



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Gala B.,¹
Complainant,

v.

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

Appeal No. 2023003003

Agency No. 1C-331-0431-22

DECISION

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 14, 2023, final decision 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, we AFFIRM the Agency's final decision.

ISSUES PRESENTED

The issues presented are whether: (1) the Agency properly issued a final decision after Complainant failed to elect either a hearing or a final decision; and (2) the Agency properly found that Complainant was not subjected to discrimination based on race (African American) and sex (female) when on August 4, 2022, she was put on Emergency Placement (EP) and issued a Notice of Removal on August 15, 2022.

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 Parcel Post Distribution Machine Operator, PS-06, at the Agency's Jacksonville Network and Distribution Center in Jacksonville, Florida. Complainant's supervisor was the Acting Distribution Operations Manager See Report of Investigation (ROI) at 71, 104-105.

On November 18, 2022, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (African American) and sex (female) when:

1. On August 4, 2022, she was put in Emergency Placement (EP); and
2. On August 15, 2022, she was issued a Notice of Removal.

The investigation into the complaint revealed the following pertinent details.

Claim 1

The Acting Distribution Operations Manager issued an EP memorandum to Complainant. The memorandum was written notice that Complainant was placed off duty (without pay) effective August 4, 2022, and would remain in that status until further notice for allegedly threatening another employee. The Acting Distribution Operations Manager cited Article 16.7 of the Collective Bargaining Agreement in support of his action. Article 16.7 provides:

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others.

ROI at 194.

During the EEO investigation, the Acting Distribution Operations Manager explained that on August 4, 2022, Complainant was found to have acted in an intimidating, threatening and aggressive manner towards Employee 1 on Postal property. ROI at 99.

Employee 1, who was an African American woman, reported that after she backed into a postal parking space, Employee 2 drove behind her and began honking his horn. As Employee 1 walked toward the facility, Employee 2, who was with Complainant, asked Employee 1 why she put on her brakes, and called her "a fat bitch." Employee 1 alleged that Employee 2 threatened to kick her ass and later remarked that Complainant would kick her ass while he watched. At which point Complainant chimed in and responded, "[y]eah, I'll beat your ass." Employee 1 called the police and reported to management that Complainant and Employee 2 threatened her.

The Acting Distribution Operations Manager reported that he could not allow Complainant to remain on duty while he conducted his investigation given the egregious nature of the allegation and the evidence available to him at that time. He believed that if retained on duty, Complainant could engage in similar conduct which posed a risk of harm to self or others. ROI at 151.

The Acting Operations Support Specialist (OSS) asserted that the Acting Distribution Operations Manager placed Complainant on EP in accordance with the Gulf Atlantic Postal District's Zero Tolerance Policy, which states that "USPS will not tolerate any acts or threats of violence in [the] workplace." The policy commits USPS leadership to providing a safe and secure work environment for all employees. ROI at 131, 208.

The record includes a Threat Assessment Team Guide, which provided guidance to Postal Service management officials in responding to and assessing the seriousness of violent and potentially violent situations. ROI at 220-269. The Agency's Threat Assessment Report about the incident identified Employee 1 as the victim of a creditable threat. ROI at 141-147. However, Complainant alleged that Employee 1 initiated the incident after driving erratically into the Postal parking lot.

According to Complainant, Employee 2 asked Employee 1 what was wrong with her and Employee 1 shouted and cussed at Complainant and Employee 2. Complainant asserted that Employee 1 "got with her friend [Employee 3]" in the parking lot and remarked to Complainant, "I don't fight, I shoot." Employee 1 pulled out her phone to call someone and Complainant replied, "I don't care who you call." Employee 1 said we will see. Complainant indicated that they entered the building and nothing else was said. An hour later the Acting Distribution Operations Manager and Acting OSS informed Complainant that she was placed on EP. ROI at 74, 111-114.

