



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

[REDACTED]
Karen S.,¹
Complainant,

v.

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

Appeal No. 2022005140

Agency No. 4G-780-0200-21

DECISION

On July 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 5, 2022 final decision 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 decision.

BACKGROUND

Complainant worked as a Part-Time Flexible City Carrier, 01/D, at the Agency's Post Office in Weimar, Texas. On November 19, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against her and subjected her to a hostile work environment in reprisal for prior protected EEO activity when:

1. On unspecified dates, Complainant's coworker (CW):
 - a. Ran into Complainant with a cart and bumped her on three occasions,
 - b. Threw Complainant's cell phone,
 - c. Hid Complainant's tray under a desk for weeks and hid Complainant's canner jacket in her cubby compartment, and

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.

- d. yelled at Complainant five or six times about a customer;
2. Since July 23, 2021, Complainant was not paid for travel to and from the Columbus Post Office; and
3. On August 2, 2021, management took no action when CW yelled at Complainant and hit a paper Complainant held in her hand.

At the conclusion of the ensuing investigation, the Agency provided Complainant with a copy of the investigative report (IR) and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). On May 5, 2022, Complainant requested a final decision without a hearing. In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). In the decision, the Agency determined that Complainant was not subjected to reprisal as alleged. The instant appeal followed.

ANALYSIS AND FINDINGS

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review “requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker,” and that EEOC “review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission’s own assessment of the record and its interpretation of the law”).

Reprisal/Retaliatory Hostile Work Environment

To establish a retaliatory hostile work environment claim, Complainant must show that: (1) she engaged in protected activity; (2) she was subjected to a materially adverse action taken by her employer; (3) there is a causal connection between the protected conduct and the adverse action; and (4) there is a basis for imputing liability to the Agency. See EEOC Enforcement Guidance on Retaliation and Related Issues, EEOC Notice No. 015.004, § II(B)(3) & n. 137 (Aug. 25, 2016) (Retaliation Guidance). Complainant must show that she was subjected to conduct sufficient to dissuade a “reasonable person” from making or supporting a charge of discrimination. See Burlington Northern & Santa Fe Ry. Co. v. White, 548 U.S. 53, 57 (2006); Retaliation Guidance. Only if these critical elements are present, particularly retaliatory motivation and a chilling effect on protected EEO activity, will the question of Agency liability for reprisal-based harassment present itself. See Janeen S. v. Dep't of Commerce., EEOC Appeal No. 0120160024 (Dec. 20, 2017).

Although petty slights and trivial annoyances are not actionable, adverse actions such as reprimands, threats, negative evaluations, and harassment are actionable.

Enforcement Guidance on Retaliation and Related Issues (Enforcement Guidance on Retaliation), EEOC Notice No. 915.004, at II.B. (Aug. 25, 2016). Retaliatory harassing conduct is actionable if it is sufficiently material to deter protected activity, even if it is insufficiently severe or pervasive to create a hostile work environment. *Id.* at II.B.3.

When asked what her prior EEO activity was, Complainant replied that she did not understand the question and that CW had bullied her for almost seven years. IR 110, 112, 116. Complainant has not identified any specific EEO-related activity that she had participated in at any time prior to the incidents at issue. IR 106. The Officer-in-Charge (OIC), the Postmaster (PM), and the POOM all averred that they were unaware of any prior EEO activity by Complainant. IR 131-32, 142, 145, 155, 157.

Even assuming that Complainant engaged in protected EEO activity, we find that Complainant failed to show that the Agency's actions were based on retaliatory animus. Rather, the evidentiary record reflects that the alleged incidents were more likely the result of routine supervision and general workplace disputes and tribulations. The record demonstrates that Complainant and CW had contentious interactions with each other which management attempted to address numerous times. Both employees were instructed to speak to each other in a respectful manner and to bring delivery issues to the attention of the PM. The POOM noted that prior to his departure from his position, the OIC informed him that the employees were working together with no issues.

Regarding travel pay, the PM and POOM affirmed that Complainant's travel pay requests for February to July 2023 were initially denied as untimely submitted. The POOM confirmed that after Complainant re-submitted the requests with explanations for the delay, the requests were approved and Complainant was paid.

Complainant has presented neither affidavits, declarations or unsworn statements from witnesses other than herself nor documents which contradict or undercut the statements made under oath by all three management officials. As Complainant chose not to request a hearing, the Commission does not have the benefit of an Administrative Judge's credibility determinations after a hearing to better ascertain whether or not a retaliatory motive existed with respect to any of the allegations comprising her hostile work environment claim. Tabitha M. v. Dep't of Veterans Affairs, EEOC Appeal No. 2022004646 (Nov. 16, 2023). Therefore, the Commission can only evaluate the facts based on the weight of the evidence presented. Elliot J. v. Dep't of Defense, EEOC Appeal No.2022000462 (Sept. 5, 2023). Ultimately, we find that the record in this case does not establish that Complainant was subjected to reprisal or a retaliatory hostile work environment as alleged.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, we AFFIRM the Agency's final 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 24, 2024
Date