



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

[REDACTED]
Willy B.,¹
Complainant,

v.

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

Appeal No. 2023000649

Hearing No. 570-2022-00931X

Agency No. 1C-931-0090-22

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 12, 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. and Title II of the Genetic Information Nondiscrimination Act (GINA) of 2008, 42 U.S.C. § 2000ff et seq. For the following reasons, the Commission AFFIRMS the Agency's final order.

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.

ISSUES PRESENTED

1. Whether the Administrative Judge's grant of summary judgment in favor of the Agency was appropriate, or whether genuine disputes of material fact exist that require a hearing.
2. Whether the Agency's final order properly found that Complainant was not subjected to discrimination based on race, color, religion, genetic information or reprisal.

BACKGROUND

Complainant worked as an Electronics Technician at the Dulles Postal & Distribution Center in Sterling, Virginia. On March 27, 2022, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (Not Specified), national origin (Not Specified), religion (Not Specified), color (Not Specified), genetic information, and reprisal (prior protected EEO activity) when, on November 19, 2021, he was denied returning to work in 10 days after being out for COVID-19.

Complainant alleged in his complaint that he contracted COVID-19 and was subjected to discrimination when the Occupational Health Nurse Administrator (OHNA) told him to stay out of work for fourteen days. Report of Investigation (ROI) at 78. The EEO Investigator asked Complainant to provide an affidavit, but he did not do so. ROI at 123, 125.

The OHNA affirmed that she did not know Complainant's race, color, religion, national origin, was not aware of his prior EEO activity, and had no knowledge his genetic information. ROI at 152-54. She further averred that she informed Complainant that he could return to work between 10 and 14 days after testing negative for the virus, that she made her recommendation after receiving the necessary information from Complainant, and that she acted in accordance with Agency policy and guidelines from the Centers for Disease Control (CDC). ROI at 155-56, 160.

At the conclusion of the investigation, the Agency provided Complainant with the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. The AJ issued a summary judgment decision in favor of the Agency.

In the decision, the AJ noted that Complainant failed to complete an affidavit during the EEO investigation. As a result, the AJ did not have his statement under oath to explain his claim or identify his protected classes. The AJ thus found that Complainant failed to establish a prima facie case of discrimination and reprisal. The AJ found that even if he had established a prima facie case of discrimination and reprisal, the Agency articulated a legitimate and nondiscriminatory reason for its actions. Namely, the Agency stated that Complainant was subject to its policy and CDC guidelines which allowed employees to return to work within 10 to 14 days after a COVID-19 related absence. The AJ found that Complainant failed to show that the Agency's reasons for its actions were pretextual. As a result, the AJ found that Complainant was not subjected to discrimination or reprisal as alleged.

The Agency subsequently issued a final order fully adopting the decision. Complainant filed the instant appeal without submitting any arguments or contentions in support.

STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, 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 Chapter 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").

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*).

ANALYSIS

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 or retaliatory 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.

Disparate Treatment

To prevail in a disparate treatment claim, 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 was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Corp. 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. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). To warrant a hearing, Complainant must raise a genuine issue of material fact as to whether the Agency's explanation is pretextual. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993).

To establish a prima facie case of discrimination, a complainant must show that: (1) he is a member of a protected group; (2) he suffered an adverse employment action; and (3) the circumstances give rise to an inference of discrimination. We note that, although a complainant bears the burden of establishing a "prima facie" case, Burdine, 450 U.S. at 252-53, the requirements are "minimal," Hicks, 509 U.S. at 506, and complainant's burden is "not onerous." Burdine, *supra* at 253.

Complainant presented neither an affidavit nor any other documentary or testimonial evidence establishing his right to protection under Title VII or GINA. Complainant failed to identify any of his claimed bases under Title VII nor did he show that the OHNA was in possession of his genetic information. We therefore agree with the AJ that Complainant failed to establish a prima facie case of discrimination on any basis.

Furthermore, we agree with the AJ that the Agency articulated legitimate, nondiscriminatory reasons for its actions. Complainant was subject to the Agency's return-to-work policies after being out due to COVID-19. Complainant failed to demonstrate that the Agency officials in this matter harbored discriminatory or retaliatory animus or that the legitimate, non-discriminatory reasons provided by the officials were pretext for unlawful discrimination or reprisal. As a result, the Commission finds that Complainant was not subjected to discrimination or reprisal as alleged.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, we AFFIRM the Agency's final order.

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 6, 2025

Date