



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Elias R.,¹
Complainant,

v.

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

Appeal No. 2023000870

Agency No. 1F-341-0297-22

DECISION

On November 17, 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 November 7, 2022 final decision 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. For the following reasons, the Commission AFFIRMS/REVERSES the Agency's final decision.

ISSUES PRESENTED

Whether the Agency properly determined that Complainant was not subjected to discrimination.

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.

BACKGROUND

During the period at issue, Complainant worked as a former Maintenance Mechanic at the Agency's Network Distribution Center (NDC) facility in Chicago, Illinois.

On May 23, 2022, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (African-American), sex (male), and color (Not Specified) when:

1. On July 11, 2021, January 8, 2022, March 10, 2022, and March 13, 2022, he was harassed and bullied by a co-worker, and management failed to take appropriate action; and
2. On April 14, 2022, he was issued a Notice of Removal.

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). 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). The decision concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

In its decision, the Agency found that Complainant failed to, and the investigation did not, demonstrate that any of management's actions were based on Complainant's protected bases.

Complainant had numerous incidents with a coworker (Coworker1). Complainant alleged incidents of harassment and bullying by Coworker1 on July 11, 2021, January 8, 2022, March 10 and 13, 2022. Complainant reported the January 8 and March 13, 2022 incidents to his first-level supervisor (race – Polish, color – white, sex – male) (S1). Report of Investigation (ROI) at 145-147. S1 testified that, on January 8, 2022, both Complainant and Coworker1 reported the incident to him. Id. at 145. S1 stated that Complainant told him that Coworker1 bumped his shoulder, and that Coworker1 stated that Complainant bumped his shoulder. Id. S1 stated that no action was taken. S1 further testified that he was never informed about an incident on March 10, 2022, and he did not take any action. Id. at 146. S1 stated that, on March 13, 2022 at 10:00 p.m., he was paged by mail processing and informed that Complainant and Coworker1 were fighting. Id. at 147.

S1 took Complainant and Coworker1's statements and placed both employees on emergency placement. Id. On March 15, 2022, S1 conducted an investigation. Id. While S1 did not testify regarding the July 11, 2021 incident, the record includes a Zero Tolerance Policy and Official Job Discussion, with an interview date of July 15, 2021, signed on July 25, 2021, between S1 and Complainant. Id. at 156.

The Supervisor Distribution Operations (Black, brown, female) (SDO) testified that she witnessed a fight between Complainant and Coworker1, on March 13, 2022. ROI at 174. She and another supervisor broke up the fight. Id. Another coworker testified that she was sitting with Complainant, on July 11, 2021, when Coworker1 walked by and tried to start a fight. Id. at 187. She further stated that Coworker1 used "aggressive words and body language" in a way, she viewed, as trying to threaten Complainant. Id. Complainant did not react. Id. The General Expeditor (GE) also witnessed an incident on March 10, 2022. Id. at 195. GE stated that Complainant was sitting at GE's workstation and Coworker1 drove up in a maintenance vehicle, jumped off the vehicle, and stepped into Complainant's face with his fist balled up. Id. at 196. GE stated that Coworker1 had a brief, tense confrontation, with Coworker1 was the aggressor, and GE told Coworker1 that he needed to leave the area. Id. Another coworker witnessed the January 8, 2022 incident and testified that he saw Coworker1 bump into Complainant hard enough to knock everything out of Complainant's arms. Id. at 202.

S1 testified that the Manager of Maintenance Support (MMS) issued Complainant the Notice. Id. at 148. MMS (Identified color as African-American, male) testified that, on April 14, 2022, he issued the Notice, but the Manager of Operations made the decision. Id. at 180. The April 14, 2022 Notice charged Complainant with "Unacceptable Conduct" for a verbal and physical altercation with Coworker1, on March 13, 2022. Id. at 255. The Notice cited the pre-disciplinary interview with Complainant and the Union Steward on March 16, 2022, where Complainant affirmed that he was aware of the Agency's no tolerance policy. Id. The Notice was signed by S1, MMS, and Complainant on April 18, 2022. Id.

CONTENTIONS ON APPEAL

The instant appeal followed. In his appeal, Complainant states that he never received information on requesting a hearing or a final agency decision.

STANDARD OF REVIEW

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”).

ANALYSIS

As a threshold matter, Complainant’s sole contention on appeal was that he did not receive the information to elect a hearing or final decision. The Agency’s decision stated that Complainant received the ROI, and because he failed to respond within 30-days of receipt of the ROI the Agency issued its final decision. The record contains an email sent on September 8, 2022, titled “Relayed: EEO – Electronic Report of Investigation (eROI) 1f-341-0297-22” stating that delivery was complete. ROI at 37. The email was addressed to Complainant and Complainant’s representative, and a comparison to Complainant’s Notice of Appeal confirms the email addresses were the same as the ones provided by Complainant. We find that Complainant and/or Complainant’s representative likely received the ROI packet that included his option to elect a hearing or final Agency decision. Therefore, the Agency properly proceeded in issuing its final decision, pursuant to 29 C.F.R. § 1614.110(b).

Disparate Treatment

A claim of disparate treatment is examined under the three-party analysis first enunciated in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973). For complainant to prevail, she must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, *i.e.*, that a prohibited consideration was a factor in the adverse employment action. See McDonnell Douglas, 411 U.S. at 802; Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978).

The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. See Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the agency has met its burden, the complainant bears the ultimate responsibility to persuade the fact finder by a preponderance of the evidence that the agency acted on the basis of a prohibited reason. See St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

Claim 1

Complainant stated, and witnesses substantiate, that he was subjected to bullying and harassment by Coworker1. Testimony from Complainant and management officials document incidents when Complainant or others reported Coworker1's actions against Complainant. The record also included testimony by S1 the investigation into an incident, resulting in no action being taken. There was no evidence in the record that Complainant informed S1 of incidents outside of the January 8, 2022 incident, but there was also the official discussion between S1 and Complainant for the July 21, 2021 incident. While the January 8, 2022 incident did not result in any disciplinary action being taken, there was evidence that there were only two other incidents where S1 was involved. Those were the aforementioned July 21, 2021 incident, and the March 13, 2022 incident, which had witnesses. The evidence does not support Complainant's contention that S1 or any other Agency management's actions were rooted in unlawful discrimination. Instead, a fair reading of the record suggests that management was not advised about incidents, other than the July 21, 2021, and January 8 and March 13, 2022 incidents. On appeal, Complainant failed to address either claim, and the record does not support the allegation that Complainant was subjected to discriminatory animus. We find that the Agency did not subject Complainant to unlawful discrimination.

Claim 2

Complainant was issued a Notice of Removal, following an incident between Complainant and Coworker1. Witnesses stated that Complainant and Coworker1 were fighting, or that Coworker1 was the aggressor. The record does not contain evidence, and Complainant did not proffer any evidence that the Notice was issued to him on the basis of unlawful discrimination. Instead, both Complainant and Coworker1 were issued Notices. As stated above, Complainant does not address this claim on appeal. We find that Complainant has failed to demonstrate by a preponderance of the evidence that the Agency subjected him to disparate treatment when he was issued the Notice.

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 finding of 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

February 3, 2025
Date