



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

[REDACTED]
Cher C.,¹
Complainant,

v.

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

Appeal No. 2023000807

Hearing No. 451-2021-00124X

Agency No. 4G-780-0060-21

DECISION

On October 31, 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 August 25, 2022 final order concerning her 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, 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.

At the time of events giving rise to this complaint, Complainant worked as a City Carrier at the Agency's North Broadway Station in San Antonio, Texas.

On April 1, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of sex (female), disability (Physical), age (60), and in reprisal for prior protected EEO activity when:

1. On December 26, 2020, management refused to speak with her unless someone else was present;
2. On February 24, 2021, she was not allowed to attend her therapy appointment;
3. On unspecified date(s), she was singled out, called a slow worker, humiliated and mocked;
4. On unspecified date(s), she was not afforded the same overtime opportunities as her male co-workers;
5. On unspecified date(s), her request for sick leave was changed to Leave Without Pay (LWOP);
6. On unspecified date(s), she was required to provide documentation for her absences and/or leave requests;
7. On unspecified date(s), her request for assistance on PS Form 3996 was not granted; and
8. On unspecified date(s), she was verbally assaulted.

Complainant averred that she was subjected to harassment and humiliation "allowed by the [Agency] through its lack of proper hiring and training of management personnel." She says she has been told she is slow and mocked. The record shows that her supervisor refused to speak with her without someone else being present and placed her on LWOP. Complainant believes she is being targeted due to age, sex, and disability.

Complainant stated that she had suffered a dog bite while on the job, but she acknowledged that she informed her supervisor that she did not have any job restrictions. Complainant averred that her supervisor and the Station Manager denied her Form 3996 request for assistance delivering her route, saying her mail volume did not warrant it. On February 24, 2021, management would not allow her to go to her therapy appointment or her personal doctor when she needed to leave early and would not provide her with assistance. Complainant claimed that although she was told it would be okay for her to schedule appointments, her supervisor became irritated about her asking for the time off.

Management testified that Complainant waited until the day of the appointment or the day before to notify management about the appointments and could not be accommodated due to lack of coverage. The record shows that a similarly situated co-worker had requested leave in advance or spoken with management before his appointments.

Her supervisor denied calling Complainant a "slow worker" or mocking her, however, her supervisor stated she remembered an incident in which she had questioned Complainant about why she was still at the office at 9:40 a.m. when she only had to case her route and had reported at 6:00 a.m.

Regarding the overtime claim, Complainant specifically stated that, although she was on the overtime list, she was "not allowed to work the equability hours as stated in the [collective bargaining agreement.]" She believes the male employees are allowed more flexibility. One of the identified male comparators was older than Complainant and had prior EEO activity. The record shows that between October 1, 2020, through December 31, 2020, Complainant worked 171.22 overtime hours. One comparator worked 207.37 hours, but other male employees who were younger worked fewer overtime hours than Complainant. The report for January 1, 2021, through March 31, 2021, showed that Complainant worked more overtime hours than the comparators, but Complainant claimed that the report was incomplete.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. Over Complainant's objections, the AJ assigned to the case granted the Agency's motion and issued a summary judgment decision.

In the decision, the AJ determined that Complainant failed to include any evidence to support her claims or to rebut the legitimate, nondiscriminatory reasons set out in the Agency's motion. The AJ acknowledged that Complainant argued that the investigation was inadequate, but she failed to specify what was missing from the investigation, despite having a 60-day discovery period to develop additional evidence. Consequently, the AJ found that she failed to identify any disputed facts in the record sufficient to raise a factual dispute warranting a hearing. 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 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. (as revised, August 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*).

Upon review, we find the record in the present case was adequately developed. We note on appeal, Complainant has not argued the AJ improperly failed to consider the relevant record and we do not find an abuse of discretion by the AJ in failing to consider Complainant's submission as it pertained to claimed violations of the union contract or the inadequacy of the overtime report.

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 factfinder could not find in Complainant's favor.

Upon review, we find Complainant failed to raise a identify the disputed facts in the record sufficient to raise a genuine dispute of material fact or credibility to warrant a hearing. Upon further 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 fully 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