



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

[REDACTED]  
Matt B.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2023000061

Agency No. 4K-300-0219-20

DECISION

On September 30, 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 August 31, 2022, final decision 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. For the following reasons, the Commission AFFIRMS the Agency's final decision.

ISSUE PRESENTED

Whether in the final decision, the Agency properly found that Complainant was not discriminated against on the bases of sex or reprisal.

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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.

### BACKGROUND

Complainant worked as a Probationary Sales & Service Distribution Associate at the Agency's Post Office in Jonesboro, Georgia. On August 18, 2020, Complainant filed a formal EEO complaint alleging that the Agency discriminated against him on the bases of sex (male) and in reprisal for prior protected EEO activity when:

1. On March 31, 2020, the Customer Services Supervisor (CSS) made sexual comments/gestures and when he reported it, no action was taken;
2. On May 12, 2020, CSS lied to the Postmaster (PM) about the amount of time Complainant had spent on the phone with his doctor;
3. On unspecified dates, management negatively impacted his work spreading false rumors in the workplace and telling him that he was slow; and
4. Effective June 24, 2020, Complainant was terminated during his probationary period.

The Agency initially dismissed the complaint on the grounds that it was untimely filed, but in Joey B. v. U.S. Postal Serv., EEOC Appeal No. 2021000447 (Jan. 27, 2021), req. for recon. den., EEOC Request No. 2021002015 (March 2, 2022), the Commission reversed the Agency's decision and remanded the matter for further processing.

Allegations (1) & (3): Complainant claimed that on March 31, 2020, his second day of employment, CSS bent over and asked him, "Hey [Complainant], do you like my ass? You know guys like me when I catch them looking at my ass and are you single?" IR 99-100, 196, 214. He stated that on May 2, 2020, CSS got close to him, danced, and bent over in a sexually suggestive manner. IR 212. He averred that he went to PM to complain but that PM did not do anything about it, and that ever since, CSS had retaliated against him by constantly harassing him, spreading rumors about him, criticizing his job performance in front of coworkers, calling him slow, making comments about his "ashy-looking" legs, and threatening to fire him. IR 104-05, 196, 209.

CSS denied that she ever made sexual comments or gestures towards Complainant or anyone else. IR 171-74, 201, 204, 206. As to the "ashy legs" comment, she admitted saying to Complainant that his legs appeared white and ashy, and that she offered him some lotion that she carried with her. IR 200, 204, 206-07. As for the remarks about Complainant being slow, CSS averred that Complainant was "not making productivity" and needed to work a little bit faster in order to meet the standard which all clerks had to meet, namely scanning 270 packages per hour. IR 177-78, 200-01, 204-05.

PM affirmed that he had never heard CSS say anything in the workplace that was inappropriate. IR 199-200. Further, he recalled CSS telling Complainant, in essence, to pick up the pace in sorting mail. IR 200. During a fact-finding that was held on the matter, various witnesses gave written statements. When the manager conducting the fact-finding asking them whether they had ever observed any offensive or inappropriate behavior by CSS toward Complainant, they all answered, "no." IR 203, 208-09, 218, 220, 222, 224. One witness, however, stated that when CSS commented on Complainant's ashy legs, people started laughing and that Complainant looked embarrassed. IR 224. She also stated that CSS had shown her and other employees a statement from Complainant describing the various incidents referenced above, and that CSS could sometimes "become very explosive," and utter profanities in the workplace, particularly when people call in and do not come to work. IR 224-25

Allegation (2): Complainant claimed that on May 13, 2020, CSS told PM that Complainant had taken an extended break and had been on his cell phone in violation of an agency policy prohibiting cell phones on the workroom floor. Complainant maintained that CSS had lied to PM about the amount of time he had been on break. According to Complainant, CSS told PM that Complainant had been on break for 30 minutes knowing that he had only been on break for 14 minutes, which was permitted, and that he was allowed to use his cell phone during that break. IR 101-03, 213. Complainant stated that CSS was trying to get him fired, and that he attempted to show PM his cell phone so that PM could see the actual time that he was on break. He said that he told PM that he was tired of being harassed by CSS and needed to go home. In addition, he stated that PM gave him a resignation form that he did not ask for. IR 196.

According to CSS, Complainant never informed a manager that he needed to step off the workroom floor to take a phone call and that he was missing from his work area for about 30 minutes. IR 174-75.

During the fact-finding, CSS told the investigator that she did not know where Complainant was during that 30-minute period, that other employees were asking about Complainant's whereabouts. CSS stated that she went to get PM, and that when Complainant came back into the work area, he screamed at CSS, called her a profanity, and that PM demanded that Complainant show respect toward his supervisor. IR 201, 206.

