



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

[REDACTED]

Fletcher E.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2022004628

Hearing No. 510-2022-00161X

Agency No. IK-325-0014-21

DECISION

On August 28, 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 27, 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. For the following reasons, the Commission AFFIRMS the Agency's final order.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an Area Maintenance Technician, P-09, at the Agency's International Service Center facility in Miami, Florida.

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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.

On September 1, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (Hispanic)<sup>2</sup>, national origin (Cuban), sex (male), color (white), age (41), and in reprisal for prior protected EEO activity when:

1. On June 11 and July 19, 2021, Complainant was not chosen to cover as a Level 17 Supervisor;
2. On May 28, 2021, Complainant was charged LWOP (Leave Without Pay); and
3. On August 12, 2021, management called the postal police on Complainant.

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 Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing. The AJ issued a Notice of Proposed Summary Judgment (Notice) on June 27, 2022. Complainant and the Agency filed responses to the Notice on July 12, 2022. Thereafter, the AJ issued a decision without a hearing finding no discrimination on July 19, 2022. The Agency subsequently issued a final order fully implementing the AJ's finding that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

Regarding claim 1, Complainant reported submitting a form requesting to be considered and trained as a level 17 supervisor on June 11, 2021. Complainant stated that two employees "cover[ed] many days meanwhile I was never considered." Complainant contended that race was a factor because every time the opportunity became available the positions were filled by people of color. Complainant contended that sex was a factor because the manager did not want to hear anything from "this" young, white, Hispanic male from a country with no rights. Complainant contended that age was a factor because his second-line supervisor (Supervisor-2) treated Complainant like a teacher treats the student who knows more than her.

Supervisor-2 confirmed that Complainant submitted a written request to be an acting supervisor on June 11, 2021. Supervisor-2 stated that she forwarded the request to the facility manager (Plant Manager) for consideration and that she informed Complainant of the forwarding. Supervisor-2 reported that there was not a vacancy for an acting supervisor in the maintenance department on the relevant dates. Plant Manager denied knowledge of any specific opportunities for an acting supervisor on the dates in question. Plant Manager stated, "on a case-by-case basis when we have a supervisor [absent] we pull from the list of trained individuals who have covered in the past for that [absence]." Plant Manager noted that the two alleged comparators had received training for the position well before Complainant requested to fill the role of acting supervisor. Supervisor-2 stated that Complainant did not possess the knowledge or skills necessary to fill the role as an acting supervisor.

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<sup>2</sup> To the extent that Complainant is claiming "Hispanic" as a race, the Commission has consistently stated that it considers "Hispanic" as a basis of national origin discrimination not race. Leora R. v. U.S. Postal Serv., EEOC Appeal No. 2020003139 n. 2 (March 29, 2021); King W. v. U.S. Postal Serv., EEOC Appeal No. 0120143148 n. 2 (Feb. 25, 2016).

Regarding claim 2, Complainant described being out of the office for a period and that his timecard was lost when he returned to work. Complainant described filling out the appropriate form to document his time but that he was charged LWOP on May 28, 2021. Supervisor-2 acknowledged that Complainant was charged LWOP for May 28, 2021. Supervisor-2 noted that on May 28, 2021, an acting supervisor received Complainant's completed form but a regular supervisor, who would have access to input the time, was not available. Supervisor-2 stated that the acting supervisor left it on the desk for a regular supervisor to enter upon their return, which did not occur. Supervisor-2 reported that when Complainant brought the LWOP to her attention on June 14, 2021, she investigated to find out what happened and then completed a pay adjustment for Complainant. Supervisor-2 stated that past practice in a situation where there is only an acting supervisor available, the employee would bring the form to a supervisor in the mail processing department who would then be able to properly document the employee's time in the relevant system. Supervisor-2 noted that Complainant did not follow this past practice, which contributed to the incorrect charge of LWOP.

Regarding claim 3, Complainant stated that his first-line supervisor (Supervisor-1) delivered an Agency form instructing Complainant that he was not authorized to have any contact with Supervisor-2. Complainant stated that he asked Supervisor-2 to confirm that he was not authorized to talk to her. Complainant described Supervisor-2 ending the conversation. Complainant reported that a half hour later he was called back into the office where the postal police talked to him about how violence was not tolerated and about threats.

