



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

[REDACTED]
Belkis D.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Western Area),
Agency.

Appeal No. 2023002306

Hearing No. 4E-800-0038-18

Agency No. 4E-800-0038-18

DECISION

On March 8, 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 February 8, 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. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission AFFIRMS the Agency's final order.

ISSUES PRESENTED

Whether the Administrative Judge properly determined that Complainant failed to meet her burden of proving the Agency discriminated or harassed her on the basis of her race, disability, or retaliated against her.

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

At the time of events giving rise to this complaint, Complainant worked as a City Carrier at the Agency's Cheyenne Post Office facility in Cheyenne, Wyoming.

On May 8, 2018, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (African American), disability (Job Related Physical Injury), and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 and Section 501 of the Rehabilitation Act of 1973 when:

1. On December 18, 2017, she was forced to obtain updated medical restrictions; and subsequently,
2. On January 3, 2018, she was sent home and told there was no work available for her within her restrictions.²

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, and the AJ held a hearing on January 11-12, 2023.

The AJ issued a decision on January 17, 2023, finding that the Complainant did not establish her claims of discrimination, retaliation, or harassment. Regarding credibility, the AJ found all witnesses generally to be credible. That being said, the AJ was not persuaded by witness assertions that were largely based on hearsay or speculation.

As background for claim 1, the Agency noted that Complainant suffered an on-the-job injury in March 2016 and had an accepted worker's compensation claim, and Complainant was working a modified duty assignment because of that injury during the period leading up to the allegations at issue in this case. In response to this, the AJ stated, generally, when employees are working modified duty assignments or have temporary restrictions, they are required to provide updated medical information to the Health and Resources Management Office every 30 days. In Complainant's case, the AJ found that she provided updated medical information in July 2017 and received a modified duty assignment on August 4, 2017, but she had not provided any updated medical information from that point through December 2017.

The AJ found that the responsible management official in claim 1 (RMO1) credibly testified that after she began working in the office, and consistent with Agency policy, she sought to ensure all employees performing modified duty assignments had updated medical information on file.

² The AJ confirmed during the hearing that Complainant was not raising an allegation that the Agency failed to accommodate her disability. See AJ Decision at 2, note 1.

Subsequently, the Complainant was asked to provide updated medical information to support her modified duty position, and Complainant provided updated medical information on December 19, 2017.³ After receiving the documentation that stated, “No CBU Centralized Boc units and no LLV,” management stated that doctors cannot dictate what the employee can or cannot do, but only dictate physical limitation. The AJ noted that management further testified as to why the medical documentation provided was insufficient. Specifically, they explained that the medical professional should provide information about medical or physical limitations and should not dictate specific job duties. The AJ found management’s explanation for rejecting the medical information provided by Complainant’s doctor and seeking clarification to be a legitimate non-pretextual justification. The AJ also found no evidence to support an inference of discrimination or retaliation. More significantly, the AJ found no evidentiary basis for concluding the Agency’s actions were related to Complainant’s race, disability, or prior EEO activity in claim 1.

In claim 2, the AJ noted that after management requested clarification, Complainant’s doctor wrote: “No lifting overhead or away from body...no commercial driving since Rt upper extremity is impaired. DOT states drivers must have full use of R upper + lower extremities.” Based on this updated information, the Agency concluded that because Complainant could not drive, she could not continue to perform her prior modified job duties, which required driving. The AJ noted that RMO1 performed two separate searches for work within Complainant’s restrictions, and she did not find any work available that Complainant could safely perform within her restrictions provided by her doctor. The AJ found that RMO1 credibly testified that she contacted other post offices within a 50 miles radius to see if other offices had work available within Complainant’s restrictions, and there was no work available, even though the documentation related to the search was lacking. The AJ further found that the Agency’s decision that Complainant could no longer perform her prior modified duty assignment was a legitimate, non-pretextual justification for discontinuing that modified duty assignment. Similarly, the AJ found that the Complainant failed to meet her evidentiary burden of proving RMO1’s search for other available work was discriminatory. The AJ distinguished his decision from the Step B grievance decision by finding that RMO1 did in fact search for available work within Complainant’s documented medical restrictions, and that there is insufficient evidence that RMO1’s search or her inability to find work within Complainant’s restrictions was discriminatory or retaliatory.

The AJ disagreed with Complainant’s assertion that alleges comparators indicated Complainant was discriminated against because there was insufficient evidence to suggest these alleges comparators’ medical restrictions and documented medical limitations were comparable to Complainant’s restrictions or that the modified duty offered to them should have been offered to Complainant. Ultimately, the AJ found that Complainant failed to meet her burden of proving the Agency discriminated or retaliated when it sent her home and told her there was no work within her restrictions.

³ The AJ noted that Complainant testified that she does not believe the request for information was improper or discriminatory, but that it was the Agency’s refusal to accept the documentation and subsequent requests for information that were discriminatory.

