



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

[REDACTED]  
Harrison S.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2023002756

Hearing No. 430-2022-00045X

Agency No. 1C-271-0012-21

**DECISION**

On March 30, 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 March 14, 2023 final order concerning his 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 following reasons, the Commission AFFIRMS the Agency's final order.

During the relevant time, Complainant worked as a Postal Support Employee (PSE) Mail Processing Clerk at the Agency's Greensboro (Processing and Distribution Center (P&DC) in Greensboro, North Carolina.

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<sup>1</sup> 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.

Complainant was an employee from November 2020 until March 27, 2021, when he voluntarily resigned.

On July 10, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against him based on race (African-American), disability (diabetes), and age (68) when:

on March 27, 2021, Complainant was moved to a more physically demanding work location and felt forced to resign when management would not move him back to the "3X letter casing" section.

Complainant alleges management officials knew of his medical condition (diabetes) from his employment application. A review of Complainant's employment application for his position did not reveal that he had any medical conditions or needed any accommodations. Complainant never requested an accommodation due to his medical condition. Management officials testified, moreover, that they were unaware of Complainant's medical condition.

A management official testified that during the relevant time period, over 100 non-career employees at the Greensboro P&DC were converted to career employees, which allowed them to have permanent job assignments. Due to this conversion and workload management, Complainant was assigned to the Automation section. Manager of Distribution Operations (MDO) stated non-career employees do not receive preferential assignments over career employees, and Complainant's assignment was due to a deficit of employees in Automation. A few days after being reassigned to the Automation section, Complainant voluntarily resigned from his employment with USPS.

As a part of the investigation, Complainant failed to identify any similarly situated employees outside of his protected class (age, race or disability) who were treated more favorably with regard to work location, work assignment, or with regard to constructive discharge. Complainant merely reiterated he was the oldest employee in the Automation or letter casing.

After an investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. After the parties engaged in discovery, the Agency submitted a motion for summary judgment, addressing material facts, issues, and legal arguments.

Complainant did not file a response to the Agency's motion. The assigned AJ granted the Agency's May 16, 2022, motion for a decision without a hearing and issued a decision without a hearing on March 7, 2023. The AJ's decision incorporated by reference the Agency's motion in the decision and found Complainant was not subjected to discrimination based on race, disability, or age as alleged.

The Agency subsequently issued a final order adopting the AJ's finding of no discrimination. The instant appeal followed.

On appeal, Complainant argues he was discriminated against based on his age and that he was "too old to work in [a specific workgroup]." In opposition to the appeal, the Agency argues Complainant failed to establish a prima facie case of race, age, or disability discrimination, because he did not identify any similarly situated individuals who were treated more favorably.

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*).

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.

The record establishes that Complainant voluntarily resigned from his employment with the Agency, he was not forced or constructively discharged. A review of Complainant's application for employment as well as statements by management officials support the determination that the Agency was not aware of Complainant's medical condition. Complainant never alleged, and the record does not support, that he requested an accommodation for his medical condition.

Complainant did not identify any similarly situated individuals who were treated more favorably in order to establish a prima facie case of age, disability or race discrimination. Rather, the record reflects that Complainant was one of over 100 employees who were reclassified from non-career to career and thereafter, shuffled around in job assignments based on the workload needs of the facility. Complainant offered no evidence beyond his unsupported beliefs to support his assertions of discriminatory animus and the Commission has repeatedly stated that mere assertions or conjecture that an agency's explanation is a pretext for intentional discrimination is insufficient because subjective belief, however genuine, does not constitute evidence of pretext. See *Jed T. v. Dep't of Homeland Sec'y*, EEOC Appeal No. 2022000805 (May 18, 2023); *Juliet B. v. U.S. Postal Serv.*, EEOC Appeal No. 0120182519 (Oct. 8, 2019). Moreover, an agency has broad discretion to set policies and carry out personnel decisions and should not be second-guessed by the reviewing authority absent evidence of unlawful motivation. See *Tex. Dep't of Cmty. Affs. v. Burdine*, 450 U.S. 248, 259 (1981); *Vanek v. Dep't of the Treasury*, EEOC Request No. 05940906 (Jan 16, 1997). Accordingly, the Commission concurs with the AJ's ultimate finding that Complainant did not establish that his reassignment or resignation was based on his age, disability or race.

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, we conclude that the AJ correctly found no discrimination.

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:



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Carlton M. Hadden, Director  
Office of Federal Operations

February 26, 2025  
Date