



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Adalberto R.,¹
Complainant,

v.

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

Appeal No. 2023001559

Hearing No. 530-2021-00205X

Agency No. 1C-171-0069-20

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 12, 2023, 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., 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.

At the time of events giving rise to this complaint, Complainant worked as an EAS-19 Manager Distribution Operations (MDO) on Tour 3 at the Agency's Processing and Distribution Center (P&DC) in Lancaster, 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 November 17, 2020, Complainant filed a formal complaint alleging that the Agency discriminated against him on the bases of national origin (Hispanic),² sex (male), disability (mental), and age (born in 1964) when:

1. On July 25, 2020, his work schedule was changed; and
2. On August 15, 2020, he was informed that he was not selected for the Tour 2 MDO position.

Complainant's regular days off were Saturdays and Sundays. On July 25, 2020, Complainant's non-scheduled days changed to Mondays and Tuesdays. The Plant Manager (Caucasian, male, born in 1967) stated that he made the change at the direction of the Senior Plant Manager (White, male, born in 1966). According to the Senior Plant Manager, the Lancaster P&DC was having operational issues that were especially pronounced in the afternoons and evenings on the weekend because there was no management oversight. The Senior Plant Manager averred that he instructed the Plant Manager to temporarily change Complainant's schedule to he could provide oversight for the operational needs of Tour 3 on the weekends.

Complainant applied for the Tour 2 MDO position at the Lancaster P&DC. There were three applicants: Complainant, the Lancaster P&DC Tour 1 MDO (Candidate-1; Caucasian, female, born in 1978), and an outside candidate (Candidate-2; African American, female, born in 1975). The Plant Manager was the selecting official, and he did not convene a review committee. The Plant Manager selected Candidate-1.

According to the Plant Manager, both Complainant and Candidate-1 met all of the specific qualifications for the position. The Plant Manager stated that the most important criteria were the ability to work with the entire team to achieve the facility and the Agency's goals and the ability to communicate effectively. The Plant Manager determined that Candidate-1 was the best fit for the Tour 2 MDO position based on her effective communication skills, her willingness and ability to follow any instructions given to her, and her understanding of the need to work as a team across tours. Complainant alleged that Candidate-1 was not the best qualified candidate, noting that he had 35 years of experience with the Agency in all managerial operations, whereas Candidate-1 had 18 years of experience with the Agency and had only been in management for about four years.

² Although Complainant designated his race as "Hispanic," the Commission recognizes this term as an indication of national origin rather than race.

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. Over Complainant's objection, the AJ granted the Agency's motion for summary judgment and issued a decision without a hearing in favor of the Agency.

According to the AJ, Complainant undercut his claim that the change to his schedule was discriminatory by offering alternate explanations. Complainant had stated that the Senior Plant Manager directed the Plant Manager to change Complainant's schedule because he would not accept a detail to an Absence Control position, because the Senior Plant Manager did not like his questions or suggestions to improve operations, and "for no apparent reason other than he did not like me," and the AJ found these statements showed a personality conflict between Complainant and the Senior Plant Manager. The AJ determined that Complainant was unable to show that the Agency's legitimate, nondiscriminatory reason for changing his non-scheduled days was pretextual.

The AJ found that, even assuming that Complainant was more qualified than Candidate-1 for the Tour 2 MDO position, Complainant had not proven that his qualifications were plainly superior to Candidate-1's. The AJ noted that the Commission has held that years of service or years of experience do not automatically make one candidate more qualified than the other. The AJ determined that the disparity between the qualifications of Complainant and Candidate-1 was not significant enough to raise an inference of discrimination. The AJ noted that the trier-of-fact should not substitute their judgment for the legitimate exercise of managerial discretion in selecting a management-level employee because the qualities needed to successfully perform in such positions were not easily quantifiable. The AJ concluded that Complainant could not establish that he was subjected to discrimination based on national origin, sex, disability, and/or age.

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.

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, Complainant has failed to establish such a dispute.

Complainant contended that he has established a prima facie case of discrimination with respect to both claims. Complainant has established a prima facie case of discrimination for claim (2), and we will assume a prima facie case of discrimination for the purposes of analysis for claim (1). We agree with the AJ that the Agency provided legitimate, nondiscriminatory reasons for its actions, so the burden shifts to Complainant to establish pretext for discrimination.

For claim (1), Complainant argued that management changed his schedule because he would not accept the detail position or lie about delayed mail. As the AJ found, this argument actually undercuts Complainant's claim that the Agency's legitimate, nondiscriminatory reason was a pretext for discrimination. According to Complainant, the Senior Plant Manager's statement that there was no management at the P&DC on the weekend was inaccurate because it was common practice to use an Acting MDO on the weekend. However, we find that the presence of an Acting MDO does not establish that the Agency's legitimate, nondiscriminatory explanation that they needed Complainant to provide managerial oversight was pretextual. Moreover, although Complainant noted that mail volume is lighter on the weekends, he did not dispute the Senior Plant Manager's explanation that there were operational issues on the weekend.

We find that Complainant has not shown that the Agency's proffered reason for changing his non-scheduled days was a pretext for discrimination based on national origin, sex, disability, and/or age.

According to Complainant, the Agency used an illegal process for the Tour 2 MDO position and preselected Candidate-1. The Commission notes that, even if preselection occurred, it would not be unlawful unless Complainant can show that the preselection was driven by discriminatory animus. See Nickens v. Nat'l Aeronautics Space Admin., EEOC Request No. 05950329 (Feb. 23, 1996). We find that he has not done so here. Complainant acknowledged that Candidate-1 was qualified for the MDO position but contended that his qualifications far exceeded those of Candidate-1. We disagree. It is undisputed that Complainant had more years of service with the Agency and managerial experience with the Agency but, as the AJ noted, the Commission has consistently held that years of service, in and of itself, does not make one the most qualified candidate for a promotion and does not render one more qualified than those with less Agency experience. See Kenyatta S. v. Dep't of Homeland Sec., EEOC Appeal No. 0120161689 (Sept. 21, 2017). The Plant Manager decided that the most important criteria were the ability to effectively communicate and to work cohesively as a team across tours. Regarding personnel actions by an agency, we have consistently recognized that an agency has broad discretion to set policies and carry out personnel decisions, and should not be second-guessed, as here, by the reviewing authority absent evidence of unlawful motivation. See Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 259 (1981); Vanek v. Dep't of the Treasury, EEOC Request No. 05940906 (Jan. 16, 1997). We find that Complainant has not shown that the Agency's action was motivated by discriminatory animus.

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).

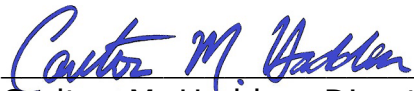
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0124)

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