



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

[REDACTED]  
Freddy V.,<sup>1</sup>  
Complainant,

v.

Louis DeJoy,  
Postmaster General,  
United States Postal Service  
(Headquarters),  
Agency.

Appeal No. 2022004124

Hearing No. 570-2022-00567X

Agency No. 6H-102-0002-21

DECISION

On July 27, 2022, Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's July 7, 2022 final order 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. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

Complainant worked as a Postal Inspector, ISLE-14, at the Agency's Inspection Service National Headquarters in Washington, D.C. On December 1, 2021, Complainant filed a formal complaint alleging that the Agency discriminated against him on the bases of race (Caucasian), sex (male), color (White), and age (50) when:

1. On August 13, 2021, Complainant was notified that he had not been selected for the position of Program Manager, Polygraph (Vacancy No. 2021-115) (Vacancy 1); and
2. On August 27, 2021, Complainant's request for a lateral reassignment to the position of Program Manager, Polygraph (Vacancy No. 2021-162) (Vacancy 2) was denied, and he was instructed to apply competitively including submitting a PS Form 991.

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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.

At the conclusion of the ensuing investigation, the Agency provided Complainant with a copy of the investigative report (IR) and notice of right to request a hearing before an Equal Employment Opportunity Commission (EEOC or Commission) Administrative Judge (AJ). Complainant timely requested a hearing. The AJ issued a summary judgment decision in favor of the Agency finding that Complainant was not subjected to discrimination as alleged. On July 7, 2022, the Agency issued its final order in which it fully implemented the AJ's decision. This appeal followed.

The Commission's regulations allow an AJ to grant summary judgment when 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*).

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 unlawful consideration of Complainant's protected classes.

To warrant a hearing on his disparate treatment claim, Complainant would have to satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). As a threshold matter, he would generally have to raise a genuine issue of material fact as to the existence of a prima facie case by presenting enough evidence from which to infer that he was subjected to adverse employment actions under circumstances that would support an inference of discrimination. Furnco Const. Corp. v. Waters, 438 U.S. 567, 576 (1978). The prima facie inquiry may be dispensed with in this case, however, since the Agency articulated legitimate and nondiscriminatory reasons for its actions. See U.S. Postal Service Bd. of Governors v. Aikens, 460 U.S. 711, 713-17 (1983).

As to allegation (1), the selecting official for Vacancy 1 informed him that the vacancy announcement had been rescinded and that no selection had been made. The position was reposted in September 2021 in a different location. Complainant was not among the applicants for that position. IR 124-25. Regarding allegation (2), the selecting official for Vacancy 2 informed him that she would not be accepting lateral transfers and that he would have to compete for the position. Complainant never submitted an application for Vacancy 2. IR 98, 112-13, 148-49.

To move forward with a hearing, Complainant must also raise a genuine issue of material fact as to whether the explanations provided the Agency were pretext for race discrimination. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 143 (2000); St. Mary's Hon. Ctr. v. Hicks, 509 U.S. 502, 519 (1993); Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 256 (1981). Pretext can be demonstrated by showing such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the Agency's proffered legitimate reasons for its action that a reasonable fact finder could rationally find them unworthy of credence. Lorraine D. v. Dep't of Def., EEOC Appeal No. 2022002980 (Oct. 27, 2022).

When asked by the EEO investigator why he thought his race, color, and sex, were factors in his nonselections, Complainant averred that he was the only White male to apply for the vacancy but admitted that he did not have any evidence to substantiate his belief. IR 96-99. When asked why he believed that his age was a factor, he replied that another inspector had spoken to the selecting official about Vacancy 1 and was told they were looking for someone with longevity for the position. IR 97, 99. Complainant also admitted that he knew of no other employees who applied for and received a lateral transfer. IR 99. Beyond these assertions, Complainant has presented neither affidavits, declarations, or unsworn statements from witnesses other than himself nor documents which contradict or undercut the Agency's explanations that Vacancy 1 had been withdrawn and that he was told to submit a competitive application for Vacancy 2. Likewise, he has not presented any evidence which would call the truthfulness of the Agency officials into question as witnesses. Complainant's subjective belief, however genuine, does not constitute evidence of unlawful animus. Stacie D. v. Dep't of the Navy, EEOC Appeal No. 2022003616 (May 18, 2023).

Ultimately, we agree with the AJ that Complainant failed to establish the existence of an evidentiary dispute sufficient to give rise to a genuine issue of material fact. 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 adopting 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

January 22, 2024

Date