



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Elvis G.,¹
Complainant,

v.

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

Appeal No. 2023001556

Hearing No. 530-2021-00530X

Agency No. 1C-151-0014-21

DECISION

On January 18, 2023, 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 January 4, 2023, final order concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of 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.

At the time of events giving rise to this complaint, Complainant worked as a Level 7 Lead Mail Processing Clerk, at the Agency's Pennwood Processing and Distribution Center (P&DC) in Warrendale, Pennsylvania.

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 May 5, 2021, Complainant filed a formal complaint alleging that the Agency discriminated against him on the bases of age (born in 1954) and reprisal for prior protected EEO activity when:

1. Since February 17, 2021, Complainant was not given access to the applications and tools to perform his job;
2. On March 17, 2021, Complainant was reprimanded for taking his lunch a few minutes late, while other coworkers were not;
3. On March 18, 2021, and other dates, management asked a coworker to monitor Complainant;
4. On April 9, 2021, Complainant was put on Emergency Placement and subsequently issued a Notice of Removal on May 5, 2021; and
5. On a daily basis, Complainant was not provided with assistance to do his job.

On or about February 17, 2021, Complainant's login credentials expired for an application that was necessary to perform a task that was part of his job, printing placards. This task was performed one to two times per night for a minimum of three minutes and a maximum of 10 minutes. Without access, Complainant had to ask someone to log into the application for him. Complainant did not submit an electronic request to reset his password or contact the help desk to assist him with resetting his password.

Complainant was directed to take his lunch break between two and two a half hours after his tour started. On March 17, 2021, this meant Complainant's lunch break would have started at 9:30 p.m. Complainant wanted to finish a container of mail and did not take his lunch break until 9:45 p.m. An Acting Manager (Supervisor-1) called Complainant into his office and reprimanded him that his lunch started at 9:30 p.m. and that he should take his lunch at exactly 9:30 every day.

On March 18, 2021, Supervisor-1 instructed a Supervisor (Supervisor-2) to monitor operations. Complainant alleged that Supervisor-2 was watching him more than his coworkers. Complainant turned in a leave slip and left work after telling Supervisor-2 that Supervisor-1 was picking on him.

On April 8, 2021, a coworker informed a Manager (Supervisor-3) that he saw Complainant at a local bar and grill drinking a beer during his lunch break. Supervisor-3 went to the bar and grill and observed Complainant drinking beer during his lunch break. When Complainant returned from lunch, Supervisor-3 conducted a pre-disciplinary interview (PDI) and put Complainant on Emergency Placement for the remainder of the shift.

According to Supervisor-3, permitting Complainant to return to work would be a safety violation because he had consumed alcohol and appeared to be under the influence of alcohol.

Complainant alleged that management denied him the assistance he needed to do his job as Lead Clerk, while others were provided with assistance. According to Supervisor-1, assistance in secondary mail operations was provided on a case-by-case basis depending on the mail volume, not the individual. Supervisor-1 stated that Complainant never asked for assistance. Supervisor-2 averred that, as the Lead Clerk in his section, Complainant could move other clerks around as needed for the mail.

On May 5, 2021, Supervisor-3 issued Complainant a Notice of Removal for Improper Conduct in relation to the April 8, 2021, incident. According to Supervisor-3, during the PDI, when he asked Complainant where he went for lunch and if he drank alcohol on his lunch break, Complainant responded "none of your business." Complainant's removal was reduced to a 14-day suspension pursuant to a grievance settlement.

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 assigned to the case issued a Notice of Intent to Issue a Decision without a Hearing. When Complainant did not respond to the Agency's Notice of Intent, the AJ issued a decision by summary judgment in favor of the Agency on December 19, 2022.

The Agency subsequently issued a final order fully implementing the AJ's finding that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

The instant appeal followed. On appeal, Complainant states that he "never received or unintentionally deleted" the AJ's Notice of Intent² and was unaware of the Notice of Intent until he received the email with the AJ's December 19, 2022, decision.

² According to the certificate of service, on December 1, 2022, the AJ issued the Notice of Intent through the EEOC Public Portal, which was sent to the same email address for Complainant as the AJ's December 19, 2022, Decision and Order Entering Judgment.

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 animus. Here, however, even considering his contentions on appeal, Complainant has failed to establish such a dispute.

