



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

[REDACTED]
Dania S.,¹
Complainant,

v.

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

Appeal No. 2023000460

Hearing No. 510-2021-00011X

Agency Nos. 4G-330-0008-21, 4G-330-0216-20

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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

At the time of events giving rise to this complaint, Complainant worked as a PS-6, Mail Processing Clerk at the Agency's Lauderridge Carrier Annex in Oakland Park, Florida.

On July 21, 2020, Complainant filed a formal complaint, Agency No. 4G-330-0216-20, alleging discrimination based on race (African American), color

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.

(black), sex (female), age (over 40), disability (knee), and in reprisal for prior EEO activity when:

1. From November 6, 2019, and continuing to a date to be specified, she was not accommodated when she was displaced from her duty assignment and only permitted to work four hours daily.
2. On July 10, 2020, she was denied leave.

On November 25, 2020, Complainant filed a formal complaint, Agency No. 4G-330-0008-21, alleging discriminatory harassment based on race (African American), color (black), sex (female), age (over 40), disability (knee), and in reprisal for prior EEO activity when:

3. On October 7, 2020, she was issued a Letter of Warning (LOW).
4. On or around October 31, 2020, her leave request was denied.
5. On November 4, 2020, she was placed on emergency placement.

After its investigation into the complaints, 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. On March 8, 2022, the AJ issued a Notice of Proposed Summary Judgment. Both parties filed a response to the notice. Based on a review of the case file and the parties' responses, on September 6, 2022, the AJ issued a decision without a hearing finding no discrimination as alleged by Complainant, incorporating the reasons stated in the notice.

Complainant indicated that she had a knee injury in November 2015. Complainant stated that she had medical limitations, i.e., lifting up to 20 pounds and no kneeling/bending/climbing. Complainant stated that she was not able to perform her Mail Processing Clerk position duties which required lifting up to 70 pounds.

Regarding claim 1, Complainant's Manager indicated that on November 6, 2017, Complainant was given four hours of work because there were only four hours of work available within her medical restrictions.

Regarding claim 2, the Manager stated he denied Complainant's leave request because she requested sick leave stating it was due to an on-the-job

injury, however, she did not have such an injury. The Manager indicated that Complainant had no active Office of Workers' Compensation Program (OWCP) case.

Regarding claim 3, Complainant's Supervisor issued Complainant the LOW at issue because Complainant failed to follow the Manager's instructions. Specifically, on October 7, 2020, the Manager instructed Complainant to count political mail, but Complainant failed to do so.

Regarding claim 4, the Manager stated that he denied Complainant's leave request for 36 hours of annual leave from October 31 through November 4, 2020. The Manager indicated that the office had "maxed out" on the number of leave requests that could be granted at the time of the request.

Regarding claim 5, the Manager stated that on October 31, 2020, he provided Complainant with a light duty assignment for which she refused to sign. Complainant thus was not permitted to clock in without her approval of the light duty assignment and she was placed on Absence Without Leave (AWOL) status on November 3, 2020. Complainant was not out of work on emergency placement as alleged. On December 12, 2020, Complainant's AWOL designation was rescinded via a grievance settlement.

The AJ stated that the evidence of record was devoid of any reasonable accommodation request made by Complainant. The AJ found that the Agency's actions were based on legitimate, nondiscriminatory factors. The AJ also found that Complainant failed to establish the Agency's reasons were untruthful or pretext to mask unlawful discrimination.

The Agency issued its final order fully implementing the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination or harassment 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. (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 or harassed by the Agency as alleged.

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 19, 2025
Date