



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Ceola K.,¹
Complainant,

v.

Janet L. Yellen,
Secretary,
Department of the Treasury
(Internal Revenue Service),
Agency.

Appeal No. 2023003768

Agency No. IRS-22-0385-F

DECISION

On June 20, 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 14, 2023, final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission AFFIRMS the Agency's final decision.

ISSUE PRESENTED

Whether the Agency's final decision properly found that Complainant was not subjected to discrimination as alleged.

¹ This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Lead Classroom Instructor, GS-8, for New Hire Trainees and was teleworking from her home in Franklin, Tennessee. Complainant stated she had a Frontline Manager and a second level manager in Franklin, Tennessee. She also identified Program Manager for Training (S1) as a first level supervisor located in Memphis, Tennessee. Additionally, Acting Memphis Accounts Management Field Director (Field Director) located in Atlanta, Georgia was in Complainant's supervisory chain of command.

During the fall of Fiscal Year (FY) 2022, Complainant was one of three instructors for the FY 2022 New Hire Training course. Complainant instructed the training course with Customer Service Representative (Instructor 2) and Customer Service Representative (Instructor 3). Contact Representative was the Acting Mentor and Classroom Manager (M1).

Complainant stated the training was virtual and trainees communicated through chat messaging, virtual meetings, and emails. Complainant alleged on several occasions since the beginning of the training, M1 belittled and disparaged her in front of trainees. Specifically, Complainant stated one day she was unable to logon to the training for an hour due to storms in her area. She stated once she logged on, she saw inappropriate and unprofessional comments in the class messaging system ("chat box") which she described as vulgar and sexual in nature. She stated M1 did not stop the behavior but instead joined in with the trainees/students. Complainant stated the comments were "that I needed a man to set me straight, but he might not be doing it right." ROI at 124. Specifically, Trainee 1 messaged that "SOMEBODY NEED A MAN" and Trainee 2 responded, "you can have a man and they just not doing it right." ROI at 128.

Trainee 1 stated she made the comments but did not mention Complainant's name in this exchange because it was not directed at Complainant. Trainee 1 stated Complainant constantly belittled them, would get mad if they asked a question in training, and was retaliating because Trainee 1 reported her for harassment.

Trainee 2 stated the comments were not referencing Complainant. Rather, Trainee 2 stated she was referencing herself. Trainee 2 noted there was a disagreement between the instructors, during which Complainant yelled at M1 that she was the Lead Instructor.

Trainee 2 stated trainees then made complaints about Complainant's treatment of them and the subpar training they had received from Complainant.

Trainee 3 stated the only person who was rude and dismissive was Complainant. Trainee 3 stated she did not recall the cited group text being created to belittle or disparage Complainant. Trainee 3 stated she was told Complainant made her own group and commented about M1 and the class. As a result, a meeting was held with Department Manager for students to voice their complaints about Complainant. Further, Trainee 3 stated "the alleged chat that [C]omplainant is referring to has been doctored." ROI at 402. Trainee 3 stated since it has been tampered with, the chat should not be considered.

M1 states she had no part in the text conversation Complainant cited. M1 noted she did not make a comment during the conversation and did not even recall any conversation from that day.

Complainant also stated that Instructor 3 told her that in a private group chat, M1 referred to Complainant as a "bitch." Specifically, Complainant noted once she became a permanent manager, she was looking for documents for her group of students and that M1 stated she was not "giving the bitch anything!" ROI at 136. Additionally, Complainant noted that M1's Lead Customer Service Representative (Lead) made a threatening comment regarding Complainant, and that management failed to respond. Specifically, she stated that in June or July 2022, Lead asked M1 if she needed to come to Franklin and take care of M1's problem. Complainant noted she was located in Franklin, Tennessee. Complainant stated she filed a complaint with the Treasury Inspector General for Tax Administration (TIGTA) and the investigation is still ongoing.

Complainant also stated that one day she requested the Program Manager put a "quip" in the chat box that students keep their comments in the chat box professional due to the comment the night prior in which M1 stated to the class that "getting information has become hel..heck yall because we have a SNITCH in the class!"² ROI at 169-170. Complainant stated this was directed at her since she stayed in touch with the Program Manager.

² We note the statement was worded slightly differently elsewhere in the record when Complainant reported the statement as: "So for the people not assigned to [team] 509, yalllll [sic] it's been hel..heck since we got snitches

Instructor 2 did not recall the term "snitch" being used. Instructor 2 stated M1 was at times rude and dismissive in her interactions with Complainant. Instructor 2 noted this was often after Complainant undermined what M1 communicated with the class or when Complainant belittled other instructors in front of the class or was rude or dismissive with students.

