



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

[REDACTED]  
Complainant,<sup>1</sup>

v.

Scott Bessent,  
Secretary,  
Department of the Treasury  
(Internal Revenue Service),  
Agency.

Appeal No. 2023001762

Hearing No. 560-2022-00111X

Agency No. IRS-21-0497-F

**DECISION**

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's December 19, 2022, final order 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, the Commission AFFIRMS the Agency's final order.

At the time of events giving rise to this complaint, Complainant worked as a Customer Service Representative at the Agency's Wages & Investments, Accounts Management Operation 2 in Kansas City, Missouri.

On August 2, 2021, Complainant filed an EEO complaint alleging that the Agency subjected her to harassment and/or disparate treatment on the

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<sup>1</sup> The Commission typically assigns a pseudonym to replace Complainant's name when the decision is published to non-parties and the Commission's website. However, due to Complainant's request, this decision will be published without a pseudonym.

bases of race (African American) and sex (female), and in reprisal for prior protected EEO activity, when:

1. on May 19, 2021, Complainant's first-line supervisor ("Supervisor") issued Complainant an annual performance evaluation rating her Critical Job Element IV(c) as "fail," and her overall performance as "minimally successful"; and
2. from March 2020 through July 27, 2021, the Supervisor presented Complainant with inaccurate quality telephone and paper reviews, and she monitored Complainant while she was performing her telephone duties.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. Over Complainant's objections, the AJ granted the Agency's motion and issued a decision without a hearing on November 30, 2022.

As an initial matter, the AJ incorporated an earlier order taking an adverse inference against Complainant due to her failure to respond fully to the Agency's discovery request. The AJ allowed Complainant an opportunity to respond to an Order to Show Cause why the AJ should not take an adverse inference against Complainant for failure to follow an order. However, the AJ found that Complainant's responses were inadequate, deliberately obtuse, and failed to comply with the AJ's Order Compelling Discovery. The AJ then determined that the Agency articulated legitimate, nondiscriminatory reasons for the actions and Complainant failed to show that the reasons were pretexts for discrimination. The AJ found that the actions were routine workplace conduct, and Complainant did not establish that these events occurred because of her protected bases. The AJ concluded by granting the summary judgment in the Agency's favor.

The Agency subsequently issued a final order fully implementing the AJ's finding that Complainant failed to prove that the Agency subjected her 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. (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 she 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 only offers general contentions of an abuse of AJ discretion and erroneous rulings, and that the AJ was motivated by personal animosity and bias towards Complainant.

Complainant must make a substantial showing of personal bias by the AJ in order to prevail on her contention that the AJ displayed bias. Such bias must be shown to have prejudiced her in this matter. Complainant must establish that the alleged bias demonstrated, so permeated the process, that it would have been impossible to receive a fair hearing, or that the process was so tainted by substantial personal bias that she did not receive a fair and impartial hearing. See Smith v. Dep’t of the Army, EEOC Appeal No. 01880866, (May 11, 1988) (citing, Roberts v. Morton, 549 F.2d 158 (10th Cir), cert. denied); and Roberts v. Andrus, 434 U.S. 834 (1977). In this case, there is no evidence that the AJ was biased in favor of the Agency such that Complainant did not receive a fair evaluation of her case.

Under 29 C.F.R. § 1614.109, AJs are granted broad discretion in the conduct of administrative hearings, including the authority to sanction a party for failure, without good cause shown, to fully comply with an order. See Malley v. Dep’t of the Navy, EEOC Appeal No. 01951503 (May 22, 1997). Given the AJ’s broad authority to regulate the conduct of a hearing, a party claiming that the AJ abused his or her discretion faces a very high bar.

Trina C. v. U.S. Postal Serv., EEOC Appeal No. 0120142617 (Sept. 13, 2016), citing Kenyatta S. v. Dep't of Justice, EEOC Appeal No. 0720150016 n.3 (June 3, 2016) (responsibility for adjudicating complaints pursuant to 29 C.F.R. § 1614.109(e) gives AJs wide latitude in directing terms, conduct, and course of administrative hearings before EEOC). We find that Complainant did not meet her burden to show an abuse of discretion for the AJ' Order to Take an Adverse Inference with her vague opposition.

Further, Complainant did not identify any genuine disputes of material facts in her appeal. Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable factfinder could not find in her 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 preponderance of the evidence did not establish that Complainant was discriminated against by the Agency as alleged.

The Supervisor explained that she issued Complainant a "fail" for the Security and Disclosure performance aspect and an overall "minimally successful" rating due to three (3) disclosure errors. The ROI at 118. The record contains the memoranda sent to Complainant regarding the details of the identified defects. ROI at 135-46. The Department Manager confirmed that she reviewed and approved Complainant's performance appraisal. Complainant had three (3) disclosure defects, which results in a "fail" for Security and Disclosure, and one fail equals a minimally successful rating. The Department Manager added that Complainant did not rebut the defects through proper channels or with appropriate information to substantiate her rebuttal. ROI at 228, 231.

Complainant also alleged that the Supervisor presented her with inaccurate quality telephone and paper reviews and monitored her performance of telephone duties in claim 2. However, management officials consistently stated that telephone and paper reviews are done by the Centralized Evaluative Review department, and supervisors simply relay the reviews to employees. ROI at 118, 229, 468, 548. The Field Director attested that he researched Complainant's allegations and found that the Supervisor's actions were normal performance reviews and feedback. ROI at 558.

Complainant offered no evidence to show that the proffered reasons are not worthy of belief, and her bare assertions that management officials discriminated against her are insufficient to prove pretext or that their actions were discriminatory.

In addition, the Commission has held that routine work assignments, instructions, and admonishments do not rise to the level of harassment because they are common workplace occurrences. See Gray v. U.S. Postal Serv., EEOC Appeal No. 0120091101 (May 13, 2010). Unless it is reasonably established that the common workplace occurrence was somehow abusive or offensive, and that it was taken in order to harass Complainant on the basis of her protected class, we do not find such common workplace occurrences sufficiently severe or pervasive to rise to the level of a hostile work environment or harassment as Complainant alleges. See Complainant v. Dep't of Veterans Affairs, EEOC Appeal No. 0120130465 (Sept. 12, 2014). There is no evidence that the work-related incidents were abusive or offensive, or taken in order to harass Complainant on the basis of a protected class.

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 26, 2025  
Date