Allegation (4): By written notice dated June 24, 2020, PM informed Complainant that he would be separated from the Agency effective upon that date. The reason PM gave for the termination was that Complainant failed to meet the expectations of the position for which he was hired. IR 230. According to the PS Form 50 documenting Complainant's separation, Complainant was separated for conduct in violation of the Agency's zero-tolerance policy. IR 186. PM and CSS both averred that Complainant abandoned his job during his probationary period, that Complainant had used profanity toward CSS, and that he left on May 13, 2020, but never reported back to work. IR 153-55, 179-81, 200. According to CSS, Complainant was terminated due to improper conduct and performance deficiencies. IR 181.

Fact-Finding Outcome: According to the documentation provided by the Agency, an investigation into alleged inappropriate behavior at the facility occurred covering the period between March 30 and May 13, 2020, and was conducted by the postmaster at another facility. The fact-finding was completed on June 18, 2020, and closed on June 22, 2020. The decision reached as a result of the fact-finding was that no corrective action needed to be taken because Complainant's allegations of harassment were not substantiated by any of the witnesses. However, the outcome memorandum for the fact-finding indicated that PM would assign CSS to a sensitivity class. IR 190-91.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the investigative report (IR) and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge. When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b).

In its final decision, the Agency concluded that management did not subject Complainant to discrimination, reprisal, or a hostile work environment as alleged. Complainant filed the instant appeal without submitting any arguments in support.

### STANDARD OF REVIEW

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”).

### ANALYSIS

#### *Hostile Work Environment*

In order to establish a prima facie case of harassment, Complainant must prove, by a preponderance of the evidence, the existence of five elements: (1) that he is a member of a statutorily protected class; (2) that he was subjected to unwelcome conduct related to his protected class; (3) that the harassment complained of was based on his protected class; (4) that the harassment had the purpose or effect of unreasonably interfering with his work performance and/or creating an intimidating, hostile, or offensive work environment; and (5) that there is a basis for imputing liability to the employer. See Celine B. v. Dep’t of Navy, EEOC Appeal No. 2019001961 (Sept. 21, 2020); Humphrey v. U.S. Postal Serv., EEOC Appeal No. 01965238 (Oct. 16, 1998). See also Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982), approved in Meritor Savings Bank v. Vinson, 477 U.S. 57, 66-67 (1986); see generally Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (April 29, 2024).; Flowers v. Southern Reg’l Physician Serv. Inc., 247 F.3d 229 (5th Cir. 2001). The harasser’s conduct should be evaluated from the objective viewpoint of a reasonable person in the victim’s circumstances. Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (April 29, 2024).

In other words, to prove his hostile work environment claim, Complainant must establish that he was subjected to conduct that was either so severe or so pervasive that a “reasonable person” in Complainant’s position would have found the conduct to be hostile or abusive. Complainant must also prove that the conduct was taken because of a protected basis.

Only if Complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself.

We find that Complainant satisfies the first element in that he is male and that he has prior protected EEO activity. We also find that Complainant satisfies the second element in that the conduct to which he was subjected was certainly unwelcome from his own subjective perspective. We now turn to the third element, which is the existence of a sex-based discriminatory or retaliatory motive on the part of CSS or PM in connection with the incidents described in Complainant's allegations.

As to incidents (1) and (3), CSS denied making sexual comments and gestures toward Complainant. CSS did admit to making a comment about his legs, but that remark was in the context of an offer to let him use her lotion if he needed it. CSS also told Complainant that he needed to pick up speed in processing the mail. When asked why he believed that his sex was a factor in connection with these incidents, Complainant replied that PM was protecting CSS because he did not believe that a woman could sexually harass a man, and that CSS was "still in her feelings about being rejected" by him and was "messing with [him] to make [him] quit." IR 101, 106. When asked why he believed that his EEO activity was a factor, he maintained that after he contacted the EEO office on May 14, 2020, PM refused to let him come back to work. IR 101, 106.

Concerning incident (2), CSS and PM both stated that Complainant had taken a 30-minute break to use his cell phone at a time when he was not authorized to do so, and that when they confronted Complainant about it, Complainant yelled profanities at CSS, prompting PM to demand that he show respect towards a supervisor. When asked why he believed his sex was a factor in the cell phone incident, Complainant repeated his assertion that PM did not believe that men could be the victims of sexual harassment. IR 103. When asked why he believed that his EEO activity was a factor, Complainant reiterated that after he initiated the instant complaint, PM refused to let him return to work. IR 103.

Regarding incident (4), the documentation of Complainant's termination indicates that management believed that Complainant failed to meet the expectations of his probationary position, particularly that he violated the Agency's zero tolerance policy by engaging in a profanity-laced tirade against CSS. According to CSS and PM, Complainant left work on May 13, 2020, and did not return.

