



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

[REDACTED]
Tammi C.,¹
Complainant,

v.

Deb A. Haaland,
Secretary,
Department of the Interior,
Agency.

Appeal No. 2023003014

Hearing No. 540-2023-00030X

Agency No. DOI-OS-22-0166

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's August 9, 2023, final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation 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

Whether Complainant was subjected to discrimination based on race (African American), sex (female) and in reprisal for her prior protected EEO activity when she was allegedly subjected to a variety of discriminatory actions.

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 an Information Technology (IT) Specialist at the Agency's Office of the Secretary (OS), Interior Business Center (IBC) in Denver, Colorado.

On May 9, 2022, Complainant filed an EEO complaint alleging that the Agency subjected her to a hostile work environment and discriminated against her on the bases of race (African American), sex (female), and in reprisal for protected EEO activity when:

1. On February 9 and March 31, 2021, the Branch Chief admonished Complainant for speaking with two division chiefs regarding two of her assigned projects without first speaking with him;
2. On March 30, 2021, and several other dates, the Branch Chief questioned her professional opinions and intents, and was unsupportive, defensive, and accusatory;
3. Since June 16, 2021, the Branch Chief reduced projects that Complainant supported and managed in the past to one;
4. On September 27, 2021 and January 30, 2022, the Branch Chief criticized Complainant's minor errors publicly and/or privately;
5. On November 28, 2021, and several other dates, the Branch Chief overly scrutinized Complainant's work, required excessive and unnecessary documentation, and sought feedback from a co-worker to validate Complainant's abilities to complete assignments;
6. On December 7, 2021, the Deputy Associate Director for Human Resources Directorate (the Deputy Associate Director) denied Complainant's request to modify her FY 2021 Employee Appraisal Performance Plan (EPAP) rating from "Fully Successful" to "Exceeds Expectations"; and

7. On May 16, 2022, the Branch Chief issued Complainant a negative Fiscal Year (FY) 2022 mid-year performance progress review.²

The investigation into the complaint revealed that Complainant was directly supervised by the Branch Chief. The Deputy Associate Director served as Complainant third level supervisor. See Report of Investigation (ROI) at 6 and 184. The Branch Chief believed Complainant identified as African American and female. The Branch Chief denied having any knowledge of Complainant's previous EEO activity and stated that he only became aware of the instant EEO complaint on February 17, 2022. ROI at 212. The Deputy Associate Director believed that Complainant was African American and female. He stated that he was not aware of her prior EEO activity, and only became aware of the instant activity when contacted for the investigation on August 19, 2022. ROI at 365.

Claims 1, 2, 4, and 5

Complainant asserted that the Branch Chief challenged her continuously, was very controlling, manipulative, and frequently displayed microaggressions against her. She asserted that on various occasions, the Branch Chief would treat her unnecessarily harsh. For example, on February 1, 2021, the Branch Chief admonished her for contacting two outside division chiefs about a project without first contacting him. Complainant asserted that the Branch Chief made it seem she was undermining his authority and trying to embarrass him. In another example, Complainant asserted that on March 30, 2021, the Branch Chief questioned, in a rhetorical manner, why he should be involved in a situation when Complainant deferred to his expertise. ROI at 9-14.

Complainant also asserted that the Branch Chief was overly critical of her work and would both privately and publicly criticize her. For example, on September 27, 2021, Complainant noted that there was a Quicktime timesheet discrepancy, and instead of treating it as a minor incident, the Branch Chief seemed to over analyze and be overly critical of the incident. Complainant also alleged that on January 27, 2022, the Branch Chief disagreed with her recommendation about a project schedule and cut her off while she was speaking. In another incident on January 30, 2022, during an informal performance review, Complainant asserted that the Branch Chief put an unnecessary amount of weight on minor errors that she did not believe should have a significant impact on her performance review. ROI at 9-14.

² Claim 7 was based on retaliation only.

