



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

[REDACTED]
Deidra D.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service,
Agency.

Appeal No. 2022004778

Hearing No. 410-2020-00566X

Agency No. 4K-300-0098-20

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 August 3, 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. For the following reasons, the Commission AFFIRMS the Agency's final order finding no discrimination.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Rural Carrier at the Post Office in Jonesboro, Georgia.

The record indicates that on January 10, 2020, Complainant and her first line supervisor (S1) were involved in a dispute. According to Complainant, she was holding the clipboard that contained the route assignments. S1 approached Complainant and snatched the clipboard out of her hands and pushed her. Complainant asserts that S1 then put her finger in Complainant's face and yelled at her aggressively. S1 yelled at Complainant to leave the building and placed her on Emergency Placement. Complainant called the police and reported the incident as an assault.

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 or about January 11, 2020, Complainant received a text message from management asking her to report to work on January 13, 2020, for an investigative interview regarding the January 10th incident with S1. The interview was conducted by a Postmaster from another location.² Complainant had never met Postmaster before the investigative interview. Complainant's union representative, S1, and a facility manager (Manager) were also present during the investigative interview. Upon completion of the investigative interview, Postmaster instructed Complainant to return to her route and Complainant responded that she did not feel comfortable with her attacker around her. Management asserts that Complainant was then given the option to take leave or return to her normal route.

On January 22, 2020, Complainant walked past S1's office and saw several colleagues gathered there. S1 fell on the floor and began rolling around saying "help me, help me" and laughing intentionally mocking Complainant.

The record further indicates that on January 28, 2020, Management issued Complainant a fourteen-day suspension for Failure to Follow Instructions and Improper Conduct in connection with the events of January 10, 2020. The notice was issued by Postmaster with Manager as the concurring official.

Complainant asserts that a coworker (C1) informed her that Manager asked another coworker (C2) to write a statement against her. Complainant asserts C1 indicated that C2 said he was told that if he could "get [Complainant] out" he could have her route.

On April 15, 2020, Complainant filed an EEO complaint alleging that the Agency harassed and discriminated against her on the bases of sex (female) and in reprisal for prior protected EEO activity when:

1. On January 10, 2020, Complainant's supervisor forcefully removed a clipboard from her hand, verbally assaulted her, ordered her off postal property, and put her on Emergency Placement.
2. On January 11, 2020, Complainant was forced to report for an Investigative Interview and instructed to report to her route.
3. On January 22, 2020, Complainant saw her supervisor mocking her.
4. On January 28, 2020, Complainant was issued a 14-day suspension.
5. On March 28, 2020, management asked a coworker to write a statement against Complainant.

² The record indicates the Postmaster responsible for Complainant's Post Office was out of town.

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. Over Complainant's objections, the AJ granted the Agency's July 14, 2021, motion for a decision without a hearing and issued a decision without a hearing on July 21, 2022. The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

Complainant filed the instant appeal.

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

Generally, claims of disparate treatment are examined under the tripartite analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Hochstadt v. Worcester Found. for Experimental Biology. Inc., 425 F. Supp. 318, 324 (D. Mass.), *aff'd*, 545 F.2d 222 (1st Cir. 1976). For Complainant to prevail, she must first establish a *prima facie* case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. McDonnell Douglas, 411 U.S. at 802; Furnco Constr. Corp. v. Waters, 438 U.S. 567, 576 (1978).

Once a complainant has established a *prima facie* case, the burden of production then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions.

Texas Dep't of Com. Affairs v. Burdine, 450 U.S. 248, 253 (1981). If the Agency is successful, the burden reverts back to Complainant to demonstrate by a preponderance of the evidence that the Agency's reason(s) for its action was a pretext for discrimination. At all times, Complainant retains the burden of persuasion, and it is his obligation to show by a preponderance of the evidence that the Agency acted on the basis of a prohibited reason. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 509 (1993); U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 715-16 (1983).

In order to establish a claim of harassment, a complainant must show that: (1) she belongs to a statutorily protected class; (2) she 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 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 to the employer. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982). In order to meet the requirements of prong 4, 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).

Even accepting Complainant's version of events as true, we find that Complainant failed to establish beyond a preponderance of the evidence that the actions complained of were based on her protected classes. As such, she failed to establish a prima facie case of harassment or discrimination. Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable factfinder could not find in Complainant's favor.

Complainant generally asserts that she believes the Agency was motivated by sex because “male employees were not treated similarly.” Complainant has not identified any similarly situated employees outside her protected class that were treated more favorably. Furthermore, she failed to point to any evidence that persuasively shows that management was motivated by sex or retaliation. Pretext requires more than a belief, assertion, or suspicion that the Agency was motivated by discrimination. See Kathy D. v. Environmental Protection Agency, EEOC Appeal No. 0120171318 (Aug. 14, 2019). Furthermore, a finding of a hostile work environment is precluded by our determination that Complainant failed to establish that any of the actions taken by the Agency were motivated by discriminatory animus. See Oakley v. U.S. Postal Service, EEOC Appeal No. 01982923 (Sept. 21, 2000). Based on the foregoing, we find that Complainant failed to show that the Agency's actions were motivated by discrimination as alleged.

CONCLUSION

The Agency's decision 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:



Carlton M. Hadden, Director
Office of Federal Operations

January 25, 2024
Date