



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

[REDACTED]
Christopher U.,¹
Complainant,

v.

Sean Duffy,
Secretary,
Department of Transportation
(Federal Aviation Administration),
Agency.

Appeal No. 2023000515

Hearing No. 570-2019-01675X

Agency No. 2018-28014-FAA-02

DECISION

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403, from the Agency's September 30, 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. 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 FV-J, Flight Safety Inspector/Analyst at the Agency's Regulations & Analysis

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.

Division of the Office of Commercial Space Transportation (AST) (AST-300) in Washington, DC.

On October 3, 2018, Complainant filed a formal complaint alleging that the Agency subjected him to harassment and disparate treatment based on his race (Asian), color (brown), religion (creationist), age (over 40), disability (bipolar I/mania), and in reprisal for prior EEO activity when:

1. On various dates, Complainant was subjected to a pattern of harassing conduct, including but not limited to:
 - a. On March 10, 2018, he was issued a Letter of Reprimand.
 - b. On unspecified dates, he was not given an award for his work on a "RESOLVE" tool and his supervisor stated that he would never be promoted.
2. On July 11, 2018, his request for a relocation reassignment was denied, and his telework agreement was revoked.

After its investigation into the complaint, 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. The Agency submitted a motion for a decision without a hearing. Complainant filed his opposition. The AJ issued a decision without a hearing finding no discrimination or harassment. The Agency issued its final order fully implementing the AJ's findings. Complainant appeals from the Agency's final order. Specifically, Complainant asserts that he appeals *only* regarding his alleged disparate treatment raised in Claim 2. As such, we will only address such.

Complainant indicated that he had bipolar and mania disabilities, but his conditions did not place any restrictions on his work performance. Complainant stated that he was able to perform his duties without accommodation, and he did not request any accommodation for his disabilities.

Complainant indicated that he requested to be relocated to Ohio to accommodate his wife's need to be closer to family after she retired in 2017. Complainant stated that in January 2018, he requested and was approved a modified telework agreement for six months (i.e., telework two weeks in Ohio and two weeks in his home in Virginia).

The Agency indicated that Complainant's modified telework agreement expired (not revoked) on July 21, 2018.

The AJ stated that the Agency articulated legitimate, nondiscriminatory reasons of the alleged action. Specifically, Complainant's supervisor (S1) indicated that he denied Complainant's relocation reassignment request because: S1 lacked authority to reorganize AST-300; AST-300 did not have a need for a Field Office in Ohio; there was no cost-benefit to create such a Branch Office; and Complainant lacked the requisite verbal and written skills to support a permanent change of duty station from a non-face to face environment.

The record indicates that on June 15, 2015, S1 issued Complainant a Letter of Expectation for failure to follow S1's instruction not to send emails to persons outside of his division, AST-300. On June 31, 2016, Complainant was issued a Letter of Admonishment for his careless work performance on October 29-30, 2015, when on October 29, 2015, he incorrectly informed AST's senior management about SpaceX's Final Flight Data Package data being missing. In Complainant's year-end review for fiscal years 2017 and 2018, S1 commented about his concerns about Complainant's ability to communicate verbally and in writing.

The AJ found that Complainant failed to provide any evidence that S1 acted with a discriminatory motive. The AJ also found that Complainant failed to provide any evidence showing that similarly situated employees not in his protected classes were treated more favorably by S1.

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.

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

March 5, 2025
Date