



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Gabriele G.,¹
Complainant,

v.

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

Appeal No. 2023000377

Hearing No. 410-2022-00293X

Agency No. 4G-300-0290-21

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, notice of 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 Rural Carrier Associate at the Agency's Alpharetta-Webb Bridge Station in Alpharetta, Georgia. During the relevant time, Person A was Complainant's first line supervisor. Person B was the Postmaster assigned to Alpharetta, Georgia.

On November 15, 2021, Complainant filed an EEO complaint, which was subsequently amended, alleging that the Agency subjected her to discriminatory harassment on the bases of religion (Christian) and in reprisal for protected EEO activity when:

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.

1. On July 9, 2021, Complainant became aware that she had been terminated effective June 14, 2021.²
2. On unspecified dates, management consistently made negative comments and mocked Complainant concerning her religion.
3. On June 4, 2021, Complainant's supervisor refused to process her request for Emergency Federal Employee Leave (EFEL).

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. The AJ noted the record contained adequate documentation to fully understand the claims including the multiple communications to Complainant regarding her return to work. The AJ determined *sua sponte* that the complaint did not warrant a hearing and over Complainant's objections, issued a decision without a hearing on September 13, 2022.

Regarding her removal, Person A explained Complainant was terminated due to her Absence Without Leave (AWOL) having not reported to work for 60 calendar days and failing to respond to multiple directives including to return to duty or provide medical documentation to support her absences. The record contained the termination letter and directives with tracking information and delivery confirmation. While Person A claimed Complainant never contacted her until after receiving the termination letter, Complainant stated that she called Person A "on each occasion" and that she was out of work due to a work-related injury. The AJ stated even viewing the evidence in the light most favorable to Complainant, she failed to provide any evidence to demonstrate she complied with the Return to Duty letter or provided Medical Certification to support her repeated absences from work. In addition, the AJ noted Complainant's Office of Workers' Compensation (OWCP) claim was denied. Further, the AJ found Complainant failed to make any inference of connection between her protected bases and the Agency's action.

Regarding Complainant's request for leave and the religious-based comments, Person A stated Complainant's email request for EFEL was sent after her termination from an outside email address so Person A never opened the email. The AJ found this did not evidence discriminatory or retaliatory animus. Person B and Person A denied ever having made or heard comments about Complainant's religion. Even assuming Person B stated he would pray for Complainant or words to that effect, the AJ found no hostile work environment.

² Complainant filed a grievance regarding her removal and was reinstated to her position in August 2021.

The Agency subsequently issued a final action on September 15, 2021. The Agency's final action fully implemented the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

Thereafter, Complainant filed the instant appeal. On appeal, Complainant claims the AJ improperly denied Complainant the right to discovery. Complainant also argues the AJ erred in not considering her claim of retaliation.

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 Chap. 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 AND FINDINGS

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 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. At the outset, we find the record fully developed and the case is appropriate for summary judgment and the AJ made no error regarding discovery. We note Complainant does not dispute the definition of her claims as stated in the AJ's decision. Moreover, despite Complainant's contention to the contrary, we note the AJ did address the basis of reprisal in his September 13, 2022 decision.

Regarding the removal claim, the Agency noted Complainant was terminated due to excessive absences having not reported to work for over 60 days and failing to respond to multiple directives to return to duty or provide medical documentation to substantiate her absences.

Complainant failed to provide evidence that the Agency's actions were motivated by her protected bases or that there were any similarly situated employees not in her protected groups who were treated differently under similar circumstances. Regarding the leave claim, Person A noted the June 4, 2021 request was sent from an unknown email address and contained the subject line "HELPWANTED" and that she did not open the email from the unrecognizable source. Complainant failed to present evidence that the Agency's actions were based on discriminatory or retaliatory animus.

Regarding the harassment claim, Complainant claimed that on unspecified dates management made negative comments and mocked her religion. Complainant does not identify specific dates the comments were made or the frequency with which they occurred. However, we recognize she provided at most, three comments. First, she stated that in December 2019, when she had a discussion with Person B concerning having Sundays off and her religious beliefs, he stated, "everybody wants to have Sundays off and there were other Christians working there." Second, Complainant claimed Person B would make a joke and called her into his office and said, "before we began you know we are going to pray." Complainant claimed Person B and Person A laughed at the time. Third, Complainant stated that Person B would tell her he was going to pray for her when they had workplace disagreements. Upon review, we find that Complainant failed to show that various alleged comments, even if true, were sufficiently severe or pervasive so as to create a discriminatory hostile work environment. Nor has Complainant provided evidence indicating a link between the comments and her protected EEO activity. 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.

CONCLUSION

Accordingly, the Agency's final action 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 30, 2024

Date