The Threat Assessment Report also included statements from several employees. According to Employee 3, she observed Employee 1 and Employee 2 name-calling, and she began walking with Employee 1. In a remark about Complainant and Employee 2, Employee 1 remarked, “[H]e is not going to control me like he does her.” Complainant responded, “[w]hat you said?” Employee 1 repeated her comment and Complainant declared “[y]ou got the wrong one, fat ass hole.” Employee 3 contended that there was a reference about fighting, but she was unclear about the statement. She alleged that Complainant said, “[s]ay less! You’ll get yo asshole beat, ol’e fat asshole.” ROI at 148.

Claim 2

Complainant disagreed with the removal decision since all the references in the removal notice pertained to alleged actions of Employee 2. Complainant averred that race must have been a factor because she was not allowed to tell her account, and the removal notice did not describe Employee 1’s behavior. Complainant admitted that she was accused of stating, “[y]eah, I will beat you ass.” Yet, management ignored Employee 1’s comment of “I don’t fight, I shoot” which was far more severe and substantiated by witness statements. ROI at 114 -117.

Complainant asserted that she never had disciplinary action taken against her and was not sure what steps to follow in the NOR. Specifically, Complainant did not receive notice of the investigative interview because management sent the scheduling letter via Express Mail without signature required. Complainant asserted that management should have sent the scheduling letter by Express Mail with a signature confirmation requirement or called her and relayed instructions by telephone to ensure she received timely notification. ROI at 115

The Acting OSS explained that he made the decision to issue the NOR because Complainant threatened bodily harm to Employee 1, in her comment “Yeah, I’ll beat your ass.” The issuance of the NOR carried out the Postal Service’s zero tolerance policy for violence and threats in the workplace. Likewise, the record supports management’s decision not to issue a NOR to Employee 1 because the Threat Assessment Report identified her as a victim. ROI at 142-147

Post Investigation

At the conclusion of the investigation, the Agency sent Complainant and her representative an email on February 13, 2023, containing instructions on how to access the USPS External Large File Sharing Site and download the eROI, and noted the secure site link for the eROI was available for 30 days. The Agency also notified Complainant and her representative by email of Complainant's right to request either a final decision or a hearing. After sending these emails, the Agency received notification from Microsoft Outlook noting that "Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server: [email addresses of Complainant and her representative]"

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), which concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged. The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant acknowledges that she received the Agency's final decision on April 19, 2023. However, Complainant argues that she never had the opportunity to request a hearing because the Agency failed to provide her with a copy of the ROI and permit her to elect a hearing. She requests a copy of the copy of the ROI and the opportunity to present her case at a hearing.

The Agency did not respond to Complainant's 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

Preliminary Matters

Complainant alleges that she did not receive the ROI and notice of her right to a hearing. Our review of the record shows that on February 13, 2023, the Agency notified Complainant and her representative of Complainant's right to request a final decision or a hearing and provided instructions to her on how to access the eROI. The record contains a statement: "Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server: [email addresses of Complainant and her representative]."

EEOC regulations provide that for Portal, email, and all other digital communications, receipt is deemed to occur when a document is accessed on the Portal or received via electronic means, or within five days of when a document is uploaded to the Portal or transmitted electronically, whichever occurs first. Further, 29 C.F.R. § 1614.604(c), which allows equitable tolling of time frames, will apply to all transmissions, digital or otherwise. We find that receipt is deemed to have occurred no later than five days after the email regarding the ROI was delivered. Complainant failed to request either a hearing or final decision. Therefore, the Agency issued a final decision based on the evidence developed during its investigation of the complaint, concluding no discrimination was established as alleged.

Disparate Treatment

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 a complainant to prevail, he or she 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. Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981).

In order to establish a prima facie case of discrimination based on race or age, a complainant must show: (1) she is a member of a protected group; (2) she was subjected to an adverse employment action; and (3) that she was treated less favorably than other similarly situated employees outside of their protected groups.