Complainant added that the Branch Chief required excessive and unnecessary documentation of her work to prove that she knew how to do her job properly. She stated that this excessive documentation created a lot of stress for her, and she felt that it was done simply to create busy work for her. For example, on November 28, 2021, the Branch Chief requested more context when discussing a past project. Complainant also alleged that the Branch Chief questioned a coworker as to Complainant's ability to complete assignments. She stated that this level of questioning did nothing but defame her character and create conflict at work. Complainant asserted that in general, the Branch Chief constantly undermined her contributions, and expertise. ROI at 9-14.

The Branch Chief, however, denied being overly critical of Complainant, challenging her expertise, or ignoring her recommendations. Regarding Complainant's contacts with the two division chiefs, the Branch Chief denied admonishing Complainant. However, he asserted that it was not appropriate as she should have discussed any concerns with him prior to seeking discussions with branch chiefs outside of their division. ROI at 12-13.

Regarding the March 30, 2021, incident, the Branch Chief acknowledged asking Complainant why she thought that he would have certain information. He explained that Complainant had a history of expecting him to provide technical answers to questions that she should have been able to answer herself given her expertise and many years of experience in the division. ROI at 218.

The Branch Chief also acknowledged that he asked another employee regarding a task that Complainant seemed to be slow at completing. He felt he had to follow up with other team members for status updates because Complainant often failed to update him or include him on email chain updates. Regarding the time sheet issue, he asserted he was merely following up on the matter and nothing more. ROI at 224-25.

Regarding the January 27, 2022, incident, the Branch Chief explained that he disagreed with Complainant regarding a project schedule. He stated that after Complainant argued her perspective, he asked her to send him an email containing her points for his further consideration. The Branch Chief addressed Complainant's email, and ultimately decided not to proceed with her approach. ROI at 221-226.

Claim 3

Complainant stated that over the years, the Branch Chief reduced the number of projects that she supported to just one web-based application. She identified two applications that were decommissioned in February and March 2022. ROI at 194.

The Branch Chief replied that while he did not reduce Complainant's projects, Complainant's responsibilities diminished over the years as the applications she managed shut down due to technological changes and mission priorities. The Branch Chief explained that two applications were decommissioned prior to him assuming the chief position, and two others were discontinued due to the obsolescence of the code utilized, which had presented a security threat. He noted that on August 31, 2021, he sent Complainant an email acknowledging that several of her applications were shutting down and noting that this would be a good opportunity for her to take on new assignments. ROI at 227-28.

Claim 6

Complainant received a Fully Successful on her performance appraisal for Fiscal Year (FY) 2021. Complainant disagreed with the Branch Chief's assessment. She noted that in the past, he had provided higher ratings, and that this was her lowest one yet. Due to the lower score, she noted that she did not obtain a performance-based cash award. She felt that the Branch Chief had not properly advised her that her work had declined through the year to warrant a Fully Successful. According to Complainant, she requested that the Branch Chief reconsider the rating, but he declined. Complainant then elevated her request to the Deputy Associate Director. The Deputy Associate Director also denied her request on December 3, 2021, stating that the rating was justified. ROI at 7-9.

While Complainant believed that the Branch Chief issued her the lower rating in retaliation for her voicing opinions about him, the Branch Chief explained that he provided extensive feedback to Complainant regarding areas where Complainant could improve, such as timeliness, attention to detail, completeness, and taking appropriate initiative. The Deputy Associate Director added that he denied Complainant's request because Complainant, aside from complaining that the Branch Chief did not understand the technical aspects of her job, failed to provide any materials to demonstrate why she deserved a higher rating. ROI at 8-9.