Supervisor-2 stated that Attendance Control Officer and Supervisor-1 reported to Supervisor-2 that Complainant had made threats toward Supervisor-2 in their presence. Supervisor-2 stated that she then called the postal police to file a threat incident report for her safety. The record contains a signed statement dated August 11, 2021, where Supervisor-1 documented a conversation with Complainant where Complainant was talking about Supervisor-2 and Complainant "made a statement saying he's going to get her before he leaves." The record also contains an email Attendance Control Officer sent to Supervisor-2 and Plant Manager on August 12, 2021. Attendance Control Officer's email included that Complainant had stated during a phone call on August 9, "I am going to go after [Supervisor-2] when I return to work."

#### STANDARD OF REVIEW

The Commission's regulations allow an AJ to grant summary judgment when they find 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 factfinder 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 implementing 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 AJ'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.

### ANALYSIS AND FINDINGS

To prevail in a disparate treatment claim such as this, complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Complainant must initially establish a prima facie case by demonstrating that he or she was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Construction 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, 411 U.S. at 804 n. 14. The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the agency has met its burden, the complainant bears the ultimate responsibility to persuade the fact finder by a preponderance of the evidence that the agency acted on the basis of a prohibited reason. See St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

This established order of analysis in discrimination cases, in which the first step normally consists of determining the existence of a prima facie case, need not be followed in all cases. Where the agency has articulated a legitimate, nondiscriminatory reason for the personnel action at issue, the factual inquiry can proceed directly to the third step of the McDonnell Douglas analysis, the ultimate issue of whether complainant has shown by a preponderance of the evidence that the agency's actions were motivated by discrimination. See U.S. Postal Service Board of Governors v. Aikens, 460 U.S. 711, 713-714 (1983); Complainant v. Dep't of Transportation, EEOC Request No. 05900159 (June 28, 1990); Complainant v. Dep't of Health and Human Services, EEOC Request No. 05900467 (June 8, 1990); Complainant v. Dep't of the Navy, EEOC Petition No. 03900056 (May 31, 1990).

Complainant must prove that the employer's reasons are not only pretext but are pretext for discrimination. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 507 and 516 (1993). A factual issue of pretext cannot be established merely on personal speculation that there was discriminatory intent. Complainant v. U.S. Postal Service, EEOC Appeal No. 01A11110 (May 22, 2002); Springer v. Durflinger, 518 F.3d 479, 484 (7th Cir. 2008). Pretext means that the reason offered by management is factually baseless, is not the actual motivation for the action, or is insufficient to motivate the action. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 120 S. Ct. 2097 (2000).

To establish a claim of harassment, a complainant must establish that: (1) she or he belongs to a statutorily protected class; (2) she or he was subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on her or his statutorily protected class; (4) the harassment affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability. See Henson v. City of Dundee, 682 F.2d 897 (11<sup>th</sup> Cir. 1982). Further, the incidents must have been “sufficiently severe or pervasive to alter the conditions of [complainant’s] employment and create an abusive working environment.” Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993). The harasser’s conduct should be evaluated from the objective viewpoint of a reasonable person in the victim’s circumstances. Enforcement Guidance on Harris v. Forklift Systems, Inc., EEOC Notice No. 915.002 at 6 (Mar. 8, 1994).

In this case, we find that the AJ properly issued a decision without a hearing because no genuine dispute of material fact exists. For purposes of analysis, we assume arguendo that Complainant has established a prima facie case of discrimination on the alleged bases. We find that the Agency has articulated legitimate, nondiscriminatory reasons for the personnel actions at issue. Regarding claim 1, Supervisor-2 stated that there were no vacancies on the dates in question. Furthermore, Plant Manager stated that office practice was to pull from a list of people trained for the position and Complainant has admitted that he is untrained. Regarding claim 2, Supervisor-2 described an error occurring where Complainant’s form documenting his time was not properly input into the system. We note that the LWOP was ultimately corrected. Regarding claim 3, Supervisor-2 reported calling the postal police because she had received information supporting that Complainant had made threats against her.

After a review of the record, we find Complainant failed to show that the Agency’s articulated reasons for the discrete adverse employment actions were a mere pretext for discrimination. Complainant failed to present evidence of discriminatory or retaliatory motive. Rather, Complainant relied on his personal speculation of such motives. We find that Complainant failed to prove that the conduct complained of was based on Complainant’s membership in a statutorily protected class. The record does not contain evidence that similarly situated employees not in Complainant’s protected groups were treated differently under similar circumstances.

### CONCLUSION

Accordingly, the Agency’s final order finding no discrimination is AFFIRMED.

### 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

January 24, 2024

Date