



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

[REDACTED]  
Kieth L.,<sup>1</sup>  
Complainant,

v.

Merrick B. Garland,  
Attorney General,  
Department of Justice  
(Federal Bureau of Prisons),  
Agency.

Appeal No. 2023002915

Agency No. BOP-2022-000073

**DECISION**

On April 18, 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 17, 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. For the following reasons, the Commission AFFIRMS the Agency's final decision.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Lieutenant (LT) GS 11 at the Agency's facility in Atlanta, Georgia. On February 2, 2022, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (Caucasian) and sex (male) when on August 12, 2021, management issued Complainant a Management Directed Reassignment Letter to relocate to a location Complainant did not apply for, while non-White, females were promoted, reassigned to the Southeast Regional Office, or allowed to stay at the Atlanta facility. On October 1, 2021, management denied Complainant's request for reconsideration

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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.

According to the Senior Deputy Regional Director (SDR), the Agency decided to reassign 44 supervisors after significant security and operational concerns were identified at the Agency's Atlanta facility. ROI. at p. 84. SDR stated that Complainant was among 41 supervisors SDR met with and advised of the reassignments. Id. SDR stated that members, both male and female, as well as Black and White employees were among those reassigned. Id. SDR stated that the Southeast regional management decided not to reassign supervisors who had held their positions for less than a year. Id. at p. 86.

As stated by SDR and in Complainant's position description, the position contained a "mobility statement" which provided that the Agency "frequently requires geographic relocation of supervisory and managerial personnel to meet the legitimate needs to the [Agency] and to better utilize the skills of available staff." Id. at p. 84-5, 103-10. A list of all employees who requested reconsideration for the reassignment of SDR shows that SDR denied all the requests. Id. at p. 119. Complainant, after the denial on his request for reconsideration, applied for and accepted a GS 8 position within the Atlanta facility. Id. at p. 65. Complainant stated that he felt forced into accepting a demotion as his family was based in the Atlanta area. Id. at p. 59, 73.

The Management Directed Reassignment letter dated August 12, 2021, notified Complainant that, as a supervisor, he was subjected to reassignment based on Agency needs. Id. at p. 116. In the letter, SDR stated that between October 1, 2021, and January 2, 2022, the Agency would transfer Complainant to a LT GS 11 position at another facility. Id. The list of 44 employees that received the reassignment letter, including Complainant, contained 33 males, 11 females. Id. at p. 117. These numbers included 24 Black employees, 4 White employees, and 12 that did not indicate their race.<sup>2</sup> Id.

Complainant admits that management reassigned supervisors, both male and female, and of a variety of races, including Black, and White. Id. at p. 62.

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. In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b), which concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged. Complainant then filed 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

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<sup>2</sup> An additional 4 employees identified their race as "Hispanic."

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

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 Constr. Corp. v. Waters, 438 U.S. 567 (1978). The burden then shifts to the Agency to articulate a legitimate, non-discriminatory reason for its actions. See Tex. Dep’t of Cmty. Affs. v. Burdine, 450 U.S. 248, 253 (1981). Once the Agency has met its burden, the complainant bears the ultimate responsibility to persuade the fact finder by a preponderance of the evidence that the agency acted on the basis of a prohibited reason. See St. Mary’s Honor Ctr. v. Hicks, 509 U.S. 502 (1993).

A complainant may establish a *prima facie* case of discrimination by demonstrating: (1) membership in a protected group; (2) that complainant was adversely affected by management’s personnel decision or action; and (3) that complainant was treated less favorably than similarly situated individuals outside of complainant’s protected group(s). See e.g., Ricardo K. v. Dep’t of Veterans Affairs, EEOC Decision No. 2019004809, \*9 (Dec. 10, 2020) (complainant failed to establish a *prima facie* case of discrimination because complainant has not provided any evidence or facts that give rise to an inference of unlawful discrimination based on complainant’s protected classes); Bill A. v. Dep’t of Army, EEOC Appeal No. 120131989, \*21-22 (Oct. 26, 2016). Alternatively, a complainant may establish a *prima facie* case by establishing the first two elements above and that there is some other evidentiary link between membership in the protected class and the adverse employment action. Complainant v. Dep’t of Navy, EEOC Decision No. 0120113118, \*4 (Aug. 14, 2014) (*prima facie* case includes comparator element or it “must present other evidence that supports an inference that the agency was motivated by unlawful discrimination.”) (citing Alonzo v. U.S. Postal Serv., EEOC Appeal No. 0720070032 (Feb. 4, 2008)).

In the instant case, Complainant fails to establish a *prima facie* case. While Complainant is a member of a protected class and was subject to an adverse action, by Complainant’s own admission, management reassigned members both inside and outside of Complainant’s protected classes. Therefore, Complainant did not prove that he was treated less favorably than members outside of his protected class, nor did he establish an evidentiary link between the adverse action and Complainant’s membership in a protected class.

Assuming, arguendo, that Complainant established a prima facie case of disparate treatment, we find that the Agency articulated legitimate, nondiscriminatory reasons for its actions. SDR stated that due to significant security and operational issues at the Atlanta facility, the regional office decided to reassign 44 supervisors to various Agency facilities throughout the country.

Additionally, SDR stated that he denied Complainant's request for reassignment, along with many others, because Complainant failed to present evidence that altered the Agency's need for new management in the Atlanta facility.

At all times, the ultimate burden remains with Complainant to demonstrate by a preponderance of the evidence that the Agency's reasons were not the real reasons and that the Agency acted on the basis of discriminatory animus. Complainant failed to carry this burden and did not demonstrate pretext. As stated above, Complainant admitted that management reassigned employees of various races and both male and female. Complainant provided no additional evidence to show that managements actions were pretextual. Based on the foregoing, we conclude that Complainant did not prevail on the merits of his complaint.

### CONCLUSION

Based on a thorough review of the record, we AFFIRM the Agency's final 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

January 22, 2024  
Date