We note that, although a complainant bears the burden of establishing a “prima facie” case, Texas Dep’t of Cmty. Affairs v. Burdine, 450 U.S. 248, 252-53 (1981), the requirements are “minimal,” St. Mary’s Honor Ctr. v. Hicks, 509 U.S. 502, 506 (1993), and complainant’s burden is “not onerous.” Burdine, 450 U.S. at 253.

The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. Burdine, 450 U.S. at 253. 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. Hicks, 509 U.S. at 507.

At the onset, we find that Complainant failed to establish a prima facie case of discrimination based on sex and race, as she did not persuasively establish a causal nexus between her protected class and the adverse employment actions at issue.

Furthermore, with respect to Claim 1, we find that the Agency articulated a legitimate, nondiscriminatory reason for its action. Here, the probative record shows that the Acting Distribution Operations Manager decided to put Complainant on EP because of allegations of threats and the possibility that Complainant was injurious to self or others, in accordance with Zero Tolerance Policy and Article 16.7 of the Collective Bargaining Agreement.

In arguing pretext, Complainant asserted that management did not complete a thorough investigation or provide her an opportunity to tell her side of the story prior to placing her on EP.

While we acknowledge Complainant’s concerns, we are not persuaded by her argument. The EP procedures specify that an employee may be placed on EP immediately where the employee may be injurious to self or others. The record demonstrates that Complainant remarked, “[Y]eah, I’ll beat your ass” to Employee 1. Given this factor, we find that the Acting Distribution Operations Manager exercised reasonable discretion when he decided that Complainant should not remain in the workplace pending full investigation of the allegations.

As for Claim 2, we find that the Agency articulated a legitimate, nondiscriminatory reason for its action. Here, the Acting OSS explained that he made the decision to issue the NOR because Complainant threatened bodily harm to Employee 1, in her comment “Yeah, I’ll beat your ass.”

The issuance of the NOR carried out the mandate of the Postal Service's zero tolerance policy for violence and threats in the workplace. As stated above, the record supports management's decision not to issue a NOR to Employee 1, because the Threat Assessment Report identified her as a victim.

In an effort to show pretext, Complainant concedes that she and Employee 2 argued with Employee 1 but maintains that she did not threaten her with bodily harm. Complainant argues that the references made in the NOR concerned Employee 2's alleged conduct. Further, Complainant alleges that Employee 1's conduct was worse than hers because Employee 1 told her "I don't fight, I shoot." Yet, management failed to treat Complainant the same as Employee 1.

We are not persuaded by Complainant's arguments. As previously stated, the NOR describes aggressive and threatening conduct by both Complainant and Employee 2. We note that Employee 1's version of events was viewed by management as more credible because she promptly called police and informed management about the incident. Furthermore, the record shows that management found Employee 1's statement as more credible because Complainant failed to attend her investigative interview.

Even assuming that management treated Employee 1 more favorably, such treatment does not raise an inference of race or sex discrimination because Employee 1 was a member of the same protected classes as Complainant.

Without proof of a demonstrably discriminatory motive, the Commission will not generally second-guess the Agency's personnel decisions, such as disciplinary actions. See Chavez v. U.S. Postal Serv., EEOC Appeal No. 0120055246 (Jan. 5, 2007); see also Carson v. Bethlehem Steel Corp., 82 F.3d 157, 159 (7th Cir. 1982) (noting that "the question is not whether the employer made the best, or even a sound, business decision; it is whether the real reason [was discriminatory]").

We ultimately find no evidence that Complainant's protected classes were a factor. 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 based on discriminatory animus. Aside from conclusory statements, Complainant has not provided any evidence connecting the alleged incidents with her protected classes. Based on the record, we concur with the Agency's final decision that Complainant has not met her burden of proving that she was discriminated against 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 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:



Carlton M. Hadden, Director
Office of Federal Operations

March 6, 2025
Date