



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

[REDACTED]
Delphia F.,¹
Complainant,

v.

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

Appeal No. 2023000229

Hearing No. 430-2022-00205X

Agency No. 4B-230-0093-21

DECISION

Complainant appeals to the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's September 7, 2022, final action 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 action.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Part-Time Flexible (PTF) Rural Carrier at the Charlottesville Post Office in Charlottesville, Virginia.

On September 23, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against her based on race (Black) and in reprisal for prior protected EEO activity when:

1. On dates to be specified she was harassed in that:

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.

- a. She was not allowed a water break;
 - b. She was sent out multiple times after completing her route;
 - c. Her scanner came up missing on her route;
 - d. She was singled out when she was yelled at for delaying the mail;
 - e. Management refused to place her on her assigned routes;
 - f. Management took her green card so that she could not clock out; and
 - g. Packages were taken from her route.
2. On June 19, 2021, she was put on Emergency Placement in an Off-Duty status.
 3. On August 5, 2021, she was issued a Notice of Removal, effective September 10, 2021.²

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 EEOC Administrative Judge (AJ). Complainant requested a hearing. On August 15, 2022, the Agency motioned for a decision without a hearing. Over Complainant's objections, the AJ granted the Agency's motion and issued a decision without a hearing on August 30, 2022.

The AJ found that Complainant's allegations of harassment failed because the Agency's alleged conduct was not "severe or pervasive" enough to support a finding of harassment. The AJ noted that even if Complainant's allegations were found to be true, Complainant presented no evidence that the Agency's conduct occurred because of her race or her prior EEO activity.

Regarding Complainant's allegations of discriminatory suspension and removal, the AJ found that the Agency had legitimate, nondiscriminatory reasons for these disciplinary actions. Complainant was found to have intentionally stashed mail in various locations along her route to avoid having to deliver it. The AJ found no evidence that any other employee had willfully and unethically stashed mail and been treated more favorably than Complainant.

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.

STANDARD OF REVIEW

The Commission's regulations allow an AJ to grant summary judgment when they find 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 factfinder 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.

² Through the grievance process, Complainant's removal was ultimately reduced to a seven-day suspension without backpay.

In rendering this appellate decision, we must scrutinize the AJ's legal and factual conclusions, and the Agency's final order implementing 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. (as revised, August 5, 2015) (providing that an AJ'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.

ANALYSIS AND FINDINGS

After careful review of the record, we find that Complainant failed to raise a genuine issue of material fact on any of her claims of discrimination and reprisal. Regarding Complainant's harassment claims, the Agency denies that most of these allegations occurred as Complainant described. Complainant's first-line supervisor (S1) denied that Complainant was ever denied a water break. S1 stated that water breaks are not policed by management, and that employees are free to access the water fountain as often as they like. During the hottest months, S1 described, pallets of water bottles are made available to employees. Complainant did not deny these facts or present any evidence to refute them.

S1 also stated that Complainant was "sent out... after completing her route" in the same manner that all employees are asked to do when necessary to meet workplace demands. Complainant presented no evidence that she was sent out more than any other employee or that her assignments were given based on her race or her prior EEO activity.

Complainant alleged that her scanner went missing and implied that someone took it from her but failed to produce any evidence supporting this claim. Complainant admitted that the scanner was found in a cluster box located along her assigned delivery route.

Regarding Complainant's allegation that she was singled out and yelled at for delaying the mail, we find no evidence to support this allegation. We agree with the AJ that even if this allegation is true, there is no evidence that it occurred in a severe or pervasive manner, or that it occurred because of her race or her prior EEO activity.

Regarding Complainant's allegation that she was not given her assigned routes, the record makes clear that Complainant was assigned routes to deliver mail. Complainant admits she was "placed on another route," although she claims it was "not a part of [her] assignment." Complainant presents no evidence that her assignments were less favorable than other similarly situated employees or that her assignments were given based on her race or her prior EEO activity.

Regarding Complainant's allegation that management took her "green card," preventing her from clocking out, the record contains no evidence to support this claim. S1 denied that she ever took Complainant's green card and stated that when Complainant failed to complete a timecard, her hours were documented via text message.

Regarding Complainant's allegations of discriminatory suspension and removal, we agree with the AJ that the Agency stated legitimate, nondiscriminatory reasons for these disciplinary actions. Complainant was suspended on June 17, 2021 because the Agency suspected she had intentionally delayed delivery of mail by stashing pieces of mail along her route instead of delivering them. An investigation by the Agency's Office of Inspector General (OIG) produced strong evidence that Complainant had engaged in this behavior. GPS tracking information confirmed that Complainant's work vehicle did stop at the locations where the stashed mail was found. Records confirm that Complainant checked out the key for the cluster boxes where the stashed mail was found. Consequently, S1 issued Complainant a Notice of Removal on August 5, 2021. The record contains no evidence that would contradict these facts or show that the Agency used these reasons as pretext for discrimination or retaliation.

Though Complainant at times denied that she intentionally hid mail, claiming that someone else stashed the mail to soil her reputation, she presented no evidence to support this claim. Complainant also stated that other employees "did the same thing leaving package[s] [mis-delivering] package[s] putting thing[s] in parcel lockers that don't belong in the parcel lockers." The record contains no evidence that any employee other than Complainant engaged in this behavior or, that the Agency knew of such actions even if such actions occurred.

The ultimate burden of proving discrimination remains at all times with the Complainant. Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). Complainant has failed to produce evidence sufficient to support her claims.

CONCLUSION

Accordingly, we AFFIRM the Agency's final action finding no discrimination or reprisal.

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