Regarding Complainant's harassment claim, the AJ noted that there was some evidence in the record and testimony from Complainant about potentially problematic statements from RMO1. For example, the AJ mentioned that Complainant testified that another employee (W1) said that RMO1 was trying to get rid of employees with injuries, that RMO1 said Complainant had been faking her injury, and Complainant wrote in her affidavit that RMO1 talked about her behind her back. However, the AJ noted that both RMO1 and W1 both credibly denied making those statements or saying anything that could be construed that way. Regarding these inconsistent statements, the AJ found RMO1 to be more credible. More specifically, especially with the respect to the idea that RMO1 was trying to get rid of employees, the AJ found that was most likely based on a misunderstanding and rumors among employees, likely related to RMO1's requirement that employees provide required documentation, and not based on any actual statements or harassment by RMO1.

In regard to Complainant's other general allegations of harassment including that she was yelled at, and belittled by management, the AJ found insufficient evidence to support Complainant's general assertions or that Complainant was subjected to harassment by her supervisors or management as alleged. Ultimately, the AJ concluded that Complainant failed to meet her evidentiary burden of proving she was subjected to harassment on the basis of her race, disability, or in reprisal as alleged.

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. The instant appeal followed. Neither party submitted statements on appeal.

ANALYSIS AND FINDINGS

Standard of Review

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held.

An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony, or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See EEOC Management Directive 110, Chapter 9, at § VI.B. (Aug. 5, 2015).

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, 802 (1973). Her first step would generally be to establish a prima facie case by demonstrating that she was subjected to adverse employment actions under circumstances that would support an inference of discrimination. Furnco Const. Corp. v. Waters, 438 U.S. 567, 576 (1978). The prima facie inquiry may be dispensed with in this case, however, since management articulated legitimate and nondiscriminatory reasons for their actions as set forth in detail above. See U.S. Postal Service Bd. of Governors v. Aikens, 460 U.S. 711, 713-17 (1983).

To ultimately prevail, Complainant must show that the explanations put forth by the Agency were pretext for discrimination. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993). Pretext can be demonstrated by showing such weaknesses, inconsistencies, or contradictions in the Agency's proffered legitimate reasons for its actions that a reasonable fact finder could rationally find them unworthy of credence. Opore-Addo v. U.S. Postal Serv., EEOC Appeal No. 0120060802 (Nov. 20, 2007), req. for recon. den'd EEOC Request No. 0520080211 (May 30, 2008).

Here, as discussed above, management deemed Complainant's medical information submitted by her doctor to be insufficient and requested additional information because only Complainant's physical restrictions should have been documented on the form and not recommendations for job duties that should or should not be performed by the employee. ROI at 627. After reviewing the record, we find that substantial evidence supports the AJ's findings that Complainant failed to present any evidence of pretext. We further find that there is no other objective evidence that contradicts management's testimony and proffered reason for its action in claim 1.

In claim 2, management stated that based on Complainant's updated information, Complainant could not drive and could not continue to perform her prior modified job duties, which required driving. Management also performed two searches for other positions within Complainant's restrictions but there was no work available, which caused management to send Complainant home from work. ROI at 632-634. In an attempt to establish pretext regarding this claim, Complainant identified other employees whom she argued were treated better than her because they were offered modified duty assignments. However, the AJ found that there was insufficient evidence to suggest that these alleged comparators' medical restrictions and documented medical limitations were comparable to Complainant's restrictions or that the modified duty offered to them should have been offered to Complainant. A review of the record corroborates the AJ's finding given that management testified that the comparators restrictions and therefore their ability to perform modified duties were entirely different. See ROI at 555-556. As such, we find that substantial record evidence supports the AJ's findings.

On appeal, Complainant does not submit any additional arguments or point to any particular information in the record to contest the AJ's findings.

Complainant did not otherwise show that the proffered reasons are not worthy of belief. As such, we find that Complainant did not establish that the Agency discriminated against her on the basis of race, disability, or in reprisal for prior EEO activity in either claim.

Harassment

To the extent that Complainant is alleging that she was subjected to a hostile work environment, we find under the standards set forth in Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993) that any claim of hostile work environment that includes such incidents must fail. See Enforcement Guidance on Harris v. Forklift Systems, Inc., EEOC Notice No. 915.002 (Mar. 8, 1994). A finding of a hostile work environment is precluded based on our finding that Complainant failed to establish that any of 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). As a result, the Commission finds that substantial evidence supports the AJ's finding that Complainant has not shown that she was subjected to discrimination or a discriminatory hostile work environment.

CONCLUSION

Upon careful review of the AJ's decision and the evidence of record, we conclude that substantial evidence of record supports the AJ's determination that Complainant has not proven discrimination by the Agency as alleged and **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 30, 2024

Date