



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

[REDACTED]  
Jacki A.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2023001744

Agency No. 4J-450-0059-22

Hearing No. 532-2023-00029X

DECISION

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 9, 2023, final decision concerning her 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. For the following reasons, we AFFIRM the Agency's final decision.

ISSUES PRESENTED

The issues presented are: (1) whether the AJ properly dismissed Complainant's hearing request; and (2) whether the Agency correctly determined that Complainant was not subjected to discrimination based on race and sex when she was allegedly harassed, suspended, and denied leave.

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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.

### BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier at the Agency's Whitehall Post Office in Whitehall, Ohio. She was supervised by the Customer Service (CS) Supervisor and the CS Manager.

On July 6, 2022, Complainant filed an EEO complaint alleging that the Agency discriminated against her based on race (African American) and sex (female) when:

1. On March 1, 2, 12, April 1, 2022, and possible other dates to be specified, the CS Manager screamed, talked down to Complainant, told her to get out of his office, slammed his office door on her, waved his arms, and made negative comments about her;
2. On March 3, 2022, Complainant was placed on Emergency Placement;
3. On April 1, 2022, Complainant was issued a 14-Day Suspension; and
4. On April 2, 2022, Complainant's leave requests were denied.

The investigation into the complaint revealed the following information.

#### *Claim 1*

According to Complainant, on March 1, 2022, the CS Manager told her to meet him in the back office for a meeting, and that she would need a witness. When she arrived at the meeting, the CS Manager accused her of leaving mid-conversation the day before. Complainant denied this accusation, and the CS Manager responded by allegedly talking down to her in a demeaning tone, repeatedly asking, "Do you understand?" The CS Manager then took Complainant's timecard and sent her home. Complainant asked whether she was fired, but the CS Manager did not respond. The CS Manager then returned her timecard and said, "I'll call you when I need you." Report of Investigation (ROI) at 63-65.

Complainant's coworker, City Carrier 1, witnessed the March 1, 2022 incident between Complainant and the CS Manager. He described the CS Manager as very demanding while Complainant remained calm. He recounted that the CS Manager became loud with Complainant, followed her out of his office, and told her to leave. He stated that both of them then raised their voices, and the CS Manager was in Complainant's face. ROI at 141-142.

On March 2, 2022, Complainant and the CS Manager became involved in a verbal altercation. Complainant alleged that she asked the CS Manager for her timecard, and the CS Manager told her to leave. As Complainant exited the building, the CS Manager allegedly followed her and antagonized her. Complainant alleged that the CS Manager hit her with a door, but the CS Manager claimed that Complainant physically assaulted him. The CS Manager called the police, who responded to the scene and took statements from the CS Manager, Complainant, and a witness. The police noted that the CS Manager's account was not supported by witness statements and determined that "an assault never had taken place." ROI at 65-66, 155-156, 163.

Another of Complainant's coworkers, City Carrier 2, witnessed the March 2, 2022 incident and recounted that the CS Manager told Complainant to leave the office after Complainant asked for her timecard. When Complainant asked why, the CS Manager said she needed to leave or he would call the police. City Carrier 2 tried to de-escalate the situation by getting Complainant to go outside. Complainant realized that she left her purse inside and tried to re-enter the building. The CS Manager stood in the doorway blocking Complainant from entering, so she stepped to the side to pass him, and their shoulders "may have brushed." The CS Manager then called the police and claimed that Complainant assaulted him. ROI at 147-148.

According to the CS Manager, on March 2, 2022, Complainant came to his office and demanded her timecard, and he told her he would bring it to her. Complainant refused to leave or follow his instructions. Instead, Complainant continued "ranting and raving" loudly, commenting, "where's my mace, yep it's in my purse." The CS Manager sent Complainant home for her inappropriate behavior. When Complainant refused to leave, he called the police to escort her from the building. City Carrier 2 managed to get Complainant to go outside, and when Complainant returned for her purse, the CS Manager told Complainant that City Carrier 2 could go inside to retrieve it. The CS Manager was standing in the doorway when Complainant walked to him on his right side and grabbed his arm, pushing him out of the way and walked into the building. The CS Manager claimed that he felt threatened by Complainant's behavior and filed a police report. ROI at 157.

The CS Supervisor reported witnessing Complainant arguing with the CS Manager and being verbally combative. When the CS Manager threatened to call the police, Complainant responded that she did not care and used profanity. After the CS Manager called the police, Complainant grabbed her things and left. ROI at 158.

On March 12, 2022, the CS Manager allegedly yelled at City Carrier 1 about blue boxes. ROI at 68. When asked what words or actions occurring on March 12, 2022 were discriminatory or harassing, Complainant responded, "N/A." ROI at 68. City Carrier 1 did not recall the March 12, 2022 incident. ROI at 143-145.

On April 2, 2022, the CS Manager allegedly told Complainant that she would be required to "beg" to have her leave requests approved. ROI at 70.

