



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

[REDACTED]
Tran M.,¹
Complainant,

v.

Pamela Bondi,
Attorney General,
Department of Justice
(Federal Bureau of Prisons),
Agency.

Appeal No. 2023002588

Hearing No. 550-2022-00154X

Agency No. BOP-2021-003796

DECISION

On January 20, 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 December 23, 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 GS-0007-6 Correctional Officer, at the Agency's Federal Correctional Institution in Dublin, California (FCI Dublin). Complainant began working for the Agency on June 7, 2020, and her employment was subject to successful completion of a probationary period.

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 October 8, 2021, Complainant filed a formal complaint alleging that the Agency discriminated against her on the bases of race (African American) and color (dark brown skin tone) when, from November 20, 2020, to June 15, 2021:

1. Two of her coworkers yelled, stared, and laughed at her after she was removed from her post; and
2. Management refused to meet with her, failed to take her request to be removed from a work area seriously, removed her from her post, emailed her in all caps, awarded her a lowered performance evaluation, and sent her several backdated performance evaluations all at one time.

Complainant alleged that the Unit Manager told inmates not to listen to Complainant and that the Unit Manager did not get along with any Black people or people of color. The Unit Manager denied telling inmates not to listen to Complainant, explaining that she provided Complainant guidance on the unit rules and policies. According to the Unit Manager, when Complainant directed inmates to keep their doors closed, she advised Complainant that the Warden's procedures allowed inmates to keep their cell doors open. One day, the Unit Manager allowed an inmate out of her cell to get dressed for a video visit after Complainant told the inmate she could not do so based on the Warden's procedure. Complainant stated that the Unit Manager expunged three incident reports she wrote. Complainant requested not to work with the Unit Manager and requested a threat assessment. A Captain spoke with Complainant, who said she did not feel unsafe around the Unit Manager but just did not like her. A Lieutenant (Lieutenant-1) also spoke to Complainant about her concerns working with the Unit Manager, and Complainant responded that the Captain had addressed the matter.

Complainant stated that Lieutenant-1 sent her an email about equipment use in all caps. Lieutenant-1 averred that, sometimes management sent out emails with text bolded, italicized, underlined, or in all caps to emphasize the email or the crucial parts of the message. According to Lieutenant-1, Complainant never told him she found the email offensive.

Complainant alleged that a Secretary yelled at her over the phone and called her a "rookie" in a demeaning manner. According to Complainant, she sent the Secretary an email, asking her to refrain from calling Complainant a rookie because her name was "Officer [Complainant's last name]." The Secretary responded, "You're right, probationary Officer [Complainant's last name]."

According to Complainant, she was moved from her post without explanation. Post assignments were based on quarterly assignments and/or probationary status, but management could reassign officers to meet institutional needs. Due to staff shortages during that time period, officers were reassigned on a daily basis. The Administrative Lieutenant (Lieutenant-2) prepared the monthly rotation schedule for probationary staff. According to Complainant, she should not have been treated as a probationary employee because of her experience. Lieutenant-1 stated that he told Complainant that probationary status was not the only reason that an officer would be reassigned. Complainant averred that, when she was removed from her post, the Secretary and a Senior Officer Specialist laughed at her.

Pursuant to Agency policy, probationary employees received formal progress reviews following the third, sixth, and ninth months of employment, but there was no requirement to send probationary employees a copy of the progress reviews. Lieutenant-2 met with Complainant after each quarter of her rating period to discuss her progress reviews but stated that, due to workload, she did not have the written progress reviews ready for Complainant's signature. On June 27, 2021, Lieutenant-2 sent Complainant a copy of her complete evaluation, including the three-month, six-month, and nine-month progress reviews and her annual rating of Satisfactory. Lieutenant-2 dated the progress reviews based on their verbal meetings for the corresponding rating period.

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. The AJ assigned to the case issued a notice that, based on a review of the record, the case may be appropriate for disposition pursuant to 29 C.F.R. § 1614.109(g). After both parties responded to the notice, the AJ issued a decision without a hearing in favor of the Agency.

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. (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*).

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, however, Complainant has failed to establish such a dispute.

Regarding the performance evaluation, Lieutenant-2 denied lowering Complainant’s evaluation, stating that she rated Complainant Satisfactory for her first evaluation, that she provided suggested improved communication, and that the rating was consistent with the progress reviews. Complainant raised the issue of Lieutenant-2 providing her with backdated quarterly progress reviews for signature all at once, but she did not assert that the content of the written progress reviews differed from what was discussed during the progress review meetings. Moreover, while Complainant contended that she deserved a higher rating based on her performance, Complainant did not identify any comparators who were treated more favorably than she was or any other evidence of pretext for discrimination based on race or color.

As the AJ found, even assuming Complainant’s version of events to be true for the purposes of summary judgment, Complainant offered no evidence the alleged discriminatory harassment occurred because of her race or color. Complainant did not show that she was removed from her post based on her race or color rather than based on staffing needs. While Complainant objected to being called a rookie and the allegedly demeaning way the Secretary used the term, she did not allege that a similarly situated comparator of a different race or color was treated more favorably than she was. Similarly, Complainant stated that the email in all caps from Lieutenant-1 was bad email etiquette, as though he was yelling. However, Complainant has not shown that the email was based on her race or color. Moreover, the alleged harassment was insufficiently severe or pervasive to constitute a hostile work environment.

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

Upon careful review of the AJ's decision and the evidence of record, as well as the parties' arguments on appeal, including those not specifically addressed herein, 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.

Accordingly, we AFFIRM the Agency's final order implementing 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

March 6, 2025
Date