



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Diane D.,¹
Complainant,

v.

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

Appeal No. 2023000459

Hearing No. 410-2022-00126X

Agency No. 4G-300-0070-21

DECISION

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403, from the Agency's September 21, 2022, final order concerning an 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, we AFFIRM the Agency's final order finding no discrimination.

At the time of events giving rise to this complaint, Complainant worked as a Q-02, City Carrier at the Agency Tucker Post Office in Tucker, Georgia.

On July 15, 2021, Complainant filed a formal complaint alleging discrimination and harassment based on sex (female) and in reprisal for prior 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 November 30, 2020, and December 3, 2020, she requested to go on a detail assignment upon her return to work and never received a response.
2. On April 2, 2021, her request for a detail assignment to the Jackson, Georgia Post Office was denied, while a coworker (C1) was allowed to detail to another office.

The Agency dismissed claim 1 due to untimely EEO Counselor contact because Complainant did not contact an EEO Counselor regarding the incidents until April 16, 2021, pursuant to 29 C.F.R. § 1614.107(a)(2). The Agency accepted and investigated claim 2. After its investigation, the Agency provided Complainant with a copy of the report of investigation and notice of right to request a hearing before an Equal Employment Opportunity Commission (EEOC or Commission) Administrative Judge (AJ). Complainant requested a hearing. Upon Complainant's request, the AJ reinstated claim 1 as a part of the harassment claim.² The Agency submitted a motion for a decision without a hearing. Complainant did not respond. On September 2, 2022, the AJ issued a decision without a hearing finding no discrimination as alleged.

Regarding claim 1, Complainant submitted to the AJ a copy of her emails, dated December 2, 9, and 30, 2020, which were purportedly sent to a Level 24, Manager of Post Office Operations (MPOO). Therein, Complainant indicated that she was emailing her Candidate Profile for consideration for any development opportunity he might have in her work area or area 302. Complainant claimed that the MPOO did not respond to her requests.

Regarding claim 2, Complainant claimed that on April 1, 2021, she became aware that the MPOO released C1, a Carrier at Tucker Post Office, to detail at the Conyers Post Office. Complainant indicated that on April 2, 2021, when she asked for a detail assignment, the MPOO told her to wait until a new Officer-in-Charge Postmaster came on board.

The MPOO stated that he did not know Complainant and he was not aware of her requests. The MPOO indicated that as a MPOO, he was responsible for over 67 Post Offices with approximately 50 Postmasters.

² We note that on appeal, Complainant does not contest only treating claim 1 as part of harassment.

The MPOO stated that he gave detail opportunities for Postmasters and Managers, and not for 204-Bs (first-line supervisors for City/Mail Carriers), as Complainant indicated, which was the Postmaster's responsibility. The MPOO indicated that regarding C1, male, a City Carrier, he did not approve C1's detail; rather, two identified officials approved C1's detail to the Conyers Post Office on November 16, 2019. The MPOO noted that C1 was already in the 204-B detail position prior to him having responsibility managing the Tucker Post Office as MPOO.

The Postmaster stated that she was not at the Tucker Post Office and was not aware of the April 2, 2021 incident. The Postmaster indicated that she became the Officer-in-Charge Postmaster of the Tucker Post Office in late April 2021. The Postmaster stated that effective May 18, 2021, she gave Complainant the opportunity for a 204-B assignment in the Tucker Post Office.

Based on the foregoing, the AJ found that the Agency articulated legitimate, nondiscriminatory reasons regarding Complainant's detail request on April 2, 2021 (claim 2). The AJ also found that Complainant failed to demonstrate the Agency's reasons were pretext. Regarding the harassment claim, the AJ found that Complainant failed to establish harassment because she failed to establish the conduct involved her sex or prior EEO activity or that it was based on her protected classes. Thus, the AJ concluded that Complainant failed to establish she was subjected to discrimination or harassment as alleged.

The Agency issued its final order fully implementing the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination and harassment as alleged. The instant appeal followed. Complainant did not submit any contentions 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 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. (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*).

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. Although Complainant claimed that on April 2, 2021, her detail request was denied whereas C1 was detailed as a 204-B, C1's detail was approved by other officials on November 16, 2019, and not by the MPOO. The MPOO was not responsible for giving detail assignment to 204-Bs. As such, Complainant acknowledged that the MPOO told her to wait until the new Postmaster came on board. Further, when the Postmaster came on board, she gave Complainant a 204-B detail assignment effective May 18, 2021. We also agree with the AJ's decision that Complainant failed to establish that the alleged incidents, including claim 1, were based on her sex or retaliation and thus her harassment claim fails.

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 27, 2025

Date