



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

[REDACTED]  
Lonny C.,<sup>1</sup>  
Complainant,

v.

Pete Buttigieg,  
Secretary,  
Department of Transportation  
(Federal Aviation Administration),  
Agency.

Appeal No. 2023003757

Agency No. 2022-29475-FAA-02

DECISION

On June 19, 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 June 22, 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.<sup>2</sup> For the following reasons, the Commission AFFIRMS the Agency's final decision.

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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.

<sup>2</sup> When Complainant filed his appeal, it was premature. However, the Agency subsequently issued its final decision. Where a premature appeal has been filed and the Agency subsequently issues a final action while the appeal remains pending, we have held that the issuance of the decision cured the defect and made the appeal ripe for adjudication. See Franchesca V. v. Dep't of the Treasury, EEOC Appeal No. 0120150620 (March 24, 2017); Complainant v. Dep't of Veterans Aff., EEOC Appeal No. 0120120712 (June 18, 2014).

### ISSUES PRESENTED

Whether Complainant established that he was subjected to harassment based on his race and/or reprisal.

### BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Supervisory Management Analyst at the Agency's Unmanned Aircraft Systems Integration Office at its Headquarters in Washington, D.C.

On July 15, 2022, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (African-American) and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 when his second-line supervisor, the Executive Director (Supervisor) subjected him to numerous incidents of harassment including, but not limited to, undermining Complainant's authority by working directly with Complainant's subordinates; rejecting Complainant's promotion from a K-band to an L-band; lowering Complainant's annual rating; humiliating Complainant by berating him in front of his peers; and his new first-line supervisor, the Deputy Executive Director (Deputy Director) also subjected him to harassment when she told Complainant she didn't care if employees "file cases because [she] isn't afraid of them," and when the Deputy Director sent harassing texts to Complainant after working hours.

Complainant stated that his prior EEO activity consists of serving as a witness to a complaint filed with the Accountability Board alleging that the Supervisor had made a racist remark during a staff meeting held on June 15, 2020, when the Supervisor commented, "I am so excited about getting new neighbors and no longer being surrounded by Ethiopians!" See Report of Investigation (ROI) at 160; 224-25. Complainant asserted that since the Supervisor became the Executive Director in 2019, he has avoided Complainant and undermined Complainant's authority by reaching out directly to Complainant's subordinates so that Complainant is left out of the loop on issues. See ROI at 138-39. He stated that the Supervisor's interaction with white male peers is less tense and more frequent while Complainant and other black employees are marginalized and ignored. See ROI at 140. He asserted that the Supervisor has consistently refused to seek his guidance on decisions related to his line, circumvented his authority, questioned his decision-making and instead sought second opinions from others, while not doing so to white Directors. See ROI at 143.

For example, he cited to a meeting where a white employee gave a project update during the weekly directors' meeting and in response, the Supervisor praised the white employee saying "great job" and that the Supervisor was glad to have the white employee leading the effort whereas when Complainant had given an almost identical report the week before, the Supervisor told Complainant publicly that Complainant was not meeting the Supervisor's needs, which caused Complainant embarrassment and humiliation in front of his peers. See ROI at 143. He stated that there have been other meetings where the Supervisor has greeted all other managers by name except for Complainant and then further appeared to mock Complainant by looking directly at Complainant while making a comment about his managers being "dull and boring and mean." See ROI at 143.

The Supervisor denied having any knowledge of Complainant's prior EEO activity. See ROI at 314. He asserted that from the beginning, Complainant seemed to be hostile and annoyed with him and he was told by the former Deputy Director that Complainant did not like him. See ROI at 314. He asserted that it was common practice that if a senior manager knew of a person who had the expertise they were looking for, that they would go directly to that person rather than going through their manager. See ROI at 315. He explained that Complainant has refused to accept his management style and instead expected the Supervisor to conform to Complainant's management style. See ROI at 315. He denied trying to avoid Complainant, stating that he was only trying to save time by going directly to employees who could answer his questions without going through Complainant and waiting for his response. See ROI at 316. He denied ever deliberately cutting Complainant off but acknowledged that when someone explains something to him that he was already familiar with, he would often move to the conclusion so they could move the discussion along. See ROI at 317.

Complainant further asserted that between January and March 2019, as part of an Agency reorganization, the former Executive Director had recommended that Complainant be promoted from the K-band to the L-band, but the Supervisor decided not to approve the promotion so that Complainant had a larger division to manage while remaining at the same level of compensation. See ROI at 148. He asserted that another white director was promoted to the L-band and received a 7% increase in salary as a result, insisting that there was no business justification for denying Complainant the promotion to the L-band while approving it for his white counterpart. See ROI at 148.

