



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

[REDACTED]
Lela M.,¹
Complainant,

v.

Pamela Bondi,
Attorney General,
Department of Justice
(Bureau of Alcohol, Tobacco, Firearms & Explosives),
Agency.

Appeal No. 2023000073

Hearing No. 480-2021-00211X

Agency No. ATF-2020-01237

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 September 26, 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.

At the time of events giving rise to this complaint, Complainant worked as an Industry Operations Investigator (IOI) at the Agency's Field Office in Glendale, California.

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 June 2, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (African American), sex (female), and in reprisal for prior protected EEO activity when:

1. On unspecified dates, Complainant's Supervisor micromanaged her work assignment by placing unfair requirements on her but not on other investigators in her group.
2. From October through December 2019, Complainant's Supervisor ignored her requests for work assignments.
3. On December 18, 2019, the Director yelled at her.
4. On April 20, 2020, Complainant received a rating of "Minimally Successful" for her mid-year appraisal.
5. On April 27, 2020, Complainant's Supervisor did not respond to her email related to a work assignment.
6. On June 17, 2020, Complainant's Supervisor did not respond to Complainant's email requesting additional assignments.
7. On October 29, 2020, Complainant learned that her Annual Performance Appraisal included inaccurate comments.²

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 assigned to the case granted the Agency's March 4, 2022, motion for a decision without a hearing and issued a decision without a hearing on October 24, 2022. The AJ found that Complainant failed to carry her burden of establishing there is a genuine issue of material dispute or that credibility determinations needed to be rendered. The AJ further found that there was insufficient evidence to create an inference that the Agency discriminated against Complainant based race or sex or retaliated against Complainant as to any of the claims.

² Claim 7 was added to the complaint pursuant to Complainant's November 2, 2020, amendment request.

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. Neither party filed a brief on appeal.

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 13, 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).

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.

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.

We find that Agency officials articulated legitimate, nondiscriminatory reasons for its actions, which Complainant failed to dispute.

Regarding Claim 1, Complainant stated her first line supervisor (S1) micromanaged her timecard and called her on her days off to make corrections. Complainant asserts S1 would not assign her work unless she completed all assignments in her queue. She asserts he would issue more

work to other IOIs even if they had outstanding work. Complainant also alleged that S1 required that she complete biometrics information in her assignments. S1 denied micromanaging Complainant's work but asserts that he required her work to comply with policy and often her assignments had to be returned for incomplete information, missing attachments, and late submissions. S1 stated that in fiscal year (FY) 2020, he required all IOIs to submit biometric information. A coworker corroborated this.

Regarding Claim 2, Complainant asserts that she requested assignments orally and in writing and in some instances S1 would tell her to finish all the work assigned to her first and sometimes he did not respond. S1 stated that it was his first year as supervisor and there had already been work issued and carried over from the prior fiscal year. He further stated no protocol had been established for work assignments. He asserts he did not respond because she still had overdue assignments to be completed.

Regarding Claim 3, Complainant asserts that at a December 18, 2019, meeting S2 yelled at her. She indicated that on December 16, 2019, she asked him to meet with him so she can discuss challenges she was having with S1. Complainant asserts that during their dispute about whether S2 had told her he was not available to meet with her, S2 yelled, "I did not tell you that I did not have time to speak with you and you will not continue to make that statement! You are disrespectful by continuing to say this." S2 stated that he raised his voice because he was upset that Complainant made false statements. He stated that the next day he apologized to her for raising his voice.

Regarding Claim 4, Complainant disputed the minimally successful midyear performance rating S1 gave her. The appraisal noted that Complainant had 11 assignments closed compared to the office average of 24. Complainant asserts S1 failed to issue an equal number of assignments and comparing her to the office average was inequitable. S1 stated he rated Complainant minimally successful because she did not properly manage her assignments or complete them in a timely manner. He denied assigning her less cases. He asserts Complainant has not reviewed internal controls to identify risk factors through database queries, and asserted she needs to have access and be certified to several different databases to improve her research skills and results.

Regarding Claim 5, Complainant alleged that on April 27, 2020, she emailed S1 and S2 regarding an assignment and neither of them responded. In the email she noted that some of the inspections he had returned to her to work

on did not include notations regarding the changes to be made. S1 never responded. S1 stated he did not respond because Complainant still had outstanding work. He also noted that any reasons he had for returning assignments to his subordinate IOIs were written in the case management system.

Regarding Claim 6, Complainant alleged that on June 17, 2020, she emailed S1 requesting additional assignments. She asserts when he did not respond, she sent another email on June 25, 2020. S1 responded that her request was noted and will be assigned. He further asked her to make corrections on specified assignments. S1 asserts he did not respond to Complainant's email because she already had 20 assignments assigned to her that were becoming overdue. He also indicated that other employees have not requested additional work assignments as all new work assignments are distributed evenly in the beginning of the fiscal year. S1 further assert this was the first year he became a supervisor and he was very busy learning the position.

Regarding Claim 7, Complainant asserts the S1 inaccurately stated on her annual performance appraisal that she refused to close out an assignment. Complainant asserts this was inaccurate because she did not refuse, but instead sent several emails to S1 and S2 regarding the assignment but received no response. She also disputed S1's statement that she only requested access to the FLS database to conduct inspections. She asserts she has had a continuous certification to another database since 2018. S1 indicated that he noticed one typographical error in which he stated the review period ended on September 20th instead of September 30th but otherwise denied writing any inaccurate statements on Complainant's performance appraisal.

Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable factfinder could not find in Complainant's favor. Complainant has not identified any persuasive evidence that suggests that any Agency alleged action in this complaint was motivated by discrimination.

Accordingly, we AFFIRM the Agency's final order implementing the AJ's decision finding no discrimination.

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 19, 2025
Date