



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Office of Federal Operations**  
**P.O. Box 77960**  
**Washington, DC 20013**

[REDACTED]  
Kendall C.,<sup>1</sup>  
Complainant,

v.

Louis DeJoy,  
Postmaster General,  
United States Postal Service  
(Western Area),  
Agency.

Appeal No. 2023001736

Hearing No. 480-2022-00447X

Agency No. 4E-900-0052-22

**DECISION**

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's October 24, 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 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 City Letter Carrier at the Agency's Post Office in Bellflower, California.

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<sup>1</sup> 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 February 11, 2022, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of sex (male) and age (YOB: 1963), and in reprisal for prior protected EEO activity, when:

1. on October 22, 2021, Complainant was placed on Emergency Placement in an off-duty status; and
2. on November 29, 2021, Complainant was issued a Notice of 14-Day Suspension for Unacceptable Conduct.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing.

On September 1, 2022, the AJ issued a Notice of Intent to Issue a Decision in Favor of the Agency Without a Hearing ("Notice of Intent"). The AJ observed that the Agency placed Complainant on Emergency Placement after coworkers reported that he referred to some employees as "pieces of shit"; "trash"; and "a big disgusting piece of trash." In a written response, Complainant admitted to calling coworkers "vile" and "trash," but he denied calling anyone "pieces of shit." Complainant was suspended for this unacceptable conduct. The AJ noted that no evidence showed that the managers' decisions were motivated by discrimination. Complainant was ordered to respond to the Notice of Intent.

On December 21, 2022, the AJ issued a revised decision entering summary judgment in the Agency's favor.<sup>2</sup> Upon review of Complainant's response and the record, the AJ found that, even considering reasonable inferences in his favor, the evidence was insufficient to prove pretext for discrimination. The AJ concluded by granting summary judgment for the Agency.

The Agency subsequently issued a final order adopting 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

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<sup>2</sup> The AJ vacated an initial decision because the Agency failed to follow an order to provide a copy of the Notice of Intent to Complainant.

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. (as revised, August 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*).

Upon review, we find the record in the present case was fully developed. 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 he 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.

On appeal, Complainant argues that the AJ erroneously relied upon coworkers’ statements, which were hearsay and not sworn like Complainant’s declarations. However, Complainant did not deny making the specified comments in his affidavit. ROI at 77-84. Further, during the investigative interview, Complainant stated, “[t]he words/actions of certain people can be define[d] as trash, vile.” ROI at 140. Complainant also submitted a statement dated October 22, 2021, that he called some employees liars and/or trash. ROI at 87.

Complainant raises additional claims, such as a proposed removal. However, the Commission has held that it is not appropriate for a complainant to raise new claims for the first time on appeal.<sup>3</sup> See Hubbard v. Dep’t of Homeland Security, EEOC Appeal No. 01A40449 (Apr. 22, 2004).

Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable factfinder could not find in his favor. Upon careful review of the AJ’s decision and the evidence of record, as well as the parties’ arguments on appeal, we conclude that the AJ correctly determined that the

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<sup>3</sup> Complainant filed an appeal for the case involving his proposed removal, which will be addressed separately in EEOC Appeal Number 2024000757.

preponderance of the evidence did not establish that Complainant was discriminated against by the Agency as alleged.

The Agency placed Complainant on Emergency Placement after multiple employees reported that Complainant verbally assaulted them, which was "threatening." ROI at 101, 167. The Agency relied upon witness statements that Complainant called certain coworkers "trash" and "pieces of shit," in an aggressive and violent tone. ROI at 147-9. Complainant was suspended for this conduct. The management officials noted that Complainant did not provide a reasonable explanation to excuse his conduct, and his responses appeared evasive, disingenuous, and self-serving. ROI at 168-72. The record also contains Complainant's prior discipline of a 7-Day Suspension issued on March 27, 2021, and a 14-Day Suspension issued on December 26, 2020. ROI at 115-22.

Complainant responded that the Agency's actions were malicious and defamatory; a double standard; hypocrisy; and not legitimate. ROI at 80, 83. However, Complainant did not show that the proffered reasons are not worthy of belief, and his bare assertions that management officials discriminated against him are insufficient to prove pretext or that their actions were discriminatory.

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:



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Carlton M. Hadden, Director  
Office of Federal Operations

February 19, 2025

Date