He further stated that when he again brought up the issue of his being promoted to the L-band with the Supervisor at a meeting to discuss his annual performance review, the Supervisor refused to answer and instead told Complainant that he should look for detail assignments in other organizations and that they needed to talk about Complainant's career goals, which Complainant interpreted as disguised ways of removing him from the organization. See ROI at 155-56.

The Supervisor asserted that he never heard anything about Complainant being approved for an L-band promotion. See ROI at 319. He explained that making Complainant an L-band was not as simple as promoting someone based on their time-in-grade or their performance because Complainant's job was classified as a K-band job and the entire position would need to be reclassified as an L-band job. See ROI at 319. He asserted that for the position to be reclassified as an L-band job, the scope of the position's duties would need to be expanded to be commensurate with an L-band job and to his understanding, the position's responsibilities have not significantly changed so as to justify the reclassification. See ROI at 320. He stated that he explained the process of being promoted to an L-band job and encouraged Complainant to look for L-band positions and asserted that he viewed it as coaching and mentoring to encourage Complainant to look for details because it was a common practice for employees to take details to broaden their experience. See ROI at 319-20. The former Deputy Executive Director stated that to his recollection, there had been some discussion and draft proposals in early to mid- 2019 about upgrading AUS100 positions, such as Complainant held, to the L-band and acknowledged that he had some informal discussions about what he would need to do to be promoted to the L-band but that the discussions never came to fruition because his position did not get upgraded to an L-band and so there were no vacancies at the L-band level for Complainant to apply for. See ROI at 529-30.

Complainant further took issue with his annual rating, which was issued on November 4, 2020, in which the Supervisor lowered his rating from a 3.6 to a 3.4 so that his overall rating was a 3.0, which negatively affected his bonus and merit increase. See ROI at 158-59. He asserted that there was no justification for the decrease in his rating because he had taken on more responsibilities with the reorganization and had successfully completed all his core objectives. See ROI at 159. The Supervisor stated that he rated Complainant according to his observation of Complainant's performance and further explained that he was not obligated to consider Complainant's prior performance ratings. See ROI at 322.

Complainant stated that on or around February 23, 2022, he was not selected to fill a Deputy Executive Director position for which he was “eminently qualified,” but acknowledged that he did not apply for the position. See ROI at 169-70. He took issue with the selection because he asserted that the Supervisor selected someone who was an old friend of his rather than allowing the position to be advertised on USA Jobs so that Complainant could apply. See ROI at 170-71. He asserted that on March 15, 2022, he was humiliated in front of his peers when the Supervisor berated him for boxes being placed on the floor of the office when Complainant had no knowledge of the boxes, and the Supervisor was aware that Complainant and his staff had not been in the office since they had begun teleworking due to the Covid pandemic. See ROI at 174-75.

The Supervisor explained that the Deputy Executive Director position was filled using the Executive Mobility Program per Agency policy and Complainant was not eligible for it because Complainant was not an executive. See ROI at 324. He asserted that he selected the Deputy Executive Director for the position because she was an executive who had worked at the executive level for many years, was head of technical training and aeronautical information, worked in policy, handled congressional issues, and was a good fit for the organization. See ROI at 324. The Director of Enterprise Operations explained that decisions about using the Executive Mobility Program were made by the hiring organization and by the office of the Associate Administrator for Aviation Safety and that the hiring process was managed by the Executive Resources organization. See ROI at 415. She asserted that Agency hiring policy on the Executive Mobility Program was properly followed for the Deputy Executive Director position. See ROI at 415.

Some of Complainant’s co-workers agreed that in their opinions, the Supervisor avoided Complainant and treated black employees worse than their white counterparts. See ROI at 423-26; 473-74; 499-502; 508-509. They also opined that in their opinion, the Supervisor treated Complainant unfairly by berating him over the boxes in the office when Complainant was not sited at the office so could not have been aware of the boxes. See ROI at 428; 501. We note, however, that several other of Complainant’s co-workers stated that to their recollection, the Supervisor only mentioned that the boxes in the hallway might be a potential hazard and asked Complainant and another employee to look into clearing them away. See ROI at 487; 516. In addition, one of Complainant’s coworkers who is white noted that the Supervisor has also subjected him to public mocking at a symposium in front of colleagues by making a sarcastic remark. See ROI at 502.

