



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

████████████████████
Scarlet S.,¹
Complainant,

v.

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

Appeal No. 2023002231

Hearing No. 430-2022-00433X

Agency No. 4B-270-0107-22

DECISION

On February 27, 2023, 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 25, 2023 final Agency 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., 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.

ISSUE PRESENTED

The issue presented herein is whether the final Agency decision correctly found that Complainant failed to prove that she was subjected to unlawful discrimination based on sex, disability and age.

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

During the period at issue, Complainant worked for the Agency as a Postmaster at the Agency's Post Office in Rocky Point, North Carolina. Complainant's immediate supervisor was the Manager, Post Office Operations (MPOO), who was male and age 48.

On April 6, 2022, Complainant filed the instant formal EEO complaint alleging that the Agency discriminated against her on the bases of sex (female), disability (psoriatic arthritis, Reynaud's syndrome, fibromyalgia, osteoarthritis, migraines and depression), and age (64) when:

1. From December 22, 2021 and ongoing, Complainant was worked outside of her 8-hour per day medical restriction.
2. On December 22, 2021, Complainant's schedule was changed while the schedules of other employees were not changed.
3. On January 11, 2022, Complainant's manager repeatedly asked Complainant if she was qualified for the job.
4. On January 13, 2022, Complainant was given an Investigative Interview.
5. On January 14, 2022, Complainant was sent to another facility to work, not given an assignment and not provided a reasonable accommodation when a stand-up desk was not provided.

After an investigation into the complaint, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). Complainant requested a hearing. On September 26, 2022, the AJ assigned to the case issued an order for an initial status conference to be held on October 25, 2022. On that date, the AJ and Agency were present. However, neither Complainant nor a representative attended. As a result, on November 2, 2022, the AJ issued Complainant an Order to Show Cause to explain her absence at the status conference. Complainant declined to respond. As a sanction for Complainant's non-compliance with her orders, the AJ dismissed Complainant's hearing request. The AJ remanded the formal EEO complaint to the Agency, and the Agency issued the instant final decision, pursuant to 29 C.F.R. § 1614.110(b), finding no discrimination was established.

The instant appeal followed.

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). EEO Management Directive for 29 C.F.R. Part 1614 at Ch. 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 AND FINDINGS

Claims 1, 2 and 5

As did the Agency, we consider Claims 1, 2 and 5 in the context of disparate treatment. The Commission reviews such claims by applying the three-part analysis from McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). To prevail, Complainant must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination---that an unlawful consideration factored into Agency employment decisions or adverse actions. See Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978). The second burden shifts to the Agency to articulate a legitimate and nondiscriminatory reasons for its actions. See Texas Dep’t of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). Whenever the Agency has met that second burden, Complainant bears the ultimate burden to prove, by preponderant evidence, that any of those justifications was a pretext to mask the Agency’s actual discriminatory intent. See St. Mary’s Honor Ctr v. Hicks, 509 U.S. 502 (1993); Reeves v. Sanderson Plumbing Prod., 530 U.S. 133 (2000).

This established order of analysis in discrimination cases, in which the first step normally consists of determining the existence of a prima facie case, need not be followed in all cases. Where the Agency has articulated a legitimate, nondiscriminatory reason for the personnel action at issue, the factual inquiry can proceed directly to the third step of the McDonnell Douglas analysis, the ultimate issue of whether Complainant has shown by a preponderance of the evidence that the Agency’s actions were motivated by discrimination. U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 713-714 (1983); Hernandez v. Dep’t. of Transp., EEOC Request No. 05900159 (June 28, 1990); Peterson v. Dep’t. of Health and Human Serv., EEOC Request No. 05900467 (June 8, 1990); Washington v. Dep’t. of the Navy, EEOC Petition No. 03900056 (May 31, 1990).

Regarding Claim 1, MPOO testified that the reason Complainant was assigned work beyond her restriction was because he only first learned of Complainant’s restriction when she provided him medical documentation recommending that she be limited to eight hours of work per day. MPOO stated that Complainant provided him her medical documentation on January 31, 2022. Thereafter MPOO referred Complainant to the Agency’s disability accommodation review committee and also immediately limited Complainant’s duty day to eight hours.

Regarding Claim 2, wherein Complainant objected to her workday schedule being changed from 8:00 AM to 5:00 PM to 10:00 AM to 7:00 PM.