Regarding the May 5, 2021, Notice of Removal, Complainant has not identified any evidence showing a connection between the Notice of Removal and his age and/or prior protected EEO activity. The Agency's legitimate, nondiscriminatory reason for issuing Complainant the Notice of Removal was that he engaged in improper conduct when he consumed alcohol during his lunch break, returned to work, and, during the PDI, said that it was none of management's business where he went for lunch or if he consumed alcohol during his lunch break. Complainant's disciplinary history included two 14-Day Suspensions for Improper Conduct dated November 17, 2020, and August 31, 2020, and a Letter of Warning for Unsatisfactory Performance dated July 6, 2020. According to documentation with Complainant's appeal, the May 5, 2021, Notice of Removal was reduced to a 14-Day Suspension pursuant to a grievance settlement.³

³ Complainant contends that he has not yet received the back pay he is owed pursuant to the grievance settlement. The Commission does not have jurisdiction to enforce the terms of Complainant's grievance settlement.

However, the grievance settlement is not evidence of pretext for discrimination based on age and/or reprisal, and Complainant has not otherwise established that the Agency's legitimate, nondiscriminatory explanation was pretextual.

Complainant alleges that his password expired when he was not at the P&DC and cites a March 11, 2021, step 2 grievance appeal asserting that management was prohibiting him from performing his duties and needed to allow Complainant to perform the functions of his duty assignment. However, neither the reason for his password expiring nor the language in his grievance appeal negate the undisputed material facts that Complainant did not submit an electronic request to reset his password or contact the helpdesk for help submitting a request to reset his password. Moreover, although Complainant could not personally log into the application while his password was expired, the record reflects that he was able to access the application when he needed to print placards.

Regarding lunch breaks, Complainant contends that he was the only person required to take his lunch break at a specific time. Supervisor-1 stated that he instructed all the secondary clerks to take their lunch break within the two to two and a half-hour mark of the start of their tour. According to Supervisor-1, this was so the lunch breaks would be completed before the mail volume in their operation increased and so the clerks would be in their assignment at dispatch time. Complainant identified several comparators who were allegedly not reprimanded for starting their lunch at the specified time, but Supervisor-1 stated that the identified individuals took their lunch break on time or slightly early.

According to Complainant, on March 18, 2021, he heard Supervisor-1 tell Supervisor-2 over the walkie talkie to monitor Complainant. Supervisor-1 stated that he instructed Supervisor-2 to monitor all clerks assigned to secondary manual operations and denied singling out any clerk by name. Supervisor-2 averred that she was monitoring the entire operation more closely due to multiple days of mail failures and was not instructed to specifically monitor Complainant. Although Complainant objected to the increased surveillance by supervisors, he has not identified any evidence connecting the additional monitoring to his age and/or prior protected activity.

Complainant also alleged harassment with respect to unspecified assistance he did not receive that was provided to his coworkers. However, Supervisor-1 stated that Complainant did not request assistance, and Supervisor-2 explained that, as Lead Clerk, Complainant had the authority to move staff around within his section as needed.

We find that all the alleged incidents of harassment constitute commonplace workplace interactions such as work assignments, instructions, and admonishments that are not sufficiently severe or pervasive to constitute a hostile work environment. See Complainant v. Dep't of State, EEOC Appeal No. 0120123299 (Feb. 25, 2015). To the extent Complainant argues that the Supervisor-1, Supervisor-2, Supervisor-3, and other management officials have made him feel undervalued and treated him in a demeaning manner, we have repeatedly stated that such ordinary friction in supervisor-employee communications do not rise to the level of establishing unlawful harassment. See Wen Y. v. U.S. Postal Serv., EEOC Appeal No. 2021002631 (July 11, 2022); Marine V. v. Social Sec. Admin., EEOC Appeal No. 2019001434 (July 7, 2020). Not every unpleasant or undesirable action which occurs in the workplace constitutes an EEO violation. Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120120158 (May 15, 2014). The Supreme Court has held that the legal standards for assessing discrimination claims must ensure that the EEO laws do not become a “‘general civility code’ [and must be sufficiently rigorous to] ... filter out complaints attacking ‘the ordinary tribulations of the workplace.’” Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998).

Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable fact-finder 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, including those not specifically addressed herein, 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 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