Moreover, several other of Complainant's co-workers stated that they never witnessed the Supervisor treating Complainant any differently than other employees. See ROI at 487-88; 514-15; 537. Several of Complainant's co-workers acknowledged that the Supervisor has come directly to them to ask questions about their jobs but asserted that they believed it was simply the Supervisor's prerogative as the head of the organization to go straight to the source for the person who can answer his question and did not believe it was intended to bypass Complainant or undermine his authority. See ROI at 486; 521-23.

Complainant stated that on March 22, 2022, the Deputy Director stated in a meeting that she didn't care if employees filed EEO complaints against her because she "isn't afraid of them," which he asserted made him feel threatened because he had just filed his EEO complaint against the Supervisor and complained about the Supervisor's discriminatory treatment to the Deputy Director. See ROI at 179-80. He asserted that the Deputy Director's comment led him to believe that he did not have allies or a path forward with his grievances and was not welcome because he is not white. See ROI at 180-81. He stated that in response, the Supervisor made a comment about how managers should not think that they will be in a position for their entire careers and must recognize when it's time to move on, which he took to be a threat. See ROI at 181. He further took issue with the Deputy Director assigning one of his subordinates to present at a meeting without first informing Complainant, which he said undermined his managerial authority and reflected negatively on his competence. See ROI at 184. Finally, he stated that the Deputy Director sent him harassing texts on April 5, 2022, after working hours about his not attending a meeting that he had not been invited to join. See ROI at 186.

The Deputy Director acknowledged that she advised Complainant that it would be career enhancing to take a detail but stated that she gave the same advice to all her direct reports in order to encourage career development and growth. See ROI at 337. She denied ever saying to Complainant that his career would be over if he chose to work remotely, asserting that she only told him that almost all Senior Executive positions required people to come into the office on a regular basis. See ROI at 337. She explained that in the staff meeting where she made the comment at issue about not being afraid of EEO complaints, the context was encouraging managers to be forthright with their direct reports about their performance, both positive and negative, because in her experience, managers are reluctant to give honest feedback on performance or manage conduct for fear of employees filing union grievances or EEO complaints. See ROI at 339.

She denied that the comment was intended to refer to Complainant in any way. See ROI at 339. While some of Complainant's co-workers recalled the Deputy Director making the comment about not being afraid of EEO complaints, they described the comment as being general and not directed at Complainant or anyone in particular. See ROI at 489-90; 503-504; 517; 537-38.

The Deputy Director further explained that it is a routine practice at the Agency to ask experts directly to present or for information, stating that it empowers employees and optimizes organizational efficiency. See ROI at 340. She asserted that she sent Complainant text messages at 4:33 p.m. on April 5, which was within Agency standard work hours which are considered to be between 6 a.m. and 6 p.m. See ROI at 341. She asserted that her text messages were professional, and that Complainant responded in a positive manner. See ROI at 341. The record included the text messages at issue between the Deputy Director and Complainant, which corroborate the Deputy Director's description of the messages. See ROI at 347-49. For example, the Deputy Director's initial text to Complainant started by saying "Hope you had a great weekend! I'd like to catch up with you tomorrow about the decision to not have [a coworker] at the Director meeting today." See ROI at 347. She stated that Complainant has only told her that he felt uncomfortable with the Supervisor, but that Complainant never provided any specifics. See ROI at 342.

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 (AJ). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision initially dismissed Complainant's claims regarding the discrete incidents related to management failing to promote him to an L-band position, his lower annual performance rating, and his non-selection for the Deputy Executive Director position for untimely counselor contact. The decision also found that the non-selection claim could be dismissed for failure to state a claim because Complainant acknowledged that he did not apply for the position. The decision further found that Complainant did not establish that he was subjected to unlawful harassment because the alleged incidents constituted common workplace occurrences such as routine work assignments and admonishments. The decision therefore concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

### CONTENTIONS ON APPEAL

Complainant asserts on appeal that he has suffered adverse health consequences and damage to his professional reputation due to the Agency's harassment.

The Agency did not file a brief in response.

### 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

#### *Procedural Dismissal*

EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination should be brought to the attention of the Equal Employment Opportunity Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) days of the effective date of the action. The Commission has adopted a "reasonable suspicion" standard (as opposed to a "supportive facts" standard) to determine when the forty-five (45) day limitation period is triggered. See Howard v. Dep't of the Navy, EEOC Request No. 05970852 (Feb. 11, 1999). Thus, the time limitation is not triggered until a complainant reasonably suspects discrimination, but before all the facts that support a charge of discrimination have become apparent.