### *Claim 2*

On March 3, 2022, Complainant was placed on Emergency Placement by the CS Manager for her alleged altercation on March 2, 2022. Complainant maintained that the CS Manager's accusation of assault was false. Complainant claimed that when employees, who were not African American were disrespectful to the CS Manager, he took no action. Complainant claimed that she witnessed verbal altercations between the CS Manager and male employees, such as City Carrier 3 and there were no accusations of physical assault or police involvement. ROI at 75-78, 162.

Complainant filed a grievance, which resulted in the Emergency Placement action being expunged from Complainant's file. ROI at 164.

### *Claim 3*

On April 1, 2022, the CS Manager issued Complainant a 14-day suspension due to the altercation on March 2, 2022. As noted above, the police determined that the CS Manager's description of the incident was not corroborated and concluded that "an assault never had taken place." Again, Complainant claimed that the CS Manager never took similar action against male colleagues. ROI at 79-83.

Complainant filed a grievance, which resulted in the rescission of Complainant's suspension. ROI at 171.

### *Claim 4*

Complainant alleged that on April 2, 2022, the CS Supervisor denied her leave requests on instructions from the CS Manager. Again, Complainant claimed that the CS Manager never took the same action against male colleagues. ROI at 83-84, 167.

Both the CS Supervisor and the CS Manager could not recall the alleged incidents. However, they explained that leave requests were granted based on the needs of the office and staffing considerations. ROI at 118, 133.

### *Post Investigation*

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). Complainant requested a hearing and mailed her request directly to the Commission's Cleveland Field Office. However, she did not serve her request on the Agency. As the Agency was unaware of Complainant's request for a hearing, the Agency issued a final decision on January 9, 2023, which concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged. Complainant appealed the Agency's final decision.

While her appeal was pending with the Commission, the Agency became aware that Complainant previously filed a request for a hearing. On May 11, 2023, the Agency filed a motion to dismiss, urging the AJ to dismiss Complainant's request due to her failure to notify the Agency. Complainant opposed the Agency's motion and emphasized that she timely mailed her request to the Commission's Cleveland Field Office. However, over Complainant's objection, the AJ granted the Agency's motion and dismissed Complainant's hearing request, as the Agency did not receive Complainant's request for a hearing within the time frame provided in 29 C.F.R. § 1614.108(f).

### CONTENTIONS ON APPEAL

On appeal, Complainant argues that she received a letter in response to her appeal indicating that "a court case would take place." While Complainant waited for further instructions, she received another letter explaining that a decision had already been made and that Complainant had missed a deadline. Complainant reiterates that she mailed her hearing request to the Commission's Cleveland Field Office in a timely manner.

The Agency opposes the appeal and argues that the AJ properly dismissed Complainant's hearing request.

### STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review “requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker,” and that EEOC “review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission’s own assessment of the record and its interpretation of the law”).

### ANALYSIS

As an initial matter, we note that Complainant claims to have timely filed a hearing request with the Commission’s Cleveland Field Office. However, there is no evidence in the record that Complainant sent a copy of the request for a hearing to the Agency’s EEO office, as required by 29 C.F.R. § 1614.108(h). We note that Complainant was notified by the Agency that she was required to provide a copy of her hearing request to the Agency and that failure to do so would result in the issuance of a final decision and the loss of her right to a hearing. As Complainant failed to notify the Agency of her request, we affirm the AJ’s dismissal of Complainant’s hearing request, and find that the Agency’s issuance of a final decision was appropriate. See Cher C. v. U.S. Postal Serv., EEOC No. 0120182053 (Apr. 9, 2019), citing Lopez v. U.S. Postal Serv., 0120091185 (Jun. 9, 2011) (affirming the dismissal of a hearing request where the agency provided the Complainant with notice that her right to a hearing would be forfeited if she did not provide a copy of the hearing request to the Agency); see also Gallo v. Dep’t of Labor, EEOC Request No. 05A01085 (Oct. 9, 2002) (finding that failure to inform the agency rendered Complainant’s hearing request legally deficient.)

#### *Disparate Treatment – Claims 2-4*

A claim of disparate treatment is examined under the three-part analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). For a complainant to prevail, they must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to

an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. McDonnell Douglas, 411 U.S. at 802, n. 13; Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978).

In order to establish a prima facie case of discrimination based on race or sex, a complainant must show: (1) they are a member of a protected group; (2) they were subjected to an adverse employment action; and (3) they were treated less favorably than other similarly situated employees outside of their protected groups. We note that, although a complainant bears the burden of establishing a "prima facie" case, Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 252-53 (1981), the requirements are "minimal," St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 506 (1993), and complainant's burden is "not onerous." Burdine, 450 U.S. at 253.

