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

[redacted]
Allen M.,[1]
Complainant,

v.

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

Appeal No. 2023002851

Agency No. 6U-260-0003-22

DECISION

On April 13, 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 April 5, 2023, final decision concerning his 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 the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. The Commission AFFIRMS the Agency's final decision finding no discrimination.

ISSUES PRESENTED

Whether the Agency's decision properly determined that Complainant failed to establish discrimination as alleged regarding his terms and conditions of employment.

[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 Secretary at the Agency's facility in Grand Rapids, Michigan.

On September 2, 2022, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (Bi-racial), national origin (Hispanic), sex (male), color (Brown), and age (45) when:

1. In April 2022, Complainant was forced to take a detail in the Customer Relations Department;

2. Since April 2022, and continuing, he had been forced to work in a small, unsafe cubicle;

3. In April 2022, he was instructed to read nine safety talks and threatened with discipline if he refused to do so;

4. In April 2022, he was informed that he was expected to adhere to the department dress code;

5. In April 2022, he was instructed to change his email signature;

6. On July 8, 2022, his manager threatened to charge Complainant with LWOP or AWOL for leaving early on July 8, 2022, without informing her that he was leaving;

7. On July 16, 2022, he was awarded the secretary position, but he was not notified until August 1, 2022;

8. On or about July 25, 2022, Complainant was informed that his documentation did not qualify for Sick Leave-Dependent Care for his absence, therefore he would be charged LWOP or AWOL;

9. In August 2022, he was singled out when he was not allowed to keep a box used for recycling paper under his desk unlike other employees;

10. On October 3, 2022, he was issued a Letter of Warning; and

11. On an unspecified date, he was given an investigative interview concerning an incident that occurred on October 14, 2022.

We note here that on November 3, 2022, the Agency issued a Notice of Partial Acceptance/Partial Dismissal decision regarding the instant complaint. Therein, the Agency determined that claim 1 is the subject of a prior complaint filed by Complainant having Agency Case No. 4J-493-0065-22. The Agency dismissed the matter in accordance with EEOC Regulation 29 C.F.R. § 1614.107(a)(1), which states that the Agency shall dismiss a complaint that fails to state a claim under 29 C.F.R. § 1614.103 or §1614.106(a). Following its dismissal of claim 1, the Agency accepted the remaining claims for investigation. We concur with the Agency's determination regarding claim 1 and find that it was properly dismissed.

At the conclusion of the 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). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

CONTENTIONS ON APPEAL

Neither party submitted a brief in support of or in opposition to the instant appeal.

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). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 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

Harassment – Claims 2, 3, 4, 5, 6, 7 and 9

To establish a claim of harassment complainant must show that: (1) he is a member of the statutorily protected class; (2) he was subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on the statutorily protected class; and (4) the harassment affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment. Humphrey v. U.S. Postal Service, EEOC Appeal No. 01965238 (October 16, 1998); 29 C.F.R. § 1604.11. The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the victim's circumstances. Enforcement Guidance on Harris v. Forklift Systems. Inc., EEOC Notice No. 915.002 (March 8, 1994). Further, the incidents must have been "sufficiently severe and pervasive to alter the conditions of complainant's employment and create an abusive working environment." Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993); see also Oncale v. Sundowner Offshore Services. Inc., 23 U.S. 75 (1998).

In other words, to prove his harassment claim, Complainant must establish that he was subjected to conduct that was either so severe and pervasive that a "reasonable person" in Complainant's position would have found the conduct to be hostile or abusive. Complainant must also prove that the conduct was taken because of a protected basis. Only if Complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself.

In the instant matter, Complainant alleges that the Agency created a hostile work environment concerning several work-related incidents. Specifically, Complainant alleges that the Agency instructed him to read ten safety talks, informed him that he was to adhere to the department dress code, instructed him to change his email signature, threatened to charge him AWOL or LWOP for leaving without authorization, and not told right away that he had been awarded the secretary position.

Regarding claims 2, 3, 4, 5, 6, 7, and 9 referenced above, the record does not establish that Complainant was harmed or subjected to any adverse action with respect to the terms, conditions and privileges of his employment. Complainant alleges in claim 2 that he was forced to work in a small, unsafe cubicle.

Complainant's manager provided affidavit testimony that when Complainant began working in her department, there was only one cubicle available outside her office. Complainant complained that the cubicle was unsafe and that his manager's door swung close to him when she opened her office door. The record indicates that the Agency's Safety Manager, Safety Specialist and the HR Manager all inspected the location and size of Complainant's cubicle in response to his concerns. The Agency officials understood that the door opening toward Complainant in his cubicle could be frustrating , but found no safety concerns. The record further indicates that despite the fact that Complainant's cubicle's size and location were found to be appropriate and did not present a safety hazard, the Agency moved Complainant's cubicle to a former storage area which placed him away from his Manager's office door.

In claims 3 and 4, Complainant claims that he was threatened with discipline if he refused to read the safety talks and informed that he was expected to adhere to the department's dress code. However, there is no evidence of record indicating that Complainant received any discipline regarding the safety talks, or that he was singled out and treated differently than other Agency employees with respect to the dress code. The record indicates the Agency's Employee and Labor Relations Manual established a dress code applicable to all employees including Complainant. Regarding the safety talks, the record indicates that as a result of the COVID-19 pandemic, and the requirement to be six feet apart, safety tasks were no longer held in person. Instead, the safety talks were emailed to individual employees for review. In claim 5, Complainant's manager instructed him to change his email signature. The record shows that Complainant's email signature identified him as an assistant rather than a secretary. Complainant's manager had instructed him on the proper title of his position and indicated that an assistant was not designated as a position under her supervision. In claim 6, there is no evidence that Complainant was disciplined or charged AWOL or LWOP for his absence on July 8, 2022. In claim 7, Complainant fails to demonstrate that the delay in hearing about being awarded the secretary position had any effect on his position, pay, benefits or any other aspect of Complainant's employment. Regarding claim 9, Complainant alleges that he was not permitted to keep a box used for recycling materials under his desk like other employees. Complainant's Manger provided affidavit testimony that she advised Complainant that his workspace was getting cluttered, and the box holding his recycling materials was sticking out in the walkway thus creating a safety hazard for employees who waked through the area. The record indicates that there were multiple blue recycling bins available for Complainant to use which would not create an unsafe workspace for Complainant and other employees.

