



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Dalton C.,¹
Complainant,

v.

Terence Emmert,
Acting Secretary,
Department of the Navy,
Agency.

Appeal No. 2023001115

Hearing No. 531-2020-00344X

Agency No. 19-68520-04097

DECISION

On December 6, 2022, Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's November 8, 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 Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, we AFFIRM the Agency's final order.

Complainant worked as an Industrial Engineer, GS-0896-09, at the Agency's Naval Air System Command facility in Patuxent River, Maryland. On November 18, 2019, Complainant filed a formal complaint alleging that the Agency discriminated against him on the bases of race (Black), national origin (Nigeria), disability (unspecified physical/mental), and reprisal (prior protected EEO activity) when:

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.

- a. In January/February 2019, the Team Lead (TL) intentionally lied to Complainant regarding Microsoft Excel training requirements;
- b. In March 2019, Complainant's first-level supervisor (S1) began treating him differently than he had previously treated Complainant;
- c. In March/April 2019, Complainant noticed how he was treated differently in the office. For example, a coworker made inappropriate remarks regarding his engineering degree, English language proficiency and his work attire;
- d. On or around June 10, 2019, a coworker sent Complainant an email falsely accusing him of not completing his timesheet;
- e. On June 17, 2019, during a meeting, Complainant yawned due to drowsiness from medication he was taking, and TL lunged at him and attempted to hit his face;
- f. Between April and June 2019, S1 did not provide Complainant with an employee handbook;
- g. Between November 2019 and July 15, 2019, Complainant was denied formal training required for his position;
- h. Between March and July 15, 2019, Complainant's job duties were changed;
- i. Between March and July 15, 2019, Complainant was excluded from communications that his co-workers received regarding meetings, trainings, workshops, and seminars;
- j. Between May and July 15, 2019, Complainant was not promoted;
- k. On or around July 15, 2019, during a meeting with his second-level supervisor (S2), Complainant was presented with a negative performance evaluation;
- l. On July 15, 2019, Complainant was removed from federal service;
- m. Between April and September 2019, management ignored Complainant's calls and messages;

- n. Since March 2019, management ignored Complainant's requests for recommendation letters; and
- o. On unspecified dates, TL made Complainant feel bullied by not addressing his work-related questions or concerns while being available to others in the workplace.

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. On August 6, 2022, the AJ assigned to the case notified the parties that he intended to issue a summary judgment decision. On September 29, 2022, after giving both parties the opportunity to respond and reviewing the evidentiary record in its entirety, the AJ issued a summary judgment decision in favor of the Agency.

The Agency subsequently issued a final order fully implementing the AJ's decision. This appeal followed. Complainant did not submit a brief or statement in support of his appeal.

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. Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable fact-finder could not find in Complainant's favor.

Other than his own assertions, Complainant has presented neither affidavits, declarations, or unsworn statements from witnesses other than himself nor documents sufficient to contradict or undercut the explanations provided by S1, S2, and TL for their actions. For example, with regard to incident (c), Complainant did not show that remarks by a co-worker regarding degrees and attire were in any way connected to his race, national origin, disability or prior protected EEO activity. With respect to incident (e), this same coworker, who was present at the meeting in question, denied that the incident ever occurred. Concerning incidents (h) and (i), the record demonstrates that Complainant's job duties did not change, and he was not excluded from staff communications. As to incident (l), Complainant was removed during his probationary period due to his demonstrated failure to exhibit the skill set needed to function satisfactorily in the position. The same holds true for the remaining incidents.

In this case, we find that the totality of the alleged conduct was not sufficiently severe or pervasive to establish a hostile work environment. Even assuming that the alleged conduct was sufficiently severe or pervasive to create a hostile work environment, the Commission finds that Complainant failed to show that the Agency's actions were based on discriminatory or retaliatory animus. The record reflects that the alleged incidents were more likely the result of routine supervision and general workplace disputes and tribulations.

Moreover, to the extent that Complainant is alleging disparate treatment regarding his claims, Complainant has not proffered any evidence demonstrating that the Agency's explanation for its actions was pretext for discrimination or reprisal. Accordingly, the Commission finds that Complainant was not subjected to discrimination, reprisal, or a hostile work environment as alleged.

Upon careful review of the AJ's decision and the evidence of record, 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)

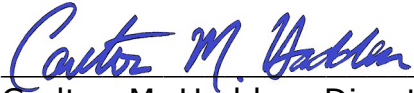
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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 4, 2025

Date