Here, Complainant raised claims that in 2019, management denied him a previously approved promotion from the K-band to the L-band; in February 2019, a coworker received a higher raise; in November 2020, the Supervisor lowered his annual performance rating; and in January 2022, he learned that he was not selected for the Deputy Executive Director position. The Agency dismissed these discrete incidents pursuant to 29 C.F.R. §1614.107(a)(2) for untimely counselor contact because Complainant did not contact an EEO counselor until March 21, 2022. With respect to Complainant's claims regarding his promotion, his raise, and his lower performance rating, Complainant did not contact an EEO counselor until well over a year after the events occurred. Complainant did not provide any reason to explain his failure to contact an EEO counselor at an earlier time considering he alleged that the Supervisor had consistently subjected him to disparate treatment beginning in 2019 when the Supervisor assumed his position. We therefore affirm the Agency's dismissal of the claims concerning Complainant's promotion, his raise, and his lower performance rating for untimely counselor contact. See Grier v. Dep't of the Air Force, EEOC Appeal No. 0120093482 (Feb. 16, 2010).

We find, however, that the Agency erred in dismissing the claims concerning Complainant's non-selection for the Deputy Executive Director position. Complainant stated that he learned of the non-selection in January 2022, but he did not specify the date, so it is not clear that he did not contact the EEO counselor within the 45-day time limit. In addition, to the extent the Agency found that the non-selection claim could be dismissed for failure to state a claim, we disagree to the extent that Complainant challenged the Supervisor's using the Executive Mobility Program to fill the vacancy as a deliberate means of making Complainant ineligible to apply. We have held that in some cases where a complainant did not apply the position in question, a complainant may state a claim for relief in limited circumstances where the complainant argues that management actively discouraged or prevented the complainant from applying due to a discriminatory motivation. See, e.g., O'Connor v. Dep't of Veterans Affs., EEOC Appeal No. 0120112072 (July 28, 2011) (reversing the Agency's procedural dismissal where the complainant alleged that management pre-selected the selectee for the position and actively discouraged him from applying); Smith v. Dep't of Defense, EEOC Appeal No. 01A24119 (February 11, 2003) (African American complainants stated a viable claim of race discrimination even when they did not apply for a position when they alleged that the agency purposefully timed the vacancy announcement so that they would not meet all the qualifications for the position). Under the circumstances, we find that here, the Agency erred in dismissing the non-selection claim on procedural grounds and we will proceed to analyze it on the merits.

### *Disparate Treatment*

Applying the McDonnell Douglas burden-shifting standard defined in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), a complainant initially must establish a prima facie case of discrimination by presenting facts which, 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 St. Mary's Honor Center v. Hicks, 509 U.S. 502, 507 (1993); Texas Dep't of Community Affs. v. Burdine, 450 U.S. 248, 252-53 (1981); McDonnell Douglas 411 U.S. at 802. 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 has the responsibility to demonstrate by a preponderance of the evidence that the agency's action was based on prohibited considerations of discrimination, that is, its articulated reason for its action was not its true reason but a sham or pretext for discrimination. See Hicks, 509 U.S. at 511; Burdine, 450 U.S. at 252-53; McDonnell Douglas, 411 U.S. at 804.

Complainant may establish a prima facie case of discrimination by providing evidence that: (1) he is a member of a protected class; (2) he suffered an adverse employment action; and (3) either that similarly situated individuals outside his protected class were treated differently, or other circumstances surrounding the adverse employment action give rise to an inference of discrimination. McDonnell Douglas, 411 U.S. at 802 n.13; Reeves v. Sanderson Plumbing, 530 U.S. 133, 142 (2000); Bodett v. CoxCom, Inc., 366 F.3d 736, 743-44 (9th Cir.2004) (internal quotation marks omitted). 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).

Here, while Complainant does not dispute that he was not qualified to apply for the position because it was offered through the Executive Mobility Program, he alleged that the Supervisor deliberately arranged to fill the Deputy Executive Director position through the Executive Mobility Program rather than advertising it on USAJobs in order to prevent Complainant from applying. He further alleged that the Supervisor pre-selected the selectee because she was a friend of his.