The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. Burdine, 450 U.S. at 253. Once the agency has met its burden, the complainant bears the ultimate responsibility to persuade the fact finder by a preponderance of the evidence that the agency acted on the basis of a prohibited reason. Hicks, 509 U.S. at 507.

Here, we find that Complainant has established the first element of a prima facie case, membership in a protected group, in that she is African American and female. Complainant has also established the second element of a prima facie case, having been subjected to adverse employment actions, in that she was placed on Emergency Placement, issued a 14-day suspension, and denied leave. However, we find that Complainant failed to establish the third element of a prima facie case of race or sex discrimination, as she presented no persuasive evidence of any similarly situated employees outside of her protected classes who were treated more favorably than her.

Furthermore, we find that the Agency articulated legitimate, nondiscriminatory reasons for its actions. The CS Manager maintained that he placed Complainant on Emergency Placement and issued her a 14-day suspension because of her engagement in an altercation with him. ROI at 109, 155-162. Management asserted that any denial of leave requests was due to the needs of the office and staffing considerations. ROI at 133.

The foregoing reasons constitute legitimate, nondiscriminatory reasons for the Agency's decisions to place Complainant on Emergency Placement, issue her a 14-day suspension, and deny her leave requests. Complainant argued that the Agency's reasons were rebutted by the fact that the CS Manager did nothing in response to altercations with employees who were male or non-

African American. However, we ultimately find these arguments to be unpersuasive, as Complainant failed to provide any evidence in support of her assertions. To the contrary, we note that the one employee named by Complainant for comparative evidence, City Carrier 3, denied ever engaging in an altercation with the CS Manager. ROI at 166. ROI at 112-113, 116-117, 120-121.

While we acknowledge that the police who investigated the CS Manager's assault accusation against Complainant found that "an assault never had taken place," we note that pretext is not concerned with bad judgment, impeccability, dislike, or mistakes. Marvin W. v. Dep't of Homeland Sec., EEOC Appeal No. 0120170438 (Dec. 12, 2018). Rather, Complainant's burden is to establish, by a preponderance of the evidence, that the Agency's articulated reason for its action was not its true reason, but a pretext to mask unlawful discrimination. See Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 143 (2000). In the present matter, we find that even if the CS Manager took ill-advised actions, the evidence presented does not prove that the Agency was wrongfully motivated by illicit discriminatory animus.

Based on the foregoing, we conclude that the Agency's reasoning is supported by the preponderance of the evidence in the record, and we affirm the Agency's finding of no discrimination on claims 2 to 4.

#### *Hostile Work Environment/Harassment – Claim 1*

As an initial matter, we find that a finding of a hostile work environment on claims 2 to 4 is precluded by our determination that Complainant failed to establish that the actions taken by the Agency were motivated by discriminatory animus. See Oakley v. U.S. Postal Serv., EEOC Appeal No. 01982923 (Sept. 21, 2000).

In order to establish a prima facie case of harassment, a complainant must prove, by a preponderance of the evidence, the existence of five elements: (1) that they are a member of a statutorily protected class; (2) that they were subjected to unwelcome conduct related to their protected class; (3) that the harassment complained of was based on their protected class; (4) that the harassment had the purpose or effect of unreasonably interfering with their work performance and/or creating an intimidating, hostile, or offensive work environment; and (5) that there is a basis for imputing liability to the employer. See Celine B. v. Dep't of Navy, EEOC Appeal No. 2019001961 (Sept. 21, 2020); Humphrey v. U.S. Postal Serv., EEOC Appeal No. 01965238 (Oct. 16, 1998). See also Henson v. City of Dundee, 682 F.2d 897 (11th Cir.

1982), approved in Meritor Savings Bank v. Vinson, 477 U.S. 57, 66-67 (1986); see generally Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (April 29, 2024).; Flowers v. Southern Reg'l Physician Serv. Inc., 247 F.3d 229 (5th Cir. 2001). The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the victim's circumstances. Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (April 29, 2024).

In other words, to prove a hostile work environment claim, a complainant must establish that they were subjected to conduct that was either so severe or so pervasive that a "reasonable person" in the complainant's position would have found the conduct to be hostile or abusive. A complainant must also prove that the conduct was taken because of a protected basis; in this case, race and sex. Only if a complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself.

We ultimately find no persuasive evidence that the Agency's conduct as alleged herein was motivated by discriminatory animus. Beyond her own unsupported assertions, Complainant has provided no evidence of the use of epithets, insults, or conduct that would establish a nexus between her race and/or sex and the Agency's actions. Moreover, we note that anti-discrimination laws are not civility codes. Shealey v. Equal Emp't Opp. Comm'n, EEOC Appeal No. 0120070356 (Apr. 18, 2011) (noting petty slights and simple lack of good manners, alone, do not constitute discrimination). Complainant's subjective belief of discriminatory animus, by itself, is simply not sufficient to show that the Agency's actions were discriminatory. Complainant failed to make the requisite showing here.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

January 22, 2025  
Date