



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

[REDACTED]
Ramon L.,¹
Complainant,

v.

Janet Petro,
Acting Administrator,
National Aeronautics and Space Administration,
Agency.

Appeal No. 2023000693

Hearing No. 532-2018-00103X

Agency No. NCN-16-GRC-00030/00031

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 2, 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. For the following reasons, the Commission AFFIRMS the Agency's final order.

At the time of events giving rise to this complaint, Complainant worked as a Computer Engineer, GS-0854-13, at the Agency's Glenn Research Center in Cleveland, Ohio.

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.

On April 28, 2016, Complainant filed an EEO complaint alleging that the Agency subjected him to discrimination and a hostile work environment on the bases of race (African American), national origin (Nigerian), color (black), and in reprisal for prior protected activity when:

1. In September 2015, Complainant's supervisor, without his consent, added new elements to his performance plan that he considered to be unmeasurable and subjective;
2. On February 9, 2016, upon his return from a family emergency in Nigeria, management questioned him and attempted to discipline him concerning his telework while abroad; and
3. On February 9, 2016, his supervisor attempted to compel him to participate in an administrative investigation without representation.

Regarding claim 1, management added a new element to the performance plans that applied to all 24 of the branch employees' performance plans. Report of Investigation (ROI) at 133. There is no evidence that Complainant was singled out. Complainant believed the new element was poorly written and difficult to measure. Complainant claimed he sought clarification, but his supervisor refused to address his concerns. Complainant received a Level 5 "Substantively Exceeds Expectations."

Regarding claim 2, the undisputed record shows that Complainant had to go to Nigeria to handle a family emergency. Although he attempted to send emails to his supervisors indicating that he would be out of the country, the emails were not transmitted to his supervisor. The supervisor learned that he was abroad when the Agency discovered that someone was attempting to access the Agency's network from Nigeria.

Regarding claim 3, the record did not show any proposed discipline pertaining to Complainant's unscheduled trip to Nigeria or any unwarranted investigation and denial of representation. The Agency questioned Complainant about his unexpected trip to Nigeria, but he was not disciplined, and he did not offer evidence that the Agency issued him an adverse action.

At the conclusion of the investigation, the Agency provided Complainant with a copy of 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 determined that the Agency articulated legitimate, nondiscriminatory reasons for its actions. Specifically, regarding claim 1, Complainant's supervisor added an organizational responsibility performance element to Complainant's performance plan and all of his similarly situated co-workers' performance plans in the branch. As to claims 2 and 3, Complainant stated that he had to go to Nigeria to handle a family emergency and admitted that he did not notify his supervisor prior to leaving the country. Complainant's supervisor learned that Complainant was abroad when the Agency discovered that somebody was attempting to access the Agency's network from Nigeria. Complainant's supervisor, with the assistance of Human Resources, investigated the situation. The AJ noted that the Agency was entitled to investigate the situation, and Complainant was ultimately not disciplined.

The AJ concluded 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, reprisal, or a hostile work environment as alleged.

The Agency subsequently issued a final order fully implementing the AJ's decision. 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 or retaliatory animus. Here, however, Complainant has failed to establish such a dispute.

Complainant's main contention is that the Agency refused to produce discovery in this matter. As the AJ noted, an AJ previously assigned to the case denied Complainant's motion to compel discovery because Complainant failed to comply with the dates set forth in the scheduling order. Administrative Judges have full responsibility for the adjudication of the complaint, including overseeing the development of the record, and have broad discretion in the conduct of hearings. 29 C.F.R. § 1614.109(a), (e). Given the AJ's broad authority to regulate the conduct of a hearing, a party claiming that the AJ abused their discretion faces a very high bar. Trina C. v. U.S. Postal Serv., EEOC Appeal No. 0120142617 (Sept. 13, 2016), citing Kenyatta S. v. Dep't of Justice, EEOC Appeal No. 0720150016 n.3 (June 2, 2016) (responsibility for adjudicating complaints pursuant to 29 C.F.R. § 1614.109(e) gives AJs wide latitude in directing terms, conduct, and course of administrative hearings before EEOC). Here, we find that it was not an abuse of discretion for the AJ to deny Complainant's motion to compel discovery.

In this case, the AJ properly found that the key facts are not in dispute and that the record was already adequately developed, and Complainant has not provided evidence sufficient to raise a genuine issue of material fact warranting a hearing in this case. Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable factfinder 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 subjected to discrimination or reprisal as alleged.

Accordingly, we AFFIRM the Agency's final order implementing the AJ's decision.

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).

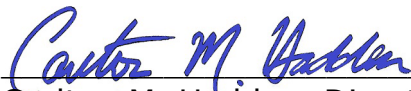
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0124)

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 6, 2025

Date