When asked why his sex and EEO activity were factors in his termination, Complainant asserted that PM did not like the idea of a man reporting his female supervisor for harassment and that CSS was still determined to remove him for rejecting her overtures. IR 108, 120. When asked the same question about his EEO activity, Complainant replied that PM sabotaged his efforts to obtain a position at another post office. IR 108, 120. In an email dated August 3, 2020 and addressed to Complainant, a Human Resources Specialist informed him that the Agency was rescinding a job offer due to his history with the Agency. IR 122.

Beyond his own assertions, Complainant has presented neither affidavits, declarations, or unsworn statements nor documents sufficient to contradict or undercut the explanations provided by CSS and PM. Likewise, Complainant has not presented any testimonial or documentary evidence which would cause us to question the truthfulness of CSS or PM as witnesses or would otherwise tend to establish the existence of at least one of the indicators of unlawful motive listed above. With respect to incidents (1), (2), and (3), the Agency conducted a fact-finding in which it had interviewed multiple witnesses and had determined that Complainant's allegations of sex discrimination and reprisal were unsubstantiated. While one witness stated that CSS sometimes displayed a quick temper and was very direct with subordinates in her management style, none of the witnesses had observed CSS single out Complainant in order to harass him or otherwise treat him differently than other employees. With regard to incident (4), the Agency documented its reasons for terminating Complainant in PM's June 24, 2020 memorandum and in a Standard Form 50. We therefore find, as did the Agency, that Complainant failed to establish the third element of the hostile work environment analysis.

Even assuming that Complainant had established the third element, he would still have to establish the fourth, namely that CSS's and PM's conduct toward him was so severe or pervasive that a reasonable person in his position would have found it to be hostile. As to CSS's alleged sexual comments and gestures at issue in allegation (1), the record is not sufficient to establish that CSS even made the comments and gestures that Complainant attributed to her. To the extent that CSS was critical of his job performance, the Commission has long held that routine work assignments, instructions, and admonishments do not rise to the level of harassment because they are common workplace occurrences. Kenyatta S. v. Dep't of Justice, EEOC Appeal No. 2023003119 (Dec. 4, 2024) citing Gray v. U.S. Postal Serv., EEOC Appeal No. 0120091101 (May 13, 2010).

CSS had determined that Complainant's parcel processing was too slow and that he needed to pick up speed and increase his productivity. As to the May 13, 2020 incident, CSS and PM had informed Complainant that he did not have permission to take an extended break. The Commission has likewise held that although petty slights and trivial annoyances are not actionable, 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. Celeste P. v. Dep't of Agric., EEOC Appeal No. 2023003744 (Nov. 19, 2024) citing Enforcement Guidance on Retaliation and Related Issues EEOC Notice No. 915.004 at § II(B)(3). (Aug. 25, 2016). As noted above, CSS was not making fun of Complainant's legs. Rather, she had offered him lotion. While some of Complainant's coworkers might have found this incident amusing, neither it nor any other incident cited by Complainant rose to the level of severe or pervasive or was otherwise sufficiently material to deter protected EEO activity. Moreover, the record demonstrates that it was Complainant who had displayed hostile behavior toward CSS when he yelled profanities at her after she claimed that he was on an extended break. Consequently, we find that Complainant has not established the fourth element of the hostile work environment analysis.

If the supervisor did not take a tangible employment action, then the employer can raise an affirmative defense to vicarious liability by proving: the employer acted reasonably to prevent and promptly correct harassment; and the complaining employee unreasonably failed to use the employer's complaint procedure or to take other steps to avoid or minimize harm from the harassment. Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 at § IV(C)(2). Here, the Agency promptly conducted an internal fact-finding investigation in which it interviewed eight witnesses, and in reliance upon the evidence compiled from those witnesses' statements, determined that Complainant's allegations were not substantiated. Ultimately, management determined that no disciplinary action was warranted; however, CSS was instructed to attend sensitivity training. There is no evidence demonstrating that the alleged conduct recurred.

Furthermore, a preponderance of the evidence establishes that Complainant was terminated for not returning to work after the May 13, 2020 incident in which he yelled profanities at CSS after being taken to task for an unauthorized 30-minute break. The termination was documented in a memorandum from PM and a Standard Form 50.

Ultimately, we find that Complainant failed to establish that there is a basis for imputing liability to the Agency.

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; therefore, the Commission can only evaluate the facts based on the weight of the evidence presented. Micki C. v. Soc. Sec. Admin., EEOC Appeal No. 2022004926 (Aug. 19, 2024). Here, the weight of that evidence is not sufficient to establish that either CSS or PM unlawfully considered Complainant's sex or EEO activity in connection with any of the incidents alleged.

Moreover, to the extent that Complainant is alleging disparate treatment regarding his claims, Complainant has not proffered any evidence demonstrating that the Agency's explanation for its actions was pretext for discrimination or reprisal. Accordingly, the Commission finds that Complainant was not subjected to discrimination, reprisal, or a hostile work environment as alleged.

#### CONCLUSION

Based on a thorough review of the evidentiary record, 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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

February 3, 2025  
Date