The Commission has held that routine work assignments, instructions, and admonishments do not rise to the level or harassment because they are common workplace occurrences. See Gray v. Postal Serv., EEOC Appeal No. 0120091101 (May 13, 2010). Unless it is reasonably established that the common workplace occurrence was somehow abusive or offensive, and that it was taken in order to harass Complainant on the basis of his protected class, we do not find such common workplace occurrences sufficiently severe or pervasive to rise to the level of a hostile work environment or harassment as Complainant alleges. See Complainant v. Dep't. of Veterans Affairs, EEOC Appeal No. 0120130465 (September 12, 2014). There is no evidence that the work-related incidents identified in claims 3, 4, 5, 6 and 7 were abusive or offensive, or taken in order to harass Complainant on the basis of a protected class.

Here, the image which emerges from considering the totality of the evidence of record is that there were conflicts and tensions between Complainant and his Manager that left Complainant feeling aggrieved. However, the statutes under the Commission's jurisdiction do not protect an employee against all adverse treatment. See Bouche v. U.S. Postal Serv., EEOC Appeal No. 01990799 (March 13, 2002). See also Jackson v. City of Kileen, 64 F.2d 1181, 1186 (5th Cir. 1981)(Title VII is not a shield against harsh treatment at the workplace; it protects only in instances of harshness, disparately distributed. The essence of the action is, of course discrimination.") The employment discrimination statutes prohibit only harassing behavior that is directed at an employee because of their protected bases. Here, the preponderance of the evidence does not establish that Complainant's Manager was motivated by discriminatory animus. Complainant's Manager provided credible, non-discriminatory reasons for issuing Complainant instructions regarding requesting leave and how to do his job. Moreover, there was no evidence of a discriminatory motivation, other than Complainant's bare speculation regarding any of the actions alleged about his Manager and other Agency officials. Complainant's claim of harassment is precluded based on our findings that he failed to establish that any of the disputed actions were motivated by Complainant's race, color, sex or age.

Disparate Treatment – Claims 8 and 10

A claim of disparate treatment is examined under the three-part analysis first enunciated in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973). For complainant to prevail, he must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. See McDonnell Douglas, 411 U.S. at 802;

Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978). The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. See Texas Department of Community 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 a pretext for discrimination. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 143 (2000); St. Mary's Honor Center v. Hicks, 509 U.S. 502, 519 (1993); Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981).

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); Hernandez v. Department of Transportation, EEOC Request No. 05900159 (June 28, 1990); Peterson v. Department of Health and Human Services, EEOC Request No. 05900467 (June 8, 1990); Washington v. Department of the Navy, EEOC Petition No. 03900056 (May 31, 1990).

In claim 8, Complainant failed to provide the Agency with the proper documentation to support his request for Sick-Leave Dependent Care. Complainant alleges that on July 17, 2022, he was informed by his ex-wife that she had contracted COVID-19 and that his son had been exposed to the virus. Complainant submitted a Sick-Leave Dependent request for 40 hours of leave covering the period July 18, 2022 through July 22, 2022. The Agency's Occupational Health Nurse Administrator informed Complainant that he would need to provide documentation that his son was symptomatic or was exposed to a caretaker who was positive for COVID-19. When Complainant failed to provide the required documentation in support of his request for Sick-Leave Dependent Care, his leave account was charged accordingly. As a result of Complainant's failure to provide proper documentation, he was issued a Letter of Warning as identified in claim 10, for his failure to follow instructions.

In claim 10, Complainant was given an investigative interview regarding his involvement with an Agency official on October 14, 2022. The record, including witness statements, indicates that Complainant became combative and rude on October 14, 2022, when the Agency's Occupational Health Nurse informed Complainant that he was required to have medical clearance to

return to work following an extended sick leave. No discipline or corrective action was issued as a result of the investigative interview.

Here, Agency officials explained that due to Complainant's failure to provide proper documentation and failure to follow instructions, his leave request for Sick-Leave Dependent Care was denied. The record further indicates that as a result of Complainant's combative behavior with another employee, his Manager initiated an investigative interview.

Complainant now bears the burden of establishing that the Agency's stated reasons were a pretext masking discrimination. Shapiro v. Soc. Sec. Admin., EEOC Request No. 05960403 (Dec. 6, 1996). Among other things, Complainant can do so by showing that the Agency's proffered explanation is unworthy of credence. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 256 (1981). Complainant failed to produce even circumstantial evidence of a connection between the Agency's actions and his race, national origin, sex, color or age, such as evidence of similarly situated comparators outside his protected classes who were treated more favorably under similar circumstances. Complainant has provided no evidence to suggest that the Agency's articulated reasons are false or unworthy of belief. As a result, the Commission finds that Complainant has not established that he was subjected to discrimination as alleged.

Upon careful review of the Agency's decision and the evidence of record, we conclude that the Agency correctly determined that the preponderance of the evidence did not establish that Complainant was subjected to discrimination 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 decision finding no discrimination.

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 5, 2025
Date