Instructor 3 stated M1 did not belittle or disrespect Complainant in front of the class. Instructor 3 did not recall M1 calling Complainant a "snitch." Instructor 3 stated she did not have knowledge of M1 forming an inappropriate text group that disparaged Complainant. Instructor 3 noted that text groups were created in April/May 2022 by students as the training class was split into two teams (409 and 509) and that the students included M1 as part of the text groups. Instructor 3 stated M1 never disparaged Complainant but noted M1 might have laughed at the complaints from team members and directed a team member where to file a complaint because the team member asked for direction. Instructor 3 witnessed M1 be rude, dismissive, and aggressive in her interactions with everyone, including Complainant and also saw Complainant be rude, dismissive, and aggressive in her interactions with M1. Instructor 3 stated the Lead did not make a threatening comment about Complainant. Instructor 3 noted that during a skype meeting in April 2022, M1 noted Complainant asked her for Team 409 Certification Scores and that M1 verbally called Complainant a "bald head bitch." ROI at 436.

M1 stated she did not start as a Manager Mentor until January 2022. M1 noted her role was to monitor the virtual classroom and that she had little to no interaction with Complainant. M1 noted that someone on the team made a statement saying, "Someone snitched" and M1 stated she asked who the person was, but no names were given. ROI at 251. M1 denied disparaging or engaging inappropriately or unprofessionally with Complainant.

Regarding Complainant's request for documents for the students assigned to Complainant, M1 stated she could not provide documents for students that were not assigned to her. M1 noted she never created any type of folders for those students as they would not report to her. M1 noted she directed Complainant to a manager for help who had more interactions with those students.

in the...It has been extremely difficult to get information accurately." ROI at 231.

Lead stated she did not know who Complainant was and had no recollection of working with Complainant. Lead noted she has been on the same Team since October 2021, and stated she was not M1's Lead during the relevant time. Lead stated she was not the individual involved in making a threatening comment to Complainant in a group text in June or July 2022. Lead stated she did not recall making the comment alleged about Complainant. Lead acknowledged it was possible she said the statement in reference to someone else in a joking manner.

On June 22, 2022, Complainant filed an EEO complaint alleging that the Agency subjected her to harassment on the bases of race (Caucasian) and age (Y.O.B. 1971) as a result of various acts that took place beginning in February 2022, including but not limited to:

- A. The manager (M1) assigned to the New Hire Training Class (for which Complainant was Lead Instructor) belittled and disparaged Complainant in front of the class, called Complainant a "snitch," and, along with the students, spoke of Complainant with vulgar sexual references in a chat box;
- B. M1 formed an inappropriate text group with students in which she constantly disparaged Complainant;
- C. M1 was rude, dismissive, and aggressive in her interactions with Complainant; and
- D. Once Complainant became a permanent manager, M1 refused to provide official documents for half of the class assigned to Complainant, and M1's Lead.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant failed to prove that the Agency subjected her to discriminatory harassment as alleged.

CONTENTIONS ON APPEAL

Complainant raises no contentions on appeal. The Agency requests the Commission affirm its finding of no discrimination.

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

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 they are a member of a statutorily protected class; (2) that they were subjected to unwelcome conduct related to their protected class; (3) that the harassment complained of was based on their protected class; (4) that 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) 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); 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).

In other words, to prove a hostile work environment claim, a complainant must establish that they were subjected to conduct that was either so severe or so pervasive that a “reasonable person” in the complainant’s position would have found the conduct to be hostile or abusive.

A complainant must also prove that the conduct was taken because of a protected basis. Only if a complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself.

In the present case, Complainant claims M1 harassed her based on her race and age when M1 failed to stop unprofessional comments being made in the training class chat, disparaged her in front of trainees, was dismissive of her, refused to provide her trainee records, and made threatening comments about her. We note that Complainant has not challenged the framing of the complaint.

We find Complainant met the first element of her harassment claim based on her race and age. The Agency does not dispute that Complainant was subjected to unwelcome conduct; thus, we find she established the second element.

Next, we address the third element. When asked why she believed M1's actions were motivated by her race or age, she stated her race was a factor because there was no one else of her race in the class. Complainant claimed the manager and instructors formed a group that excluded her due to her race and age. Complainant stated her age was a factor because M1 did not treat anyone else the way she treated Complainant. Also, Complainant stated her age seemed to bother M1 in everyday communications. We find Complainant failed to provide persuasive evidence that the incidents alleged were based on her race or age. Thus, we find she failed to establish this element.

Regarding element four, the record does not show that M1 participated in the cited comments between Trainee 1 and Trainee 2 or that the comments made by Trainee 1 and Trainee 2 even referred to Complainant. Similarly, we find Complainant has not shown that the comment about a "snitch" related to her. We find Complainant has established that M1 referred to her as a "bitch" on one occasion. While certainly offensive, we note this comment was not related to either of the protected bases alleged. We find no persuasive evidence that any threat was made to Complainant or that any threat was based upon her race or age. Upon review, we find the incidents neither individually nor collectively rise to the level of severity or pervasiveness to unreasonably interfere with her work performance and/or create an intimidating, hostile, or offensive work environment.

Further, we note most of the alleged incidents related to disagreements over how work should be done, trivial slights, personality conflicts, and/or petty annoyances between Complainant and her manager. Therefore, we find that Complainant did not establish a prima facie case of discriminatory harassment.

CONCLUSION

Accordingly, the Agency's final decision finding no discrimination is AFFIRMED.

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

December 5, 2024
Date