Complainant maintained that MPOO had adjusted her schedule in a manner that she found undesirable while MPOO assigned her subordinate a male clerk the more desirable 5:00 AM to 10:00 AM shift. MPOO explained he scheduled Complainant's shift so that she would cover closing the facility, while the clerk at her post office would handle openings. Apparently, Complainant would have preferred that her shift remain the same while the clerk's shift be split around hers so that the clerk would be responsible for both opening and closing the post office. MPOO stated that he considered Complainant's preferred shift arrangement but concluded that requiring the clerk to clock in and out and back in again was inequitable for the clerk.

Regarding Claim 5, MPOO provided a performance-based rationale for temporarily transferring Complainant from the Rocky Mount Post Office to the Myrtle Grove Post Office. Essentially, MPOO decided to remove temporarily Complainant from Rocky Mount because mail she was responsible for was undelivered. Moreover, during an preceding investigative interview, Complainant had stated that she could not ensure that the mail at the Rocky Mount Post Office could be delivered while working an eight-hour shift. MPOO further stated that Complainant was permitted to take her accommodating desk with her to the Myrtle Grove Post Office. The Postmaster who supervised Complainant at the Myrtle Grove Post Office, testified that Complainant was eventually assigned relevant work. The Postmaster for the Myrtle Grove Post Office explained that he did not assign Complainant work immediately after her temporary assignment to the Myrtle Grove Post Office because he had been advised that Complainant would be taking leave and would not be present. We find Complainant's version of the incidents in Claim 5 to be in relative equipoise with that of the Agency. Where the evidence is in equipoise, such as in the present matter, Complainant has failed to prove disparate treatment. Complainant v. Dep't of Health and Human Servs., EEOC Appeal No. 0120122134 (Sep. 24, 2014).

Beyond her own assertions, Complainant has not presented affidavits, declarations, or unsworn statements from witnesses, other than herself, or documentary evidence that exposed any weaknesses, inconsistencies, or contradictions in the explanations provided by any management officials to such an extent that a reasonable fact-finder could rationally find those explanations unworthy of credence. Opare-Addo v. U.S. Postal Serv., EEOC Appeal No. 0120060802 (Nov. 20, 2007), request for reconsideration denied, EEOC Request No. 0520080211 (May 30, 2008). Accordingly, Complainant did not establish pretext.

Claims 3 and 4

We reviewed Claim 3 and Claim 4 as matters of harassment or a hostile work environment. To prove such claims, Complainant must establish that she was subjected to conduct that was either so severe or so pervasive that a reasonable person in Complainant's position would have found the conduct to be abusive. Complainant must also prove that the conduct was motivated by animus against a protected basis – in this case, her disabilities, age, and/or sex.

Only if Complainant establishes both of those elements – abusive hostility and discriminatory motive – will the question of Agency liability present itself. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); Harris v. Forklift Sys. Inc., 510 U.S. 17, 21 (1993); also Enforcement Guidance on Harris Forklift Systems Inc., EEOC Notice No. 915.002 (Mar. 8, 1994).

Here, Complainant simply did not show that MPOO or anyone in Agency management acted out of an unlawful discriminatory motivation. To the contrary, MPOO provided the same performance-based justification for both Claim 3 and Claim 4. MPOO recounted that, on January 11, 2022, he was displeased with Complainant’s supervision of the Rocky Mount Post Office because Complainant had permitted her subordinates to clock-out without delivering 84 packages. Complainant herself refused to deliver those packages because of her medical restriction. MPOO stated that Complainant’s actions had caused him to call for help to have the 84 packages delivered as expected. Similarly, the MPOO’s investigative interview of Complainant on January 13, 2022, was prompted by Complainant’s performance deficiency on January 11, 2022. This Commission has consistently held that routine admonishment such as that those described in Claim 3 and 4, do qualify as abusive because they are common workplace occurrences. Gray v. U.S. Postal Serv., EEOC Appeal No. 0120091101 (May 13, 2010). Moreover, Complainant did not demonstrate that the Agency actions in Claims 3 and 4 were taken on the basis of her EEO-protected characteristics.

CONCLUSION

The Commission AFFIRMS the final Agency’s final decision, finding no discrimination was established as alleged.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0124)

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 his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit his or her 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 his or her 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 (S0610)

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 his or her 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 22, 2024

Date