



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

[REDACTED]
Casie S.,¹
Complainant,

v.

Scott Turner,
Secretary,
Department of Housing and Urban Development,
Agency.

Appeal No. 2022005112

Hearing No. 550-2019-00249X

Agency No. HUD-00188-2009

DECISION

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's September 20, 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.

At the time of events giving rise to this complaint, Complainant worked as a Senior Environmental Officer, GS-14, at the Agency's Field Office in Los Angeles, California.

On April 12, 2007, Complainant was not selected for the position of Deputy Regional Director (DRD) Region IX. On June 26, 2007, Complainant's discrimination claim was originally filed as part of a class complaint alleging the Agency discriminated against Hispanic employees based on national origin by denying them promotion and other job-related opportunities for

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.

growth within the Agency. On September 30, 2009, the Administrative Judge (AJ) dismissed the class complaint for not meeting all the prerequisites for certification. On appeal, the Commission affirmed the dismissal of the class action in an order dated May 18, 2018, and remanded the complaints for individual processing.

Complainant's individual complaint alleges the Agency discriminated against her on the basis of national origin (Hispanic) when she became aware on April 12, 2007, that she was not selected for the position of DRD Region IX, GS-15, Announcement No. 00-MS-07-0002.

The DRD Region IX position was the highest career-level position in the Office of Field Policy and Management. The DRD assisted the Regional Director (RD) Region IX with implementing the priorities set by the HUD Secretary in a multi-state region, which included numerous field offices led by Field Office Directors (FODs). The DRD supervised GS-15 FODs. The vacancy announcement highlighted that qualifying experience at the GS-15 grade level included one year of substantive management and supervisory experience as a GS-14.

The Selecting Official convened a selection panel to review and rank GS-15 applicants referred on the Noncompetitive Referral List by the Agency's Merit Staffing Policy. The Selection Panel interviewed all candidates on the Noncompetitive Referral List and selected the Selectee based on her fifteen years of GS-15 experience in executive-level positions. Specifically, the Selectee served as a Chief of Staff, Associate Regional Administrator, and held numerous director roles, supervising staff and managing large organizational components. As Complainant was a GS-14 employee without supervisory duties and never held a GS-15 position, she was not included on the Noncompetitive Referral List and was not interviewed for the position.

After its investigation into the complaint, 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 (EEOC or Commission) Administrative Judge (AJ). Complainant requested a hearing. Following discovery, the Agency filed a motion for a decision without a hearing, which Complainant opposed. Over Complainant's objections, the AJ granted the Agency's motion and entered judgment in favor of the Agency because the record failed to show that Complainant had been subjected to discrimination as alleged.

The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove discrimination as alleged. The instant appeal followed.

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.

Agency officials articulated legitimate, nondiscriminatory reasons for Complainant's non-selection for the position at issue. A review of the undisputed evidence shows that the selection decision was appropriately made from the Noncompetitive Referral List which did not include Complainant since she was a GS-14 employee with no prior supervisory or managerial positions, and never held a GS-15 position. 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

February 11, 2025
Date