



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

[REDACTED]
Linda P.,¹
Complainant,

v.

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

Appeal No. 2022003986

Hearing No. 430-2021-00314X

Agency No. 4K-290-0005-21

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 26, 2022 final decision concerning her 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 decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Postmaster, EAS-22, at the Agency's Sumter Post Office in Sumter South Carolina. Complainant alleged that her supervisor, Acting Manager Post Office Operations (M1), placed Complainant on emergency placement on August 28, 2020, for two weeks without pay accusing her of mail delays and falsifying scans. After an investigative interview, Complainant stated there was no disciplinary action taken.

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 December 3, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the basis of age (57) when, on August 28, 2020, she was placed on Emergency Placement and subsequently on September 11, 2020, she was subjected to an investigative interview.

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, but the AJ dismissed the request and remanded the complaint to the Agency. The Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). In the decision, the Agency concluded that Complainant failed to prove that she was subjected discrimination as alleged. This 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”).

Disparate Treatment

To prevail in a disparate treatment claim absent direct evidence of discrimination, Complainant must satisfy the evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973). Complainant carries the initial burden of establishing 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). Proof of a prima facie case will vary depending on the facts of the particular case. McDonnell Douglas, 441 U.S. at 802 n.13. The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the Agency has met its burden, Complainant bears the ultimate responsibility to prove, by a preponderance of the evidence, that the reason proffered by the Agency was a pretext for discrimination. Reeves v. Sanderson Plumbing Prod., Inc., 530 U.S. 133, 143 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993).

Complainant alleged that similarly situated comparators were not treated in the same manner. Specifically, Complainant identified three Postmasters who she claimed had “failures,” but were not put on emergency placement and given investigative interviews.

M1 affirmed that these employees were not under her management. As a result, we cannot find that they were similarly situated to Complainant. See Martinez v. Dep't of Homeland Sec., EEOC Appeal No. 0120113436 (Nov. 1, 2011) (finding comparators were not similarly situated when they had different supervisors and/or a different chain of command than complainant). Complainant has not offered any other evidence to raise an inference of discrimination.

Assuming, arguendo, Complainant established a prima facie case of discrimination based on age, we find that the Agency presented legitimate, non-discriminatory reasons for the emergency placement of Complainant for two weeks without pay and conducting an investigative interview. M1 suspected that Complainant willfully delayed mail without approval and disrupted day-to-day operations. The letter placing Complainant on emergency placement stated that Complainant was charged with delaying the mail, instructing employees to falsify scans, and failing to fulfill the Postmaster's duties. M1 affirmed that she took these actions in accordance with Agency policy. Complainant acknowledged that no disciplinary action was taken after the investigative interview and M1 confirmed that Complainant was reinstated thereafter.

Complainant now bears the burden of establishing that the Agency's stated reasons are merely a pretext for discrimination. Shapiro v. Soc. Sec. Admin., EEOC Request No. 05960403 (Dec. 9, 1996). Complainant can do this directly by showing that the Agency's proffered explanation is unworthy of credence. Tx. Dep't of Cmty. Affairs v. Burdine, 450 U.S. at 256.

The Commission finds no persuasive evidence that Complainant's protected classes were a factor in any of the Agency's actions. Aside from Complainant's conclusory allegations and speculations, Complainant has failed to establish that the Agency's reasons were pretext for discriminatory animus. We note that employers have broad discretion to set policies and carry out personnel decisions and should not be second-guessed by a reviewing authority absent evidence of unlawful motivation. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 259; Vanek v. Dep't of the Treasury, EEOC Request No. 05940906 (Jan. 16, 1997). At all times, the ultimate burden remains with Complainant to demonstrate by a preponderance of the evidence that the Agency's reasons were not the real reasons and that the Agency acted based on discriminatory animus. Complainant failed to carry this burden. As a result, the Commission finds that Complainant has not established that she was subjected to discrimination as alleged.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, 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