



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

████████████████████
Salvatore B.,¹
Complainant,

v.

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

Appeal No. 2023000250

Hearing Nos. 430-2022-00157X, 430-2022-00263X

Agency Nos. 1C-931-0009-21, 1C-931-0044-22,

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 15, 2022, final action 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. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission AFFIRMS the Agency's final action.

At the time of events giving rise to this complaint, Complainant worked as a Laborer Custodial, P-04, at the Agency's Charlotte Processing and Distribution Center in Charlotte, North Carolina.

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 July 2, 2021, Complainant filed an EEO complaint (Agency No. 1C-931-0009-21), which was subsequently amended, alleging that the Agency subjected him to discriminatory harassment on the bases of race (African American), disability (Post Traumatic Stress Disorder, anxiety, bilateral knee injuries, chronic rhinitis), and in reprisal for prior protected EEO activity when:

1. On May 17, 2021, Complainant was charged Absent-Without-Leave (AWOL).
2. On June 21, 2021, Complainant was not offered a 204B assignment.
3. On July 12, 2021, Complainant was denied an opportunity to apply for a maintenance detail assignment.
4. On August 2, 2021, management appointed an employee as a Tour 2, 204B supervisor without posting it for Complainant to apply.
5. On September 3, 2021, Maintenance Manager followed Complainant, asked Complainant's immediate Supervisor about his work status, and accessed his TACS records.
6. On September 4, 2021, Complainant was denied upward mobility when management filled a 204-B position without posting the detail opportunity.
7. On September 7, 2021, Complainant's Supervisor called him multiple times because Complainant's Manager did not want Complainant taking his breaks in the union office.
8. On September 27, 2021, Senior Maintenance Manager had multiple management officials meet in a restroom to inspect a toilet that he accused Complainant of not cleaning.
9. On September 29, 2021, Complainant was given an Investigative Interview.

On December 13, 2021, Complainant filed an EEO complaint (Agency No. 1C-931-0044-22) alleging that the Agency subjected him to discriminatory

harassment on the bases of race (African American) and in reprisal for prior protected EEO activity when:

1. On October 28, 2021, Complainant was given an Investigative Interview.
2. On November 2, 2021, management questioned Complainant's coworker about the coworker's conversation with Complainant.
3. On November 3, 2021, management told his coworker that they questioned him so that "a certain employee" would not have grounds to file an EEO complaint.

At the conclusion of the investigations on both of his complaints, the Agency provided Complainant with a copy of the reports of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing on both complaints. While the cases were pending before the AJ, the Agency filed a motion for summary judgment addressing both cases. Complainant filed a Response opposing summary judgment. Over Complainant's objections, the AJ assigned to the case granted the Agency's motion and issued a decision without a hearing on September 9, 2022.

The AJ noted Complainant confirmed during the Initial Conference that he withdrew race as a basis during the investigation of Agency Case No. 1C-931-0009-21. Further, the AJ noted the claims in the two cases were framed solely as discriminatory harassment. The AJ noted that Complainant's Response to the Agency's motion for summary judgment mischaracterized the claims as disparate treatment in addition to harassment. However, the AJ stated the claims were not accepted as separate discrete acts, nor did Complainant indicate disagreement with the claims as accepted by the Agency. Further, the AJ noted the record did not support a finding that Complainant could establish a prima facie case of disparate treatment. The AJ concluded Complainant did not allege facts to conclude the conduct was based on his protected bases. Finally, the AJ found the incidents alleged were routine supervision, personality disputes, and general workplace tribulations that do not constitute a hostile work environment.

The Agency subsequently issued a notice of final action on September 15, 2022. The Agency's final action fully implemented the AJ's finding that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

The Agency subsequently issued a notice of final action on September 15, 2022. The Agency's final action fully implemented the AJ's finding that Complainant failed to prove that the Agency subjected him to 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. (as revised, August 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).

Upon review, we find the record in the present case was fully developed. We note on appeal, Complainant has not challenged the AJ's assertion that he withdrew race from Agency Case No. 1C-931-0009-21.

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. 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 action fully 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