Claim 7

Complainant alleged that during a mid-year performance review meeting, the Branch Chief asked why she expected to receive higher than a 3 out of 5 performance rating when her work needed so many revisions. Complainant believed her work only needed minor edits, which did not significantly change the final product or outcome. Complainant asserted that the Branch Chief should have provided her with a better mid-year review to ensure that she could receive higher ratings at the end of the performance year. Complainant asserted that the Branch Chief did not understand her duties on a technical level and scored her performance along administrative lines rather than on mission critical outcomes. Complainant also believed that her mid-term review was unsatisfactory based on her participation in a workgroup that addressed management issues in the Federal Employee Viewpoint Survey. ROI at 196.

The Branch Chief, however, explained that during Complainant's mid-year review on May 16, 2022, he acknowledged Complainant's areas of good performance and provided her with constructive feedback on opportunities for improvement, including in areas such as timeliness, attention to detail, and maintenance of the JTrac System. The Branch Chief noted that Complainant was, at times, careless in updating the JTrac System, which was the branch's change management system, and one of the critical elements in her performance plan. He also noted that he considered the unsolicited input from team members who made comments on Complainant's work as well. During the meeting, the Branch Chief made it clear that Complainant met, but just did not exceed, expectations in her critical elements. ROI at 230-31.

Post Investigation

At the conclusion of the investigation, the Agency provided Complainant with a copy of the ROI and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing. The AJ subsequently issued an Acknowledgement Order on November 22, 2022, ordering the parties to submit their respective Preliminary Case Information (PCI) filings no later than 15 days from the date of the order. The Agency timely filed its PCI, but Complainant failed to do so.

On January 12, 2023, the AJ issued an order scheduling the initial teleconference call and ordered the parties to appear on January 31, 2023, to discuss the case. The AJ warned them that they could be subject to sanctions if they failed to appear.

After Complainant failed to appear, the AJ issued an Order to Show Cause to Complainant as to why she should not be sanctioned for failing to appear at the Initial Teleconference call. The AJ provided Complainant until February 10, 2023, to respond.

On February 15, 2023, the AJ issued an Order of Dismissal of Hearing Request (Dismissal) pursuant to 29 C.F.R. § 1614.109(b) & (f)(3). The AJ noted that the Dismissal was sent to Complainant's email address on file and uploaded to the FedSEP Portal. The AJ stated that as of the date of the Dismissal, Complainant still had not responded to the Show Cause Order. As a result of failing to appear at the scheduled teleconference, and her failure to respond to the Show Cause Order, the AJ dismissed Complainant's hearing request as a sanction, and remanded the complaint to the Agency for issuance of a final decision pursuant to 29 C.F.R. § 1614.110(b). In dismissing the complaint, the AJ noted that she also took into consideration Complainant's non-compliance when she failed to file a PCI as ordered.

On February 28, 2023, Complainant contacted the Agency representative about the missed meeting. She questioned why the notices were sent to her personal, instead of her government email, which she had used during the EEO process. On March 28, 2023, the Agency issued a statement that it would implement the AJ's dismissal.

On April 21, 2023, Complainant filed the instant appeal. On June 26, 2023, the Agency moved to dismiss Complainant's appeal as premature.³

On August 9, 2023, the Agency issued its final decision, which concluded that Complainant failed to prove that the Agency subjected her to a hostile work environment or discrimination as alleged. The instant appeal followed.

CONTENTIONS ON APPEAL

Complainant's Appeal

In her appellate brief, submitted prior to the Agency's final decision, Complainant asserts that the dismissal of her hearing request should be reversed and her hearing reinstated because she did not intentionally defy the AJ's Orders.

³ While we note that the Complainant prematurely filed her appeal, we find that it is now ripe for adjudication given the Agency's issuance of its final decision.

Complainant believes the dismissal of her hearing request as a sanction is too severe. Complainant asserts that during the month of January 2023, she was experiencing illness from a serious medical condition, out of the country, and had no access to the internet.

Complainant does not address the merits of her case, but submitted various exhibits to support her assertions that she was too incapacitated in January 2023 to respond to the AJ. She provides an email dated January 6, 2023, sent to management to request sick leave that day. She submits ticketing information demonstrating that she was out of the country between January 15 and 20, 2023. Lastly, she submits an email noting that she would be in surgery sometime the last week of January 2023. Complainant does not address her failure to comply with the filing of the PCI.

