



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

[REDACTED]
Nakesha T.,¹
Complainant,

v.

Pamela Bondi,
Attorney General,
Department of Justice
(Federal Bureau of Prisons),
Agency.

Appeal No. 2022003766

Hearing No. 480-2022-00069X

Agency No. BOP-2018-0936

DECISION

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 May 25, 2022, final order concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 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 cook foreman, WS-08, at the Agency's Federal Correctional Complex in Victorville, California.

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.

On September 10, 2018, Complainant filed an EEO complaint alleging discrimination based on disability (unspecified) and in reprisal for prior protected EEO activity when:

1. On May 25, 2018, Complainant's quarterly schedule bid was not accepted;
2. Complainant's supervisor made comments about how Complainant's medical recovery was causing staffing issues in the department; and
3. On June 23, 2018, Complainant's work environment became so intolerable, she was forced to resign.

Complainant became unable to work starting on June 15, 2017. In May 2018, Complainant submitted a doctor's note which indicated that she had a return-to-work date of May 31, 2018. The record shows that the quarterly bid process was occurring on or about that same time and that Complainant submitted a timely bid on May 24, 2018. In response to a management inquiry, Complainant sent another doctor's note that moved her return date to June 18, 2018. A Union Representative emailed management and indicated that Complainant was not allotted a bid preference due to Complainant not having a return date before the quarter change. Management subsequently issued a fourth-quarter schedule that did not include Complainant. Complainant resigned on June 23, 2018.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing. The AJ assigned to the case issued a Notice of Intent to Dismiss Claims 2 and 3 and a Notice of Intent to Issue a Decision in Favor of the Agency on Claim 1 on April 2, 2022. Both parties filed a response. The AJ issued a Decision and Order on April 25, 2022, dismissing claims 2 and 3, and finding no discrimination with regard to claim 1.

The AJ found that Complainant failed to rebut the Agency's legitimate, nondiscriminatory reason for not accepting her bid; specifically, Complainant did not have a return-to-work date before the start of the fourth quarter. The AJ found that the record did not contain sufficient evidence to prove a discriminatory or retaliatory motive. The AJ further found that a prior EEOC AJ Decision, dated April 28, 2021, addressed the harassment allegations contained in claim 2. In Complainant's response to the Notice of Intent to Dismiss, Complainant admitted that dismissal of claim 2 was appropriate.

The AJ found that claim 3 had already been decided by the Merit Systems Protection Board (MSPB).

The Agency subsequently issued a final order fully implementing the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged. The instant appeal followed.

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. (Aug. 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*).

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.

We note that the AJ's dismissal of claim 2 is not in dispute. Accordingly, we do not address it in our appellate decision.

The record established the Agency's legitimate, nondiscriminatory reason for not accepting the Agency's bid in claim 1. Complainant failed to present evidence to show that the Agency's articulated reason was a mere pretext for discrimination or retaliation. Because the bid process was not shown to be discriminatory or retaliatory, there can be no hostile work environment or intolerable conditions based on such a claim.

Regarding the constructive discharge in claim 3, we find that Complainant is estopped from raising this issue under the doctrine of collateral estoppel. See Billie S. v. Department of the Navy, EEOC Appeal No. 0120180652 (Aug. 22, 2019), request for reconsideration denied, EEOC Request No. 2020000519 (Feb. 19, 2020). The issue has been fully litigated and addressed in a decision by the MSPB issued on November 2, 2020 (Docket Number SF-0752-20-0519-I-1). In her MSPB appeal, Complainant alleged she was constructively discharged due to disability discrimination and retaliation. The MSPB found that Complainant complained of actions in 2017, but did not resign until six months or more later in 2018. The MSPB found that Complainant did not explain why if her work situation was so intolerable, she waited that length of time to resign.

The central question in a constructive discharge case is whether the employer, through its unlawful discriminatory or retaliatory behavior, made the employee's working conditions so difficult that any reasonable person in the employee's position would feel compelled to resign. Carmon-Coleman v. Dep't of Def., EEOC Appeal No. 07A00003 (Apr. 17, 2002). As stated above, the AJ found that Complainant had not demonstrated that the Agency's actions with respect to the bid at issue in claim 1 were motivated by discriminatory animus. Thus, Complainant cannot establish the necessary elements to prove constructive discharge. Thus, we find that summary judgment finding no discrimination is also appropriate with regard to claim 3.

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.

Accordingly, we AFFIRM the Agency's final order implementing the AJ's decision.

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

March 5, 2025
Date