We find that Complainant established a prima facie case based on race because the eventual selectee was of a different race than he is. However, we further find that Complainant did not establish a prima facie case of reprisal. Complainant's prior EEO activity consisted of serving as a witness in a complaint made against the Supervisor before the Accountability Board alleging that the Supervisor had made a racist remark in June 2020. This was around a year and half before the non-selection occurred and therefore too temporally distant to establish a nexus between the protected activity and the non-selection. See Richmond v. ONEOK, Inc., 120 F.3d 205, 209 (C.A.10 1997) (finding a three-month period between the protected activity and the adverse action to be too great a time span to establish a nexus); Hughes v. Derwinski, 967 F.2d 1168, 1174-1175 (finding a four-month period too long a time span to establish a causal link between the protected activity and the adverse action). We further note that the complaint made before the Accountability Board was anonymous and the Supervisor asserted that he was not aware of Complainant's prior EEO activity. We therefore do not find that Complainant established a prima facie case of reprisal.

We further find, however, that the Agency articulated legitimate, nondiscriminatory reasons for the non-selection and using the Executive Mobility Program to fill it. The Supervisor stated that it was per Agency policy that the Executive Mobility Program was used, and the Director of Enterprise Operations confirmed his statement. See ROI at 324; 415. Furthermore, the Director of Enterprise Operations explained that the decision to use the Executive Mobility Program was made by the hiring organization and by the office of the Associate Administrator for Aviation Safety and that the hiring process was managed by the Executive Resources organization. See ROI at 415. There is no evidence in the record that the Supervisor played any active role in deciding to use the Executive Mobility Program to fill the vacancy in order to prevent Complainant from applying, as Complainant alleged.

We find that Complainant did not establish that the Agency's reasons are a pretext for discrimination. We have repeatedly stated that without proof of a demonstrably discriminatory motive, the Commission will not second-guess the Agency's personnel decisions, such as hiring actions. See Theo B. v. Dep't of Educ., EEOC Appeal No. 2023002738 (July 22, 2024); Chavez v. U.S. Postal Serv., EEOC Appeal No. 0120055246 (Jan. 5, 2007). To the extent Complainant insisted that the Supervisor pre-selected the selectee out of favoritism, we reject Complainant's argument.

There is no evidence of pre-selection but even so, neither pre-selection nor favoritism are violations of EEO statutes. See Billy L. v. Dep't of Homeland Sec'y, EEOC Appeal No. 2022004180 (Sept. 29, 2022) (stating that even if pre-selection occurred, pre-selection on its own is not unlawful); Sierra-Barber v. Dep't of Interior, EEOC Appeal No. 0120055126 (Jan. 31, 2007) (allegations of nepotism and favoritism do not violate EEO statutes). There is no evidence in the record to support Complainant's assertions of discriminatory animus with respect to the non-selection. The Commission has repeatedly stated that mere assertions or conjecture that an agency's explanation is a pretext for intentional discrimination is insufficient because subjective belief, however genuine, does not constitute evidence of pretext. See McKinley P. v. Dep't of Defense, EEOC Appeal No. 2021005017 (Nov. 7, 2022); Ricardo K. v. Dep't of Veterans Affs., EEOC Appeal No. 2021002826 (Aug. 10, 2022).

### *Hostile Work Environment*

In order to establish a prima facie case of harassment, Complainant must prove, by a preponderance of the evidence, the existence of five elements: (1) that he is a member of a statutorily protected class; (2) that he was subjected to unwelcome conduct related to his protected class; (3) that the harassment complained of was based on his protected class; (4) that the harassment had the purpose or effect of unreasonably interfering with his work performance and/or creating an intimidating, hostile, or offensive work environment; and (5) that 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), approved in Meritor Savings Bank v. Vinson, 477 U.S. 57, 66-67 (1986); see generally Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (April 29, 2024).; 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. Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (April 29, 2024).

In other words, to prove his hostile work environment claim, Complainant must establish that he was subjected to conduct that was either so severe or so pervasive that a "reasonable person" in Complainant's position would have found the conduct to be hostile or abusive. Complainant must also prove that the conduct was taken because of a protected basis; in this case, his race or engagement in prior EEO activity.

Only if Complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself.

