



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

[REDACTED]  
Palmer N.,<sup>1</sup>  
Complainant,

v.

Alejandro N. Mayorkas,  
Secretary,  
Department of Homeland Security  
(Transportation Security Administration),  
Agency.

Appeal No. 2023003430

Hearing No. 461-2022-00036X

Agency No. HS-TSA-00581-2022

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 25, 2023 final order 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 order.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Lead Transportation Security Officer at the Louis Armstrong International Airport in St. Rose, Louisiana. Complainant was directly supervised by Supervisory Transportation Security Officer (STSO 1) Report of Investigation (ROI) at 230. Transportation Security Manager 2 (Manager 2) was Complainant's second level supervisor. ROI at 152. Senior Transportation Security Manager (Senior Manager) served as Complainant's third and fourth level supervisor. ROI at 183.

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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.

On January 31, 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), color (brown), and in reprisal for prior protected EEO activity when:

1. From July 27, 2021 to February 1, 2022, a management official allowed Complainant only 30-minute lunch breaks and only 15-minute breaks;
2. On November 24, 2021, a management official reported Complainant for not performing her baggage duties and not returning from breaks on time;
3. On December 3, 2021, a management official issued Complainant a “No Contact Order”;
4. On December 13, 2021, a management official filed a report with the police accusing Complainant of theft;
5. On December 22, 2021, Supervisor<sup>2</sup> made a remark that Complainant had a knife at work;
6. On December 29, 2021, a management official kicked Complainant out of the [Agency] baggage breakroom; and
7. On December 31, 2021, January 7, 2022, January 14, 2022, January 21, 2022, January 28, 2022, February 4, 2022, February 11, 2022 and February 18, 2022, management denied Complainant the ability to work mandatory and/or voluntary overtime.

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 timely requested a hearing. On February 6, 2023, the Agency submitted a motion for summary judgment. In her opposition to the Agency’s motion for summary judgment, Complainant withdrew claims 1 through 4. Complainant’s only remaining claims were 5, 6, and 7, and were based only on reprisal.

On February 28, 2023, the AJ issued an order regarding Complainant’s withdrawal and accepted Complainant’s withdrawal of claims 1 through 4. The AJ also granted the Agency’s motion, in part, and issued summary judgment in the Agency’s favor on claims 6 and 7. In reaching this determination, the AJ stated that Complainant failed to oppose the Agency’s motion of undisputed facts and failed to present probative evidence that her EEO activity was causally connected to those claims. The AJ, however, denied the Agency’s motion regarding claim 5, finding that there was a genuine issue of material fact as to Supervisor’s motivation.

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<sup>2</sup> This individual was a supervisory official but was not in Complainant’s chain of command. ROI at 134.

On March 30, 2023, the AJ held a hearing solely regarding claim 5 and ultimately found in favor of the Agency. The AJ issued a bench decision on April 6, 2023, which was finalized on April 10, 2023.

Specifically, the AJ found that Complainant and Supervisor, the official named in claim 5, had ongoing conflicts with each other leading up to the underlying incident in claim 5. On November 11, 2021, Complainant accused Supervisor of unprofessional conduct. On November 17, 2021, Supervisory Transportation Security Officer (STSO 2) notified a second Supervisory Transportation Security Officer (STSO 3) of her belief that Complainant was wearing a bracelet that concealed a knife at work.<sup>3</sup>

On November 24, 2021, Supervisor accused Complainant of intentionally taking her cellphone from the break room. Another Supervisory Transportation Security Officer (STSO 4), who was present as Supervisor attempted to retrieve her phone, attested that it appeared that Complainant had deliberately taken Supervisor's phone. Following this incident, Supervisor filed a harassment complaint against Complainant.

On December 3, 2021, Transportation Security Manager (Manager 1)<sup>4</sup> issued Complainant a No Contact Order while he conducted an inquiry into Supervisor's complaint. Supervisor noted that Complainant frequently violated the No Contact Order.

On December 13, 2021, Complainant made a discrimination complaint via email and named Supervisor as the responsible management official. Complainant copied Supervisor, and five other supervisory officials on the email.