In addition, Complainant requests sanctions against the Agency for failing to timely issue the final decision. Specifically, Complainant requests that the Commission should not review the Agency's appellate response to her appeal and should reinstate her hearing request.

In response, the Agency argues that Complainant failed to demonstrate that she was prejudiced by the Agency's delay in issuing its final decision. Additionally, the Agency asserts that the delay was due to lack of resources, staffing, and the multiple review processes within its office for final decisions. The Agency cites to relevant Commission cases where the Commission has declined to issue sanctions against various agencies for nearly identical circumstances. As a result, the Agency respectfully requests that the Commission deny the Complainant's request for sanctions.

Regarding the AJ's dismissal of the hearing request, the Agency asserts that it was appropriate given the circumstances. The Agency notes that Complainant failed to submit a PCI report, failed to attend the teleconference, and failed to respond to the AJ's Order to Show Cause. The Agency argues that it was prejudiced by Complainant's non-compliance in her case, as it expended time and resources to prepare a defense for Complainant's case. Additionally, the Agency argues that Complainant's failure to comply severely compromises the integrity of the EEO process. Given Complainant's repeated failures, the Agency argues that the AJ did not abuse her discretion in dismissing the hearing request.

Regarding the merits of the complaint, the Agency essentially reiterates its arguments presented in its final decision and requests that the Commission affirm its decision finding no discrimination, retaliation, or harassment.

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

The AJ's Dismissal of Hearing Request as a Sanction

The Commission's regulations afford broad authority for the conduct of hearings by Administrative Judges. See 29 C.F.R. § 1614.109 et seq.; Rountree v. Dep't of Treas., EEOC Appeal No. 07A00015 (July 17, 2001). When a complainant or agency fails to comply with an AJ's order, an AJ may take action against the noncomplying party pursuant to 29 C.F.R. § 1614.109(f)(3), up to and including issuing a decision in favor of the opposing party. See 29 C.F.R. § 1614.109(f)(3)(iv). Sanctions must be tailored in each case to appropriately address the underlying conduct of the party being sanctioned. See Hale v. Dep't of Justice, EEOC Appeal No. 01A03341 (Dec. 8, 2000). A sanction may be used to deter the noncomplying party from similar conduct in the future, as well as to equitably remedy the opposing party. Id.

Specifically, our regulations provide that where a party, *inter alia*, fails to respond to an order of an AJ, the AJ may, as appropriate, take action against the non-complying party pursuant to 29 C.F.R. § 1614.109(f)(3), *i.e.*, an AJ may: (1) draw an adverse inference that the requested information would have reflected unfavorably on the non-complying party; (2) consider the requested information to be established in favor of the opposing party; (3) exclude other evidence offered by the non-complying party; (4) issue a decision fully or partially in favor of the opposing party; or (5) take other action deemed appropriate, *e.g.*, payment of costs and expenses by the non-complying party.

The record here shows that Complainant not only failed to comply with the PCI filing requirement, but also failed to appear before the AJ as ordered, and failed to respond to the Show Cause Order. Even taking into consideration Complainant's assertion that she was too incapacitated and/or had no internet access to appear and/or respond, Complainant has not provided any reason as to why she could not have responded to the AJ before the February 10, 2023, deadline, or even before the issuance of the February 15, 2023, dismissal.

In reaching this conclusion, we carefully considered Complainant's concern that the AJ's notices were sent to her personal, versus her government email. However, we note that in her hearing request, Complainant provided both her work and personal email addresses. Ultimately, the AJ served the notice to Complainant's personal email address and uploaded the notice to the EEOC's online portal. Considering the record, we find that the AJ's dismissal of the hearing request, as a sanction, was narrowly tailored to what she objectively believed were the inactions of Complainant. The AJ's issuance of the sanction was not an abuse of discretion.