In this case, Complainant insists that the Supervisor subjected him to harassment based on his race and reprisal, arguing that the Supervisor has undermined his authority in numerous ways and has more than once publicly humiliated him before his co-workers and that he is sure this is due to his race because the Supervisor does not treat white employees in the same manner. While we acknowledge that several of Complainant's co-workers agreed that they believed the Supervisor treated Complainant unfairly and that it may have been due to his race, we note that others disagreed with this assessment of the Supervisor's actions. Because Complainant failed to request a hearing, we note that we do not have the benefit of an Administrative Judge's credibility determinations after a hearing and can only evaluate the facts based on the weight of the evidence presented. See Liz M. v. Dep't of Defense, EEOC Appeal No. 0120150805 (April 5, 2017). However, while we are concerned by the evidence in the record concerning the Supervisor's alleged earlier racist statement and the fact that some of his behavior towards his subordinates appeared to some witnesses indicate a degree of racial favoritism, we find that in this case, the preponderance of the evidence in the record does not establish that the Supervisor was motivated by discriminatory animus. We emphasize that at all times, the burden of proof remains with Complainant and we do not find that Complainant has met that burden here. While there is ample evidence that Complainant disagreed with the Supervisor's management style, such as his assertion that the Supervisor was deliberately trying to undermine his authority by communicating directly with Complainant's subordinates, we note that several of Complainant's co-workers asserted that they believed it was simply the Supervisor's prerogative as the head of the organization to try to obtain answers more efficiently by going directly to the person who could answer his questions. See ROI at 486; 521-23. Moreover, we find that the majority of the incidents of alleged harassment amount to common workplace occurrences such as routine work assignments, instructions, and admonishments, which the Commission has stated do not rise to the level of unlawful harassment. See Colene M. v. Dep't of Veterans Affs., EEOC Appeal No. 0120180391 (March 26, 2019) (personality conflicts and fundamental disagreements over how work should be done do not constitute harassment).

In addition, we find that Complainant did not establish that he was subjected to harassment by the Deputy Director based on her comments about not being afraid of EEO complaints or her urging Complainant to consider taking a detail or because she sent him text messages after working hours.

The record does not support Complainant's description of these incidents. The record indicates that the Deputy Director's texts to Complainant on April 5 were professional and positive in tone and were, moreover, sent at 4:33 p.m., which the Deputy Director stated was well within what the Agency deems to be normal business hours which are between 6 a.m. and 6 p.m. With respect to the comment the Deputy Director made about not being afraid of EEO complaints, all of Complainant's co-workers who recalled the incident stated that the comment was general and made in the context of encouraging managers to give honest feedback to subordinates and not directed at Complainant or anyone in particular. See ROI at 489-90; 503-504; 517; 537-38. Moreover, the Supervisor asserted that she was not aware that Complainant had filed an EEO complaint at the time. While we acknowledge the troubling connotations of the Deputy Director's comment, we do not find that the comment when taken in context was sufficient to dissuade a reasonable person from engaging in protected activity and therefore Complainant did not establish that he was subjected to reprisal based on this comment. See Priscilla H. v. Dep't of Agric., EEOC Appeal No. 2023002088 (Dec. 4, 2023). However, we remind the Agency of its obligation to ensure that all supervisors are aware of their legal obligation to refrain from making any statement or taking any action that could dissuade an employee from engaging in protected activity.

While it is clear that Complainant and the Supervisor had a tense interpersonal relationship with both Complainant and the Supervisor asserting that the other had a hostile attitude, we note that personality clashes and disputes over management style do not constitute harassment, even if done in a confrontational manner. See Felton M. v. Dep't of Agric., EEOC Appeal No. 0120171203 (June 23, 2017); see also Jackson v. City of Killeen, 654 F.2d 1181, 1186 (5th Cir. 1981) ("Title VII is not a shield against harsh treatment at the workplace; it protects only in instances of harshness disparately distributed. The essence of the action is, of course discrimination."). Moreover, Complainant's subjective assertion that he has suffered adverse health consequences as a result of the Supervisor's treatment is not sufficient to meet the objective standard required by Title VII. See Harris v. Forklift Systems, 510 U.S. 17, 21 (1993) ("Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment -- an environment that a reasonable person would find hostile or abusive -- is beyond Title VII's purview."); see also Aron J. v. U.S. Postal Serv., EEOC Appeal No. 0120180078 (April 12, 2019) (stating that Title VII is not a civility code).

### 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 finding that Complainant did not establish that he was subjected to discrimination as alleged.

### 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)

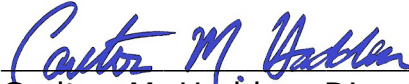
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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:

A handwritten signature in blue ink that reads "Carlton M. Hadden". The signature is written in a cursive style and is positioned above a horizontal line.

Carlton M. Hadden, Director  
Office of Federal Operations

February 3, 2025

Date