



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

[REDACTED]
Callie B.,¹
Complainant,

v.

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

Appeal No. 2023002282

Hearing No. 430-2022-00300X

Agency No. 4K-270-0108-20

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 February 1, 2023, 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, we AFFIRM the Agency's final order.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Sales, Services Distribution Associate, Grade Level 6, at the Agency's Battleground Station in Greensboro, North Carolina.

On March 20, 2020, the Agency informed Complainant that she was being placed on Emergency Placement in Off-Duty Status. The notice stated that the action was necessary pending an investigation into Complainant's arrest on March 17, 2020, for felony possession of marijuana and maintaining a dwelling or vehicle for controlled substances.

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 June 10, 2020, Complainant filed a formal EEO complaint alleging that the Agency discriminated against her on the bases of race (African American) and color (dark tone) when on March 20, 2020, she was put on Emergency Placement. In filing her complaint, Complainant accused the Agency of giving more favorable treatment to a lighter-skinned Asian supervisor who had been arrested for a similar marijuana offense. She alleged the supervisor was only on emergency placement for ten days, whereas Complainant was on emergency placement for several months.

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

On November 19, 2020, the AJ issued a notice of intent to issue a decision without a hearing, pursuant to 29 C.F.R. § 1614.107(a), finding that Complainant elected to pursue a grievance under a collective bargaining agreement. On December 14, 2020, the AJ issued a decision without a hearing, adopting the rationale provided in the notice of intent to issue a decision without a hearing. The Agency adopted the AJ's decision, which Complainant appealed to the Commission.

In EEOC Appeal No. 2021001930 (Apr. 20, 2022), the Commission found that the AJ improperly dismissed the complaint pursuant to 29 C.F.R. § 1614.107(a)(4) because the regulatory provision did not apply to postal employees. As a result, the complaint was remanded for the AJ to issue a decision in accordance with 29 C.F.R. § 1614.110. Thereafter, on December 1, 2022, the Agency filed a motion for a decision without a hearing.

Over Complainant's objections, the AJ granted the Agency's motion and issued a succinct decision without a hearing on January 23, 2023, as the AJ found that the record demonstrated that the Agency placed Complainant on Emergency Placement due to a legitimate, nondiscriminatory reason, namely that there was an ongoing investigation regarding Complainant's arrest and associated charges.

The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged. Complainant then filed the instant appeal.

On appeal, Complainant argues that the remanded complaint should have been assigned to a different AJ because of the potential for retaliation. Complainant adds that the AJ did not respond to her Request for a Status Conference and improperly denied her Motion to Compel. Additionally, Complainant reiterates her belief that she was subjected to disparate treatment and maintains that the Agency issued more lenient discipline to a supervisor from the Capital Metro area.

STANDARD OF REVIEW

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. (Aug. 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). This essentially means that we should look at this case with fresh eyes. In other words, we are free to accept (if accurate) or reject (if erroneous) the factual conclusions and legal analysis of the AJ and the Agency – including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. See id. at Chapter 9, § VI.A. (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

Decision Without a Hearing

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 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, Complainant argues the AJ was biased against her, which impacted the AJ's findings, and that the Commission should remand the matter due to disputes of material facts. However, we disagree, as we find that Complainant's purported disputed facts either relate to conclusions of law, and not facts, or they are not material. Moreover, it is well established that AJs generally have broad authority over the hearing process, to include discovery, the determination of whether to admit evidence or permit or compel the testimony of witnesses, and the appropriateness of summary judgment. See 29 C.F.R. § 1614.109. Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable factfinder could not find in Complainant's favor. Therefore, we find that the AJ's issuance of a decision without a hearing was appropriate.

Disparate Treatment

To prevail in a disparate treatment claim such as this, Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Complainant must initially establish a prima facie case by demonstrating that she was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Co. v. Waters, 438 U.S. 567, 576 (1978). Proof of a prima facie case will vary depending on the facts of the particular case. McDonnell Douglas, 411 U.S. at 804 n. 13. The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). To ultimately prevail, Complainant must prove, by a preponderance of the evidence, that the Agency's explanation is pretextual. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 120 S.Ct. 2097 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993).

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. See U.S. Postal Service Board of Governors v. Aikens, 460 U.S. 711, 713-714 (1983); Complainant v. Dep't of Transportation, EEOC Request No. 05900159 (June 28, 1990); Complainant v. Dep't of Health and Human Services, EEOC Request No. 05900467 (June 8, 1990); Complainant v. Dep't of the Navy, EEOC Petition No. 03900056 (May 31, 1990).

Here, we find that the Agency proffered a legitimate, nondiscriminatory reason for placing Complainant on Emergency Placement. Specifically, Complainant's arrest for possession of marijuana was the catalyst for the Agency's actions. We note that Complainant does not dispute her arrest or the reasoning for Emergency Placement. Rather, Complainant asserts that she received discipline that was inconsistent with discipline an alleged comparator received. However, the proffered comparator was a supervisor in another location under different supervision, and therefore, not a similarly situated comparator.

We find that Complainant failed to prove, by a preponderance of the evidence, that the legitimate reason proffered by Agency management officials for the decision to place her on Emergency Placement was a pretext masking discriminatory animus. The record is devoid of evidence that Complainant's protected classes were a factor in any of the Agency's actions. Complainant's subjective belief that the management actions at issue were the result of discrimination is insufficient to prove pretext. In light of the above, 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.

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 order adopting the AJ's 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).

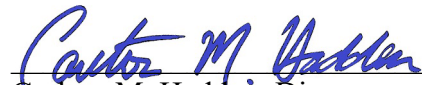
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0124)

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:



Carlton M. Hadden, Director
Office of Federal Operations

January 23, 2024
Date