On December 16, 2021, STSO 3 saw Complainant at work and took a picture of her wearing the bracelet that she believed concealed a small knife. STSO 3 forwarded the picture to Supervisor because she knew that Complainant and Supervisor had conflict, and she had concerns about Complainant's aggressive personality.

On December 22, 2021, Supervisor sent an email to her chain of command stating that she was recently informed that she had to watch out because Complainant wore a bracelet with a concealed small knife. Supervisor noted that she was unsure of the validity of the warning, but that earlier that day, she saw Complainant wearing the alleged bracelet. Supervisor asked for assistance in checking the validity of the issue.

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<sup>3</sup> We note that STSO 2-4 were relevant individuals but were also not in Complainant's chain of command. ROI at 223; 236.

<sup>4</sup> Manager 1 did not have an organizational relationship with Complainant but was involved in a variety of claims. ROI at 166.

That same day, Complainant was asked to meet with Manager 1 and Manager 2. Complainant acknowledged wearing the bracelet knife and noted that it was for work purposes only and that she never hid the bracelet knife from anyone. Complainant informed them that employees needed knives and/or other cutting tools to perform bag checks as needed, and that due to scarcity of tools, had purchased one to use herself. Complainant noted that other personnel similarly carried personal knives or tools. Complainant asserted that Supervisor's report was malicious and out of retaliation for her filing an EEO complaint. Complainant surrendered the knife.

On December 23, 2021, management queried personnel if they were using a personal knife for work purposes and reminded individuals that it was not allowed. On December 30, 2021, Senior Manager directed Manager 1 to conduct a Local Inquiry into the events as reported by Supervisor on December 22, 2021. Manager 1 conducted an inquiry from December 30, 2021 until May 11, 2022 and collected statements from 14 individuals. Complainant was not issued disciplinary action for Supervisor's report.

In reviewing the record and considering the hearing, the AJ determined that Supervisor had subjected Complainant to a materially adverse action. The AJ determined that based on the timeframe, Supervisor's report could have easily been construed as a retaliatory action against Complainant, for being named a responsible management official. The AJ noted that this could have easily dissuaded Complainant, or anyone else, from pursuing or participating in EEO activity. However, the AJ determined that Complainant had failed to satisfy her burden of proof. Specifically, the AJ determined that Complainant failed to prove that Supervisor intended to retaliate against Complainant for her prior or pending EEO activity. The AJ found that Supervisor credibly testified that she only made upper management aware when she was able to confirm for herself that Complainant wore the alleged concealed knife bracelet, and that paired with Complainant's No Contact Order, triggered her motivation for reporting Complainant. Ultimately, the AJ determined that Complainant never adduced evidence of weight or credibility establishing that Supervisor's report was pretext to discriminatorily reprise against Complainant. Accordingly, the AJ found no violation.

The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected her to retaliation as alleged. Complainant then filed the instant, disputing the AJ's credibility findings and reiterating her prior argument that Supervisor's actions were based on retaliatory animus.

As an initial matter, we note that the Commission has the discretion to review only those issues specifically raised in an appeal. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chapter 9, § VI.A.3 (Aug. 5, 2015) Complainant has not challenged the Agency's decision to implement the AJ's grant of summary judgment in claims 6 and 7. Accordingly, we will not address those claims on appeal.

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record.

Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held.

An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony, or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), Ch. 9, at § VI.B. (Aug. 5, 2015).

After holding a hearing, the AJ here determined Complainant failed to establish that Supervisor's reasons for reporting her to management for allegedly wearing a bracelet with a concealed knife was pretext for reprisal. Upon careful review of the AJ's decision and the evidence of record, as well as the parties' arguments on appeal, we conclude that substantial evidence of record supports the AJ's post-hearing determination that Complainant has not proven discriminatory reprisal in claim 5. Accordingly, we AFFIRM the Agency's final order implementing the AJ's decision.

STATEMENT OF RIGHTS - ON APPEAL  
RECONSIDERATION (M0124.1)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration**. A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

Complainant should submit their request for reconsideration, and any statement or brief in support of their request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>. Alternatively, Complainant can submit their request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507.

In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files their request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the request for reconsideration.** The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(f).

#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0124)

You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by their full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

#### RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests.

Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



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Carlton M. Hadden, Director  
Office of Federal Operations

January 22, 2024  
Date