



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

[REDACTED]  
Bart M.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2022005090

Hearing No. 530-2019-00559X

Agency No. 4C-440-0095-11

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 17, 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, we AFFIRM the Agency's final order.

ISSUES PRESENTED

The issues presented are: (1) whether there is substantial evidence to support the AJ's decision that Complainant was not subjected to discrimination based on sex (male), age (over 40), and reprisal (prior protected EEO activity) when

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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.

the Agency allegedly subjected him to various acts of discrimination; and 2) whether the Agency, in its final order, properly found that Complainant was not subjected to discrimination.

### BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Sales, Services, and Distribution Associate (SSDA) at the Agency's Beachwood Post Office in Beachwood, Ohio.

Complainant filed an EEO complaint alleging that the Agency discriminated against him based on sex (male), age (over 40), and in reprisal for prior protected EEO activity under Title VII. Following an amendment to the complaint, the Agency accepted the following claims for investigation:

1. On April 1, 2011, his start time was changed from 7:15 a.m. to 8:15 a.m., causing him to earn less overtime;
2. Beginning in December 2012, he was not allowed to complete necessary training;
3. On November 30, 2012, he was not allowed to complete the snowplow contract; and
4. On December 19, 2012, he was told that he could not sit while working the window.

#### *Claim 1*

On April 1, 2011, management informed Complainant that they were changing his start time from 7:15 a.m. to 8:15 a.m. because there was not enough work available for him at 7:15 a.m., and there was a greater need for SSDAs later in the day. Management emphasized that the start times for other employees were also changed to meet the operational needs of the Agency. See Report of Investigation (ROI) at 26, 34, 166.

Complainant, however, alleged that the change to his start time was improper because it was not done in writing through Human Resources or reflected on a PS Form 50. See Hearing Transcript (Tr.) at 14-15, 64. Complainant maintained that the schedule change constituted a contract violation since it was not entered into the Time and Attendance Control System.

Furthermore, Complainant alleged that management treated him differently than other SSDAs. Specifically, he alleged that SSDA-1's start time was changed from 5:00 a.m. to 7:00 a.m., but sometimes management would call her in as early as 5:00 a.m. for overtime when the Agency was short staffed. ROI at 157, 159, 167. Complainant also noted that SSDA-2's start time was 10:00 a.m. However, management called her in occasionally at 7:15 a.m. or 8:00 a.m. to open the window, while bypassing Complainant whose start time was at 8:15 a.m. ROI at 167; Tr. at 37, 84-85.

While Complainant alleged that the schedule change resulted in less overtime opportunities for him, management asserted that the change did not result in less overtime opportunities because Complainant usually declined or did not answer their calls for him to come in on scheduled days off or earlier in the morning. ROI at 157-58; Tr. at 156, 169-170. Furthermore, Complainant, himself, acknowledged that he was occasionally offered the opportunity to come in prior to his start time and work overtime. Tr. at 36.

### *Claim 2*

Complainant's duties included serving as a purchasing clerk, which involved carrying a government credit card to order supplies and perform related tasks. Complainant needed to complete additional credit card training to renew his authority to carry a government credit card. Tr. at 18-21, 28-29, 39-42. Complainant alleged that he was unable to complete the required training, because management prevented him from doing so by constantly assigning him new work. Tr. at 18-19. According to Complainant, he told the Acting Manager on several occasions that he needed more time to complete training. Tr. at 45-46.

The Acting Manager disputed Complainant's allegation and asserted that Complainant never informed him that he needed more time to complete the training. Rather, Complainant failed to follow directions from him and other management officials and did not take the time to complete the training, despite being afforded all the time he needed to do so. ROI at 174, 177, 198. Specifically, in October 2012 when Complainant did not complete credit card training, which included an ethics module, the Acting Manager told him to complete training in November 2012, and to come see him if he had any problems getting training time. ROI at 173; Tr. at 45, 196-198. Between October and December 2012, the Acting Manager spoke to Complainant at least ten times about the training, and Complainant replied that he was either going to training or sitting at a computer where he would complete the training. Tr. at 202, 205.

On December 13, 2012, in a three-way telephone call, Complainant informed the Acting Manager and former Manager that he completed training and only needed Supervisor-3 to document it. ROI at 132, 180-181. Complainant later discovered his training was incomplete since the ethics module was not finished. Tr. at 45-46, 69.

