and as detailed above, Complainant has not shown that he was a target of discriminatory animus. Complainant's FY 15, 16 performance appraisals were corrected. The Agency explained its reasons for Complainant's nonselection. Concerning the remaining claims, the Agency also provided legitimate, nondiscriminatory reasons (above) for its actions. Complainant's allegations of harassment are based on either legitimate, nondiscriminatory management decisions, Agency policy, or constitute nothing more than ordinary workplace occurrences. Beyond repeated conjecture, Complainant has not shown that he was subjected to a hostile work environment based upon his claimed bases.

We find Complainant failed to show that the alleged actions were based on discriminatory animus. Moreover, Complainant failed to show that the Agency subjected him to a hostile work environment based upon his age or reprisal.

Accordingly, we **AFFIRM** the Agency's final order fully implementing the AJ's 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

March 5, 2025  
Date