



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Cyrus H.,¹
Complainant,

v.

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

Appeal No. 2023001580

Agency No. 4G-290-0121-22

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated January 9, 2023, dismissing his complaint of unlawful 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, we AFFIRM the Agency's decision to dismiss the complaint.

ISSUE PRESENTED

The issue presented is whether the Agency properly dismissed the complaint for failure to state a claim.

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

At the time of events giving rise to this complaint, Complainant was employed as a Postal Support Employee (PSE) at the Agency's Van Wyck Post Office in Van Wyck, South Carolina.

On August 25, 2022, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination based on reprisal when, on April 8, 2022, he was terminated over the telephone and subsequently on April 27, 2022, he was issued a Notice of Separation and terminated during his probationary period. In his formal complaint and accompanying attachments, Complainant alleged that after he changed his mind about voluntarily resigning from the Agency, the Postmaster decided to fire him. Complainant characterized the Postmaster's action as retaliatory and based on prior incidents where the Postmaster "caught him doing something that was wrong out on the route." Complainant emphasized that based on his understanding of Agency policy, employees could retract their resignations so long as their resignations had not been effectuated. The Agency subsequently informed Complainant that it had tentatively accepted his complaint but emphasized to him that it reserved the right to dismiss the complaint based on the EEO investigation.

The investigation into the complaint revealed that Complainant previously worked for the Postmaster as a City Carrier Assistant (CCA). On December 30, 2020, while Complainant worked as a CCA, the Postmaster for the Lancaster Post Office observed Complainant violate Agency safety policy. See Report of Investigation (ROI) at 86, 94-95. Specifically, while using an Agency vehicle, Complainant failed to use the parking brake, left the keys in the ignition, and failed to turn the wheels toward the curb. ROI at 86, 94-95. The Postmaster then informed Complainant that he would be terminated, and Complainant asked if he could resign. ROI at 86.

Effective March 26, 2022, Complainant was rehired with the Agency as a PSE. ROI at 73. Complainant was told he could not begin working as a PSE until he was "window trained." ROI at 66, 78, 86.

On April 2, 2022, Complainant emailed the Workforce Planning Specialist with the subject line "I'm quitting" [sic], and stated, "My career at the Postal Service is coming to an end... I'll be putting in my resignation after I inform [the Postmaster] at Lancaster Station." ROI at 74.

On April 8, 2022, the Postmaster called Complainant and told him to return his ID badge to the Agency. ROI at 62. Complainant told the Postmaster he had changed his mind about resigning, and he wanted to work. ROI at 62. The Postmaster called again later that day and informed Complainant that he would be removed from employment with the Agency. ROI at 62, 87.

On April 27, 2022, Complainant was issued a Notice of Separation During Probationary Period, formally terminating his employment. ROI at 80, 133.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the ROI and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). After Complainant failed to make an election, the Agency issued a final decision on January 9, 2023, dismissing Complainant's formal EEO complaint, pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim because Complainant produced no evidence of any prior protected EEO activity on which to base his claim of retaliation. However, even if Complainant adequately alleged reprisal, the Agency still found that Complainant could not prevail on the merits of the complaint, as he failed to prove that the Postmaster's reasons for firing him were pretext for discrimination. The instant appeal followed.

CONTENTIONS ON APPEAL

Neither Complainant nor the Agency filed briefs or raised any arguments on appeal.

STANDARD OF REVIEW

The Agency's decision to dismiss a complaint is subject to de novo review by the Commission, which requires the Commission to examine the record without regard to the factual and legal determinations of the previous decision maker and issue its decision based on the Commission's own assessment of the record and its interpretation of the law. 29 C.F.R. § 1614.405(a). The Commission should construe the complaint in the light most favorable to the complainant and take the complaint's allegations as true. See Cobb v. Dep't of the Treas., EEOC Request No. 05970077 (March 13, 1997). Thus, all reasonable inferences that may be drawn from the complaint's allegations must be made in favor of the complainant.

ANALYSIS

We find that the Agency properly dismissed Complainant's complaint for failure to state a claim. EEOC Regulations require the dismissal of complaints that fail to state a claim. 29 C.F.R. § 1614.107(a)(1). To state a claim, Complainant must allege harm inflicted on the bases of race, sex, religion national origin, age, disability, genetic information, or prior protected EEO activity. Concerning claims of reprisal, EEOC Regulations prohibit reprisal against an individual for opposing any practice made unlawful by Title VII of the Civil Rights Act (Title VII) (42 U.S.C. 2000e et seq.), the Equal Pay Act (29 U.S.C. 206(d)), the Age Discrimination in Employment Act (ADEA) (29 U.S.C. 621 et seq.), the Rehabilitation Act (29 U.S.C. 791 et seq.), the Genetic Information Nondiscrimination Act (GINA), or for participating in any stage of administrative or judicial proceedings under these statutes. 29 C.F.R. § 1614.101(b).

In the instant matter, Complainant alleged that he was discriminated against based on reprisal. A review of the record, including the EEO Counselor's Report and Complainant's formal complaint and accompanying attachments, reveals no evidence of prior EEO activity by Complainant. Indeed, by Complainant's own account, the alleged reprisal was based on his refusal to voluntarily resign and prior incidents where the Postmaster "caught him doing something that was wrong out on the route." As such allegations are simply insufficient to constitute prior protected EEO activity, we find that the Agency correctly determined that Complainant had not participated in prior protected EEO activity. Without any evidence or argument to show that Complainant had prior protected activity, and because reprisal is the sole basis for Complainant's claims, we conclude that Complainant has failed to state a claim of discrimination based on reprisal.

CONCLUSION

Accordingly, we AFFIRM the Agency's final 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

January 21, 2025
Date