In February 2013, Complainant claimed the Acting Manager still had not allowed him to complete his training, despite Complainant informing him that the training "could be voided" if not completed in a timely manner. ROI at 132.

Further, Complainant alleged that he was treated differently than other employees because SSDA-1, SSDA-2, and SSDA-3 were allotted time to qualify on passport training. ROI at 134-135. However, the record reveals that Complainant was also granted time to complete passport training. ROI at 182, 251.

### *Claim 3*

On November 30, 2012, the Acting Manager needed the snowplow contract to be completed as soon as possible, given the quickly approaching winter season. The Acting Manager asked Complainant whether he could process the contract. Complainant replied that he would have to research the issues, since he had not prepared the snowplow contract in three years and was unfamiliar with the proper procedures. ROI at 135-36, 175; Tr. at 30, 33-34. The Acting Manager ultimately assigned the Carrier Technician to the process the contract, given that she handled the contract in 2010 and 2011. ROI at 136, 175-76, 264; Tr. at 70, 73, 199. In assigning the contract to the Carrier Technician, the Acting Manager believed a credit card was necessary to proceed with the contract and noted that Complainant had not completed the required training to renew his government credit card. Tr. at 201, 203.

### *Claim 4*

Complainant alleged that female SSDAs were allowed to sit while serving customers, but he was not. In support of his claim, Complainant stated that on December 19, 2012, Supervisor-2 witnessed Supervisor-4 direct him not to sit while working the window. ROI at 139. Ten minutes later, Supervisor-2 watched SSDA-3 sit while working in the window and did not say anything. ROI at 139. Complainant contended that he never saw a supervisor approach SSDA-2 or SSDA-3 regarding sitting while serving customers at the window.

ROI at 140; Tr. 113-117. In addition, Complainant claimed that another female SSDA who occasionally worked the window sat while serving customers and was not reprimanded. Tr. at 121-22.

Management, however, explained that they did not allow SSDAs to sit while serving customers because it looked unprofessional and could be negatively perceived by the public. The only exception to this rule was for employees with documented medical restrictions. ROI at 154, 182, 186-187, 194; Tr. at 154, 182, 188-90).

Supervisor-2 and Supervisor-4 both stated that on several occasions, they instructed Complainant not to sit while serving customers at the window, Supervisor-4 clarified that she did not prohibit SSDA-2 and SSDA-3 from sitting because they had medical documentation supporting their restrictions. ROI at 139, 186, 188, 195; Tr. 112-16, 179-180, 184, 188, 192-193. At some point, Complainant informed his supervisors that he needed to sit because his leg hurt after long periods of standing, but he never provided any documentation requested by his supervisors in support of a medical restriction. Tr. at 111-12, 182.<sup>2</sup>

### *Post-Investigation*

At the conclusion of the investigation, the Agency provided Complainant with a copy of the ROI and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. In accordance with Complainant's request, the Commission originally docketed the matter as EEOC No. 532-2013-00071X. AJ1 held a hearing into the matter on May 7, 2015, and closed the matter following the hearing. However, neither the Commission nor the parties were able to determine whether AJ1 issued a decision.

Subsequently, in September 2019, this case was reopened and docketed as EEOC No. 530-2019-00559X. During a status conference on January 27, 2022, a Supervisory AJ informed the parties that if the Commission and the parties were unable to locate a prior decision, the matter would be assigned to another AJ to issue a decision.

On July 22, 2022, AJ2 issued a decision based on the record and the 2015 hearing transcript and ultimately determined that the Agency had legitimate, nondiscriminatory reasons for its actions.

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<sup>2</sup> Complainant did not allege disability discrimination in this case.

While Complainant attempted to establish pretext by comparing himself to female colleagues, whom he believed had been treated more favorably by management, the AJ did not find the comparators to be similarly situated. For example, regarding claim 2, while Complainant alleged that management accorded more favorable treatment to female employees by giving them more time to complete passport training, the AJ found that the passport training was a completely different training course than the credit card training at issue. As for claim 4, the AJ found that the differential treatment was attributable to the fact that the female employees at issue had documented medical restrictions that established their need to sit, unlike Complainant who had no established medical restrictions. As Complainant failed to establish, by a preponderance of the evidence, that he was discriminated against based on sex, age, or in retaliation for his protected EEO activity, AJ2 entered judgment in favor of the Agency. The Agency subsequently issued a final order dated July 22, 2022, fully implementing AJ2's Decision. The instant appeal followed.