Complainant's Request for Sanctions Against the Agency

On appeal, Complainant requests sanctions against the Agency for its failure to timely issue a final decision and argues that the Commission should decline to review the Agency's appellate response to her appeal and reinstate her hearing request as a sanction.

We note that our regulations require agency action in a timely manner at many points in the EEO process. Tammy S. v. Dep't of Def., EEOC Appeal No. 0120084008 (June 6, 2014). Compliance with these timeframes is not optional; as the Commission stated in Royal v. Dep't of Veterans Affairs, EEOC Request No. 0520080052 (Sept. 25, 2009), "the Commission has the inherent power to protect its administrative process from abuse by either party and must insure that agencies, as well as complainants, abide by its regulations." Because of the length of time it can take to process a federal sector EEO complaint, any delays in complying with the time frames in the regulations can impact the outcome of the complainant's claims.

Here, we find that the Agency failed to comply with the Commission's regulations. Here, the Agency acknowledged that it received the AJ's order dated February 15, 2023, remanding Complainant's complaint for a final decision.

The Agency does not dispute that it failed to issue a final decision until August 9, 2023, which was 175 days later. However, the Agency attributes the delay to its review process, staffing, and lack of resources.

While the Agency was undoubtedly late, we find that Complainant has not made a showing that she was prejudiced by the Agency's delay in issuing the final decision. In this case, we find that the Agency did not act in a manner to warrant sanctions. See Josefina L. v. Soc. Sec. Admin., EEOC Appeal No. 0120142023 (July 19, 2016), req. for recon. den., EEOC Request No. 0520170108 (Feb. 9, 2017) (finding that the Agency's 571-day delay in issuing the final decision did not warrant sanctions, as complainant did not show she was prejudiced by the delay); Jocelyn R. v. Dep't of Def., EEOC Appeal No. 0120152852 (Mar. 11, 2016) (citing Vunder v. U.S. Postal Serv., EEOC Appeal No. 01A55147 (May 12, 2006) (declining to sanction an agency that issued a final decision after approximately 371 days)).

Disparate Treatment – Claims 3, 6, and 7

A claim of disparate treatment is examined under the three-part analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). For a complainant to prevail, they 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. McDonnell Douglas, 411 U.S. at 802, n. 13; Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978).

In order to establish a prima facie case of discrimination based on race and sex, a complainant must show: (1) they are a member of a protected group; (2) they were subjected to an adverse employment action; and (3) they were 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.

For a claim of reprisal, a complainant must show that: (1) they engaged in a protected activity; (2) the agency was aware of the protected activity; (3) subsequently, they were subjected to adverse treatment by the agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000).

A complainant can also establish a prima facie case of reprisal by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination. Shapiro v. Social Sec. Admin., EEOC Request No. 05960403 (Dec. 6, 1996) (citing McDonnell Douglas, 411 U.S. at 802).

The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. Tex. Dep't of Cmty. Affairs 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. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993).

At the outset, we find that Complainant has not established a prima facie case of discrimination based on race and sex. While it is undisputed that Complainant is a member of a protected class by virtue of her race and sex and was subjected to adverse employment actions, we find that she failed to show that she was treated less favorably than other similarly situated employees outside of their protected groups. As for her claim of reprisal, the probative record fails to demonstrate that the Branch Chief and the Deputy Associate Director were aware of her EEO activity at the relevant time.

Furthermore, we find that the Agency articulated legitimate, nondiscriminatory reasons for its actions. For claim 3, the Branch Chief explained that two of Complainant's projects were removed prior to his placement as branch chief, and that another two were discontinued due to the obsolescence of the code utilized, which had presented a security threat to the Agency.

Regarding the 2021 appraisal plan in claim 6, the Deputy Associate Director noted that he reviewed Complainant's request, the performance file, and found that she had not provided evidence to warrant a change from Fully Successful to Exceeds Expectations.

