



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

[REDACTED]  
Daniel T.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2023000687

Agency No. 4B-070-0188-22

**DECISION**

On November 4, 2022, 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 October 6, 2022, final decision 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 the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission AFFIRMS the Agency's final decision.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Postmaster, EAS-24, at the Agency's Post Office in Reading, Pennsylvania.

Between a reorganization in 2021 and the subsequent Reduction in Force (RIF), Complainant applied for a Postmaster position at the Edison Post Office in New Jersey. Complainant stated that he met all the specified qualifications for the position, and it would have been his second EAS-22 Postmaster position. Complainant claimed he had worked in an EAS-24 Officer-in-Charge (OIC) position in the same district.

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<sup>1</sup> 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.

Complainant confirmed he interviewed with the selecting official (SO) on December 17, 2021. Complainant received a letter on January 29, 2022, informing him of his non-selection for the position

On June 1, 2022, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (African-American), sex (male), and age (43) when, on January 29, 2022, Complainant was informed he had not been selected for the Postmaster Edison Post Office position

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b).

In the decision, the Agency determined that Agency officials articulated legitimate, nondiscriminatory reasons for its actions. Specifically, SO affirmed that he interviewed nine applicants for the position without a review board. SO asserted that Complainant met the basic qualifications for the position, but he did not select him because he was unaware of some of the programs necessary for the position. SO added that Complainant admitted during the interview he had not been in the field for a while and was not aware of some of the new analytic programs necessary for the position. By contrast, the selectee was aware of all of the current programs for the position and was more knowledgeable regarding programs than Complainant. Further, the selectee's application indicated she had served as OIC at Edison from December 2018 to present and received at least nine trainings from 2008 through 2021.

The Agency concluded that Complainant failed to show that SO's reasons for not selecting Complainant were pretextual. As a result, the Agency found that Complainant was not subjected to discrimination as alleged. The instant appeal followed.

#### ANALYSIS AND FINDINGS

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 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").

To prevail in a disparate treatment claim absent direct evidence of discrimination, Complainant must satisfy the evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973). Complainant carries the initial burden of establishing 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. Co. 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, 441 U.S. at 802 n.13. The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the Agency has met its burden, Complainant bears the ultimate responsibility to prove, by a preponderance of the evidence, that the reason proffered by the Agency was a pretext for discrimination. Reeves v. Sanderson Plumbing Prod., Inc., 530 U.S. 133, 143 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993).

Assuming Complainant established a prima facie case of discrimination, we find that he failed to establish that the Agency's articulated reasons for its employment decisions were a pretext or otherwise motivated by discriminatory animus. Aside from Complainant's bare uncorroborated assertions, the record shows that SO did not select Complainant for the position because Complainant was not "fully aware of all programs to be effective for the position," according to his own admission. Additionally, S1 stated that he chose the selectee because she was "more knowledgeable of current programs." Further, the selectee had acted as OIC at Edison and had more recent training. ROI at 156-57, 184-88.

Complainant now bears the burden of establishing that the Agency's stated reasons are merely a pretext for discrimination. Shapiro v. Soc. Sec. Admin., EEOC Request No. 05960403 (Dec. 9, 1996). Complainant can do this directly by showing that the Agency's proffered explanation is unworthy of credence. Tx. Dep't of Cmty. Affairs v. Burdine, 450 U.S. at 256. One way Complainant can establish pretext is by showing that his qualifications are observably superior to those of the selectee. Bauer v. Bailar, 647 F.2d 1037, 1048 (10th Cir. 1981). This is simply one method and is not the only way Complainant may establish pretext as to his nonselection claim.

The Commission finds that Complainant failed to show that his qualifications for the position at issue were plainly superior to those of the selectee's. In this case, the selectee had attributes that justified her selections, and SO affirmed that he believed the selectee was better equipped to meet the Agency's needs. In the absence of evidence of unlawful discrimination, the Commission will not second guess the Agency's assessment of the candidates' qualifications. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. at 259. We find that Complainant failed to present any persuasive evidence establishing that the Agency's selection or the selection process were tainted by discriminatory animus.

As Complainant chose not to request a hearing, the Commission does not have the benefit of an Administrative Judge's credibility determinations after a hearing. Therefore, the Commission can only evaluate the facts based on the weight of the evidence presented.

The Commission finds no persuasive evidence that Complainant's protected classes were a factor in any of the Agency's actions. Aside from Complainant's conclusory allegations and speculations, Complainant has failed to establish that the Agency's articulated reasons are pretext for discrimination. As a result, the Commission finds that Complainant has not established that he was subjected to discrimination as alleged.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's final 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

January 25, 2024  
Date