#### CONTENTIONS ON APPEAL

On appeal, Complainant provided a one-page statement which mentions a prior settlement offer by the Agency, which he did not accept. Complainant states that he retired eight (8) years ago, which was earlier than he had planned.

The Agency responds that it stands by its decision and requests that the Commission affirm its final order.

#### STANDARD OF REVIEW

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held.

An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony, or the testimony so lacks in

credibility that a reasonable fact finder would not credit it. See EEOC Management Directive 110, Chapter 9, at § VI.B. (Aug. 5, 2015).

## ANALYSIS

### *Disparate Treatment*

A claim of disparate treatment is examined under the three-part analysis first enunciated in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973). For a complainant to prevail, they 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. See McDonnell Douglas, 411 U.S. at 802; Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978).

In order to establish a prima facie case of discrimination based on sex and age a complainant must show: (1) they are a member of a protected group; (2) they were subjected to an adverse employment action; and (3) they were treated less favorably than other similarly situated employees outside of their protected groups. We note that, although a complainant bears the burden of establishing a "prima facie" case, Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 252-53 (1981), the requirements are "minimal," St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 506 (1993), and complainant's burden is "not onerous." Burdine, 450 U.S. at 253.

For a claim of reprisal, a complainant must show that: (1) they were engaged in a protected activity; (2) the agency was aware of the protected activity; (3) subsequently, they were subjected to adverse treatment by the agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000). A complainant can also establish a prima facie case of reprisal by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination. Shapiro v. Soc. Sec. Admin., EEOC Request No. 05960403 (Dec. 6, 1996)(citing McDonnell Douglas, 411 U.S. at 802).

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 persuade the fact finder by a preponderance of the evidence that the agency acted on the basis of a prohibited reason. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993).

At the outset, we find that Complainant failed to establish a prima facie case of discrimination based on sex and age. While Complainant is a member of these classes by virtue of his sex and age who was subjected to adverse actions, we find that he failed to demonstrate that he was treated less favorably than similarly situated individuals. As for his claim of reprisal, we find that Complainant failed to meet his burden because Complainant failed to establish a nexus between his protected activity and the alleged adverse actions. Furthermore, Complainant failed to adduce any other evidence that would reasonably raise an inference of evidence if unexplained.

Nevertheless, we find that the Agency articulated legitimate, nondiscriminatory reasons for its actions. For claim 1, management explained that Complainant's start time was changed from 7:15 a.m. to 8:15 a.m. to meet the operational needs of the Agency since there was less work available at 7:15 a.m., and the Agency was short on SSDAs towards the end of the day.

Regarding claim 2, the Acting Manager asserted that Complainant never informed him that he needed more time to complete the training, but instead failed to follow directions from him and other management officials and did not take the time to complete the training, despite being afforded all the time he needed to do so.

As for claim 3, management explained that the Carrier Technician was assigned the snowplow contract because she was familiar with the procedures and had completed the contract the previous two years. In comparison, Complainant did not readily know the proper procurement procedures and did not complete the requisite training to renew his authority to hold a government credit card.

With respect to claim 4, management explained that Complainant was not allowed to sit at the window while serving customers as the public may perceive the posture as unprofessional. Management stated that this rule was applied to all clerks unless they had documented medical restrictions.

Without proof of a demonstrably discriminatory motive, the Commission will not generally second-guess the Agency's personnel decisions. see Chavez v. U.S. Postal Serv., EEOC Appeal No. 0120055246 (Jan. 5. 2007); see also Carson v. Bethlehem Steel Corp., 82 F.3d 157, 159 (7<sup>th</sup> Cir. 1982) (noting that "the question is not whether the employer made the best, or even a sound, business decision; it is whether the real reason [was discriminatory]").

We ultimately find no evidence that Complainant's protected classes were a factor. 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. While Complainant compares himself to his female colleagues, whom he alleges were treated more favorably than him, we find that there is substantial evidence to support AJ2's determination that Complainant's comparators were not similarly situated to him. Furthermore, aside from conclusory statements, Complainant has not provided any evidence connecting the alleged incidents with his protected classes. Based on the record, we concur with the AJ that Complainant has not met his burden of proving that he was discriminated against 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 order.

### 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

November 13, 2024  
Date