As for claim 7, the Branch Chief stated that he highlighted areas where Complainant exhibited good performance and provided her with constructive feedback on opportunities for improvement, including in areas such as timeliness, attention to detail, and maintenance of the JTrac System. The Branch Chief noted that Complainant was, at times, careless in updating the JTrac System, which was the branch's change management system, and one of the critical elements in her performance plan. According to the Branch Chief, Complainant met, but just did not exceed, expectations in her critical elements.

Without proof of a demonstrably discriminatory motive, the Commission will not generally second-guess the Agency's personnel decisions. 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. Based on the record, we concur with the Agency that Complainant has not met her burden of proving that she was discriminated against regarding these incidents. While Complainant alleged that the Branch Chief rated her lower than she deserved and removed her projects because he did not like her based on race and sex, we find such allegations to be insufficient to establish pretext. As Complainant failed to provide persuasive evidence of pretext, we conclude that Complainant cannot prevail on her allegations.

Hostile Work Environment – Claims 1, 2, 4, and 5

Regarding the allegation of a hostile work environment, as to the claims addressed above, a finding of a hostile work environment is precluded by our determination that Complainant failed to establish that the actions taken by the Agency were motivated by discriminatory animus. See Oakley v. U.S. Postal Serv., EEOC Appeal No. 01982923 (Sept. 21, 2000).

In order to establish a prima case of harassment, a complainant must prove, by a preponderance of the evidence that: (1) they are a member of a statutorily protected class; (2) they were subjected to unwelcome conduct related to their protected class; (3) the harassment complained of was based on their protected class; (4) the harassment had the purpose or effect of unreasonably interfering with their work performance and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. See Celine B. v. Dep't of Navy, EEOC Appeal No. 2019001961 (Sept. 21, 2020); Humphrey v. U.S. Postal Serv., EEOC Appeal No. 01965238 (Oct. 16, 1998). See also Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); Flowers v. Southern Reg'l Physician Serv. Inc., 247 F.3d 229 (5th Cir. 2001). The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the victim's circumstances.) See Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (April 29, 2024).

Regarding Complainant's allegation of retaliatory harassment, Complainant only needs to show that such actions are the type of action that would dissuade a reasonable employee from making or supporting a charge of discrimination. See Burlington Northern & Santa Fe Railroad. Co. v. White, 548 U. S. 53 (2006); see also EEOC Enforcement Guidance on Retaliation and Related Issues, No. 915.004 (Aug. 25, 2016); Carroll v. Dep't of the Army, EEOC Request No. 05970939 (Apr. 4, 2000).

Having reviewed the record, we find that the alleged incidents were not sufficiently severe or pervasive to amount to a hostile work environment. While Complainant alleges that the Branch Chief clearly was overly critical, exhibited microaggressions against her, and was controlling and manipulative, we find that Complainant failed to meet her burden of proof, as the record shows that the Branch Chief categorically denied these allegations.

While Complainant takes issue with the decisions made by the Branch Chief and the Deputy Associate Director, we note that the Commission has long held that ordinary exercise of managerial authority and discretion does not constitute harassment. Erika H. v. Dep't of Transp., EEOC Appeal No. 0120151781 (June 16, 2017); Furthermore, we note that anti-discrimination laws are not civility codes. Shealey v. Equal Emp't Opp. Comm'n, EEOC Appeal No. 0120070356 (Apr. 18, 2011) (noting petty slights and simple lack of good manners, alone, do not constitute discrimination). Complainant's subjective belief of discriminatory animus, alone, is not sufficient to establish that the Branch Chief and/or the Deputy Associate Director was motivated by discriminatory animus. Furthermore, we find that the alleged incidents would not dissuade a reasonable employee from making or supporting a charge of discrimination. Ultimately, we find no persuasive evidence that Complainant was subjected to an actionable hostile work environment.

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

January 2, 2025
 Date