



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

████████████████████
Walton Z.,¹
Complainant,

v.

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

Appeal No. 2023000290

Hearing No. 410-2021-00034X

Agency No. 4K-300-0244-20

DECISION

On October 19, 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 September 15, 2022, final order 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 order.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier Assistant, Q-01, at the Agency's Howell Mill Post Office in Atlanta, Georgia.

On July 20, 2020, Complainant filed an EEO complaint alleging that the Agency subjected Complainant to disparate treatment in reprisal for prior protected EEO activity when on May 15, 2020, Complainant received an investigative interview, and on May 21, 2020, he was issued a Letter of Warning (LOW).

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.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing. The AJ assigned to the case issued a Notice of Intent to Issue a Decision Without a Hearing (Notice) on August 15, 2022. Complainant responded to the Notice on August 30, 2022. Thereafter, the AJ issued a decision without a hearing finding no discrimination on September 1, 2022. The Agency subsequently issued a final order fully implementing the AJ's finding that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

The subject of the investigative interview and the LOW are the same and we discuss the two together. Complainant stated that the charge in the LOW was failure to follow instructions/poor performance. Complainant noted that the LOW cited to his failing to timely deliver and scan a priority express mail package on May 9, 2020. Complainant stated that he had never received the package in question for delivery. Complainant noted that he could not deliver a package that was not in his possession. Complainant also denied receiving any instruction.

Complainant stated he had participated in prior EEO activity by filing a previous formal EEO complaint with the Agency case number 4k-300-0088-20, which was filed on February 11, 2020. Complainant stated that he participated in an IMIP² inquiry on February 14, 2020. Complainant reported further opposing the discrimination by requesting the results of the inquiry between May 6 and May 21, 2020. Complainant stated that his first-line supervisor (Supervisor-1) was aware of this prior EEO activity "because in her role as supervisor she was informed that I could not be sent to Doraville because of my prior EEO activity. Also in April 2020 she and I had a conversation about the mistreatment I received for reporting discrimination while at my prior station."

Complainant contended that his prior EEO activity was a factor in his being issued the LOW because the LOW was issued close to when Complainant's attorney requested the results of the IMIP inquiry. Specifically, Complainant reported that the LOW was issued the same week that Complainant's attorney sent a strongly worded final request for the results of the inquiry. The email referenced was sent to the Agency's Deputy Managing Counsel, Complainant, and another Agency employee whose position is not established in the record. Supervisor-1 was not a recipient of Complainant's attorney's email.

The LOW listed the charge as failure to follow instructions/poor performance. The LOW noted that Complainant, as a postal employee, has received training and instruction regarding the requirements of his assignment as well as receiving periodic instructions regarding his performance. The LOW noted that Complainant had been instructed to timely deliver and scan all mail entrusted to him. The LOW noted that on May 8, 2020, Complainant failed to timely deliver and scan a priority mail express package. The investigative interview was conducted to reach a determination on whether to issue the LOW for the failure to timely deliver and scan a priority mail express package.

² Complainant did not define IMIP.

Supervisor-1 explained that she relied on scanning records and a photo of the package taken by another postal worker in reaching the determination to issue the LOW. Supervisor-1 denied any knowledge of Complainant's prior EEO activity.

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. 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

To prevail in a disparate treatment claim such as this, complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Complainant must initially establish a prima facie case by demonstrating that he or she was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Construction Co. v. Waters, 438 U.S. 567, 576 (1978). Proof of a prima facie case will vary depending on the facts of the particular case. McDonnell Douglas, 411 U.S. at 804 n. 14. The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the agency has met its burden, the complainant bears the ultimate responsibility to persuade the fact finder by a preponderance of the evidence that the agency acted on the basis of a prohibited reason. See St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

This established order of analysis in discrimination cases, in which the first step normally consists of determining the existence of a prima facie case, need not be followed in all cases.

Where the agency has articulated a legitimate, nondiscriminatory reason for the personnel action at issue, the factual inquiry can proceed directly to the third step of the McDonnell Douglas analysis, the ultimate issue of whether complainant has shown by a preponderance of the evidence that the agency's actions were motivated by discrimination. See U.S. Postal Service Board of Governors v. Aikens, 460 U.S. 711, 713-714 (1983); Complainant v. Dep't of Transportation, EEOC Request No. 05900159 (June 28, 1990); Complainant v. Dep't of Health and Human Services, EEOC Request No. 05900467 (June 8, 1990); Complainant v. Dep't of the Navy, EEOC Petition No. 03900056 (May 31, 1990).

Complainant must prove that the employer's reasons are not only pretext but are pretext for discrimination. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 507 and 516 (1993). A factual issue of pretext cannot be established merely on personal speculation that there was discriminatory intent. Complainant v. U.S. Postal Service, EEOC Appeal No. 01A11110 (May 22, 2002); Springer v. Durflinger, 518 F.3d 479, 484 (7th Cir. 2008). Pretext means that the reason offered by management is factually baseless, is not the actual motivation for the action, or is insufficient to motivate the action. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 120 S. Ct. 2097 (2000).

In this case, we find that the AJ properly issued a decision without a hearing because no genuine dispute of material fact exists. An AJ may issue a decision without a hearing only after determining that the record has been adequately developed. See Petty v. Dep't of Def., EEOC Appeal No. 01A24206 (July 11, 2003). We carefully reviewed the record and find that it is adequately developed. We find that Complainant failed to establish a prima facie case of retaliation, because we find that Complainant failed to show that Supervisor-1 knew of Complainant's prior EEO activity. The sole management official involved in initiating the investigative interview and issuing the LOW was Supervisor-1. Supervisor-1 denied knowledge of Complainant's prior EEO activity. Complainant relies on his speculation that Supervisor-1 must have known of the previous formal complaint he filed, which is insufficient. Second, Complainant's main theory for supporting retaliatory motive is that the timing of the LOW was close to when his attorney demanded the results of the IMIP inquiry. The record, however, demonstrates that Supervisor-1 was not a recipient of this email and Complainant has failed to present evidence that Supervisor-1 knew of this email. Complainant has not presented persuasive evidence that Supervisor-1 knew of Complainant's prior EEO activity. We note that the prior EEO activity referenced by Complainant did not involve Supervisor-1 in any way.

CONCLUSION

Accordingly, the Agency's final order finding no discrimination is AFFIRMED.

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 25, 2024
Date