



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

[REDACTED]
Lorita A.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service,
Agency.

Appeal No. 2023003545

Hearing No. 420-2022-00227X

Agency No. 4G-350-0158-22

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 May 3, 2023, final order concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 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 City Carrier Assistant (CCA) at the Agency's Pearl Branch in Jackson, Mississippi.

On May 17, 2022, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the basis of age (over 40) when:

1. Beginning on or about January 16, 2022, Complainant alleged that she was not properly trained, and that during her first thirty (30) days of work, she was only

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.

assigned to work on Sundays doing parcels and not allowed to deliver any mail; and

2. On February 24, 2022, Complainant alleged that she felt forced to resign from her City Carrier Assistant (CCA) position.

Upon Complainant's hire, she attended new hire orientation, where she was advised that all CCAs would be delivering on Sundays. Report of Investigation (ROI) at 87; 103. Manager of Customer Service (Manager), a certified route inspector and official trainer for the Agency, stated that he provided Complainant with training, that Complainant also shadowed with a City Carrier. ROI at 16; 87; 94. Complainant was given partial routes during the week to deliver mail as she acclimated to the position.

On February 23, 2022, Manager provided Complainant with a performance evaluation. ROI at 115. Manager marked Complainant a mix of Satisfactory, and Unacceptable for work observed. Id. As a certified route inspector, he informed Complainant that she was taking longer to complete a route than expected, noting that he provided her a partial route, but that she was taking the time a full route would take to deliver mail. Manager suggested other possible positions he believed she could thrive in, like clerk or mail handler. ROI at 89-90; 95. On February 24, 2022, Complainant resigned, under protest, from her position. ROI at 126. Manager denied forcing Complainant to resign. ROI at 95.

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. The Agency submitted a motion for a decision without a hearing, Complainant responded. Over Complainant's objections, the AJ issued a decision without a hearing on April 26, 2023 fully adopting the Agency's motion. The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged. Complainant then filed the instant appeal.

ANALYSIS AND FINDINGS

Standard of Review

The Commission's regulations allow an AJ to grant summary judgment when he or she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). An issue of fact is "genuine" if the evidence is such that a reasonable fact finder could find in favor of the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A fact is "material" if it has the potential to affect the outcome of the case. In rendering this appellate decision, we must scrutinize the AJ's legal and factual conclusions, and the Agency's final order adopting them, *de novo*.

See 29 C.F.R. § 1614.405(a)(stating that a “decision on an appeal from an Agency’s final action shall be based on a *de novo* review...”); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (Aug. 5, 2015) (providing that an administrative judge’s determination to issue a decision without a hearing, and the decision itself, will both be reviewed *de novo*).

In order to successfully oppose a decision by summary judgment, a complainant must identify, with specificity, facts in dispute either within the record or by producing further supporting evidence and must further establish that such facts are material under applicable law. Such a dispute would indicate that a hearing is necessary to produce evidence to support a finding that the Agency was motivated by discriminatory animus. Here, however, Complainant has failed to establish such a dispute. Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable factfinder could not find in Complainant’s favor.

Disparate Treatment – Claim 1

To prevail in a disparate treatment claim such as these, Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Complainant must initially establish a prima facie case by demonstrating that she was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Construction Co. v. Waters, 438 U.S. 567, 576 (1978). Proof of a prima facie case will vary depending on the facts of the particular case. McDonnell Douglas, 411 U.S. at 804 n. 14. The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dep’t of Cmty. Aff. v. Burdine, 450 U.S. 248, 253 (1981). Once the Agency has met its burden, Complainant bears the ultimate responsibility to persuade the fact finder by a preponderance of the evidence that the Agency’s explanation was pretextual. Reeves v. Sanderson Plumbing Prod., Inc., 530 U.S. 133, 143 (2000); St. Mary’s Honor Ctr. v. Hicks, 509 U.S. 502 (1993).

Assuming arguendo that Complainant established a prima facie case of discrimination, we find that Agency provided a legitimate, nondiscriminatory reason for its actions as discussed above.

We note that as the employer, the Agency has broad discretion to determine how best to manage its operations and may make decisions, including personnel decisions such as new hire training and processes, on any basis except a basis that is unlawful under the discrimination statutes. See Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978); Texas Dep’t. of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). Our analysis focuses on the Agency’s motivation, not its business judgment. Loeb v. Textron, Inc., 600 F.2d 1003, 1012 n.6 (1st Cir. 1979). In other words, it is not the function of this Commission to substitute its judgment for that of management officials who are familiar with the needs of their facility, and who are in a better position to make decisions, unless other facts suggest that proscribed considerations of bias entered the decision-making process. See Shapiro v. Soc. Sec. Admin., EEOC Request No. 05960403 (Dec. 6, 1996), citing Bauer at 1048.

Here, the Agency engaged in what appears to be standard new hire procedures. There is no persuasive evidence that Complainant's protected class was a factor in how they processed her new hire training and/or engaged with her in providing a performance evaluation. 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.

Constructive Discharge – Claim 2

In claim 2, Complainant asserted that due to the hostile work environment, she had to resign. The central question in a constructive discharge case is whether the employer, through its unlawful discriminatory behavior, made the employee's working conditions so difficult that any reasonable person in the employee's position would feel compelled to resign. Carmon-Coleman v. Dep't. of Def., EEOC Appeal No. 07A00003 (Apr. 17, 2002). Here, we agree with the Agency that because Complainant failed to prove she was subjected to a hostile work environment motivated by discriminatory animus, she is unable to prove she was subjected to a constructive discharge in violation of the ADEA. See Lorraine D. v. Federal Deposit Ins. Corp., EEOC Appeal No. 0120142043 (October 27, 2016).

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 25, 2024

Date