



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

[REDACTED]
Sonya R.,¹
Complainant,

v.

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

Appeal No. 2022004118

Hearing Nos. 550-2021-00274X; 550-2021-00070X

Agency Nos. 1F-946-0027-20; IF-946-00002-21

DECISION

On July 18, 2022, 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 6, 2022, final order concerning her 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. and 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 finding no discrimination.

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.

At the time of events giving rise to these complaints, Complainant worked as a Postal Support Employee (PSE), Mail Processing Clerk, P-06, at the Agency's Oakland Processing and Distribution Center in Oakland, California. On June 22, 2020, Complainant filed an EEO complaint, Agency No. 1F-946-0027-20, alleging discrimination and harassment based on sex (sexual harassment), disability (unspecified), and in reprisal for prior EEO activity (filing a Form CA-1) when:

1. On January 3, 2020, Complainant was told she has no future at the post office when her machine broke, and Complainant told management that is why they called her "destructo."
2. On January 30, 2020, Complainant's Supervisor (Supervisor) called her "bontot" which Complainant believes means "stinky" in Tagalog and Supervisor spanked her on her buttocks.
3. On February 5, 2020, Supervisor walked up to Complainant and spanked her on her buttocks.
4. On February 28, 2020, when Complainant informed Supervisor of an unsanitary issue, she was told she should have just called a janitor.
5. Beginning on March 3, 2020, and continuing, Complainant was the only employee who was told to remove her headphones.
6. On March 4, 2020, when asked to attend the Safety Captain's meeting, Supervisor asked Safety Captain why they had recruited Complainant and then told Safety Captain about Complainant's safety record.
7. On March 11, 2020, and March 12, 2020, Complainant was given inconsistent work instructions, required to work outside her medical condition and given instructions to start following her Coworker (another PSE).
8. On March 19, 2020, Supervisor stated Complainant's documentation requesting a light duty accommodation did not list her restrictions and delayed completing Form CA-17.
9. Beginning on March 30, 2020, and ongoing, Complainant's workhours were reduced from eight hours per day to four hours per day and she was assigned to work in the USS² operation which is a heavier workload.
10. On April 2, 2020, Complainant was required to complete a Form 13 (Buck Slip) listing her work restrictions.
11. On April 3, 2020, Complainant was threatened with discipline for not working the SPSS³ operation.

² The record does not define this acronym.

³ The record does not define this acronym.

12. On April 7, 2020, Supervisor placed Complainant in a one arm bear hug, asked her if she was going on a date, spanked her on her buttocks and poked her twice in the stomach.
13. On April 8, 2020, Supervisor asked Complainant a personal question about her dad, tried to poke her in the stomach twice after Complainant told Supervisor to please stop, stated she was going to start calling Complainant "baby girl," asked about Complainant's red nail polish, and continued to follow Complainant asking her about her boyfriend and/or a guy that Complainant had a crush on.
14. On April 8, 2020, Supervisor made her choose from working four hours or staying for overtime, which was against her medical restrictions.
15. On April 8, 2020, Supervisor mimicked Complainant and asked what she was good at, and when Complainant replied "sacking," Supervisor said, "go do that."
16. On April 11, 2020, Complainant stated that if she cannot work like a PSE, she was going to cut her hours and insisted that Complainant work over eight hours, which was a violation of Complainant's medical restrictions.
17. On April 14, 2020, Complainant was harassed regarding her doctor's note, threatened with discipline, and management made inappropriate comments about her level of maturity.
18. On April 30 and May 1, 2020, Supervisor saw Complainant in the breakroom and came inside after being told to stay clear of Complainant.
19. Beginning in May 2020 and ongoing, management has been giving Complainant glaring looks.

On December 23, 2020, Complainant filed a an EEO complaint, Agency No. 1F-946-0002-21, alleging discrimination based on disability (unspecified) when on September 24, 2020, the following occurred:

- a. She was given instructions to clock in at the Manager's desk and required to report to the office.
- b. She was asked several personal questions about her medical physician and told her doctor's note was unacceptable and to provide a new note.
- c. She was sent to a different location to work (the third floor).
- d. She was told she would not be given a new modified assignment and was required to start clocking in and out when she took her five-minute work accommodation rest break.

Regarding the alleged harassment, Complainant reported that Supervisor told Complainant that Coworker was the same age as Supervisor's daughter and that Complainant was young too. Additionally, Complainant reported that Supervisor stated that Supervisor pokes people and teases them if she knows the individual long enough. Regarding Complainant's work hours, Supervisor stated that Complainant's position as a PSE does not entitle Complainant to eight hours of work, but instead only four hours per workday. Supervisor reported that any further hours were assigned to Complainant based on the Agency's needs.

At the conclusion of the investigations, 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 consolidated the complaints. When the Complainant did not object, the AJ assigned to the case granted the Agency's April 7, 2022, motion for a decision without a hearing and issued a decision without a hearing finding no discrimination on June 21, 2022.

The AJ found that many of the allegedly adverse actions fall within the realm of typical supervisory oversight for which Complainant failed to present evidence of pretext for discrimination or retaliation. Furthermore, the AJ found that Complainant failed to present evidence that the allegedly harassing conduct was based on Complainant's membership in a protected category or her prior EEO activity. The AJ found that Complainant chose to work beyond eight hours (claim 14) and that there is no evidence she was forced to work those hours.

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. Complainant made no argument on appeal.

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.

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)

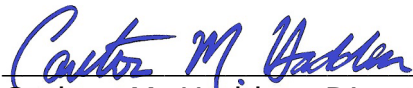
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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 6, 2025

Date