



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

████████████████████
Maxwell M,¹
Complainant,

v.

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

Appeal No. 2023002132

Hearing No. 450-2022-00193X

Agency No. 1H-724-0008-21

DECISION

On February 23, 2023, Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's January 25, 2023 final order concerning an equal employment opportunity (EEO) complaint claiming 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 reasons discussed below, we affirm the Agency's final order.

During the relevant time, Complainant worked as a Tractor Trailer Operator at the Agency's Processing and Distribution Center in Dallas, Texas.

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 May 11, 2021, Complainant filed a formal complaint claiming that the Agency discriminated against him on the bases of race (Caucasian), color (White), disability (disabled veteran with Traumatic Brain injuries that are service connected, and long-COVID), age (56), and in reprisal for prior protected EEO activity when:

1. In March 2020, Complainant's trainer said: "get in the back seat mother fucker so you can know what it feels like to be black" and management did nothing;
2. On a date to be specified, management yelled at Complainant for reporting poor working conditions (i.e. no mask or hand sanitizer);
3. On a date to be specified, management sent him a certified letter telling him that he was under investigation for being ill;
4. On September 19, 2020, Complainant returned to work from being ill with COVID and a management official told him that he was fat;
5. In December 2020, a co-worker assaulted Complainant and management did not conduct an investigation;
6. On a date to be specified, Complainant was told he had to show a COVID shot record in order to use Annual Leave;
7. On February 2, 2021, Complainant filled out a leave slip and a co-worker made a joke that he was getting a low-T shot, which led him to feel that Management had disclosed his protected health information;
8. On April 9, 2021, Complainant's supervisor took a picture of his driver's license with her cell phone;
9. On April 20, 2021, Complainant was verbally assaulted by the union steward which caused a hostile work environment;
10. On August 10, 2021, August 29, 2021 and other possible dates to be specified, management assigned Complainant an unsafe tractor and dismissed his safety concerns;

- 12a. On August 29, 2021, Complainant was assigned to work in an unsafe vehicle which he had reported as being defective two days prior;
- 12b. On November 6, 2021, when he attempted to talk to his Supervisor about an issue with the truck he had been assigned, she responded by saying, "I am recording you"; and
13. On an unspecified date, Complainant's regular route was changed and his hours were cut.

After its investigation, the Agency provided Complainant with a copy of the report of investigation and notice of right to request a hearing before an Equal Employment Opportunity Commission (EEOC or Commission) Administrative Judge (AJ). Complainant timely requested a hearing. The Agency submitted a motion for a decision without a hearing. Complainant opposed the motion. The AJ subsequently issued a decision by summary judgment in favor of the Agency. The Agency issued its final order adopting the AJ's finding of no discrimination.

The instant appeal followed. On appeal, Complainant contended that his reprisal and discrimination claims should have been substantiated. Complainant details multiple efforts to report discrimination, as well as ethics and safety violations to higher headquarters which he believed motivated management's retaliation against him. Although the EEOC does not have jurisdiction over Veterans matters, Complainant described a pattern whereby Veterans at his facility were mistreated to include getting passed-over for promotion.

The Agency opposed Complainant's appeal.

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. 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).

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. Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable fact-finder could not find in Complainant's favor.

To the extent that Complainant made his prima facie case for disparate treatment, we find the Agency advanced legitimate non-discriminatory reasons for its actions. For example, management issued Complainant an absence inquiry because he had absented himself without notice or explanation for six to eight weeks. We note that after Complainant returned and told his supervision that he had been out because of a COVID infection, no disciplinary action was taken. As to Claim 8, Complainant's Supervisor explained that she had taken a picture of Complainant's drivers license as a standard procedure for completing a report on an accident involving an Agency vehicle Complainant had been operating. Regarding Claim 13, the Agency stated that Complainant's route was changed because he had been absent for more than 10 days. On these and other disparate treatment claims, outside of his own statements, Complainant did not provide documentation or testimonial evidence which showed that the Agency's reasons for the alleged unfavorable treatment were pretextual.

In the context of harassment, we concur with the AJ in that Complainant failed to make his prima facie case. Here, Complainant did not evidence that the Agency's adverse conduct toward him was targeted against his protected characteristics. We further note that simple teasing or off-hand offensive comments do not qualify as harassment. It is clear that Complainant and at least two of his supervisors had personality conflicts, however such are normal workplace occurrences which do not create an unlawfully hostile work environment.

After a review of the record in its entirety, including consideration of all statements submitted on appeal, it is the decision of the Commission to affirm the Agency's final order, because the AJ's issuance of a decision without a hearing was appropriate and a preponderance of the record evidence does not establish that discrimination occurred.

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