



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

[REDACTED]
Will K.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Appeal No. 2023004022

Agency No. 1F-441-0063-23

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 June 22, 2023, final decision concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 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, we AFFIRM the Agency's final decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Maintenance Mechanic at the Agency's Flats Sequencing Systems Annex in Cleveland, Ohio.

On March 6, 2023, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of disability (physical)² and age (over 40) when on dates to be

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.

² According to Complainant, he has been diagnosed with delicated cervical disc and thoracal discs with neuropathy, bungler nerve repositions, carpal tunnel syndrome, rotated fracture of tibia and fibula. See Report of Investigation (ROI) at 00040.

specified,³ Coworker called him names, said he was stupid, commented on the work he was performing, created a safety hazard on the equipment he was working on, and subsequently on October 30, 2022, got in his personal space, yelled and cursed at him, and gave him the middle finger.

During the EEO investigation, Complainant explained that on or about October 30, 2022, he was attempting to repair the Automatic Induction Automated Flat Sorting Machine when a coworker (Coworker) came over telling him what the issue was with the equipment. Complainant stated that Coworker became angry, cursing, yelling, refusing to leave, and invading Complainant's personal space when Complainant requested for Coworker to go away. Complainant asserted that he informed management about the incident and followed up with an email regarding ongoing harassment from Coworker. According to Complainant, his supervisors failed to investigate the issue or respond to his report.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the ROI and notice of his 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).

In analyzing Complainant's allegations of harassment, the Agency found that while Complainant established that he is a member of a protected group based on his age and physical impairments, Complainant failed to establish that Coworker or management acted as they did because of those protected classes. Management responses indicated that Complainant's supervisor was instructed to investigate Complainant's reports about Coworker, which revealed similar complaints about Complainant, and Coworker was instructed to stay away from Complainant.

The Agency further found that the incidents Complainant raised were minor, transitory, and ephemeral in nature. As such, the Agency determined that the incidents did not rise to the level of seriousness or severity to have been severe or pervasive enough to unreasonably interfere with Complainant's work performance, or to create an intimidating, hostile, or offensive work environment. In support, the Agency explained that management officials interviewed both employees, along with others in the department, and Complainant and Coworker agreed to stop verbally abusing one another. The Agency ultimately concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged. Complainant then filed the instant appeal without offering any arguments in support of his appeal.

³ In his affidavit, Complainant specified that the dates at issue were March 15, 2022; October 30, 2022; and March 19, 2023.

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 AND FINDINGS

To establish a claim of harassment, a complainant must establish that: (1) they belong to a statutorily protected class; (2) they were subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on their statutorily protected class; (4) the harassment affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982). Further, the incidents must have been “sufficiently severe or pervasive to alter the conditions of [complainant's] employment and create an abusive working environment.” Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993). The harasser’s conduct should be evaluated from the objective viewpoint of a reasonable person in the victim’s circumstances. Enforcement Guidance on Harris v. Forklift Systems, Inc., EEOC Notice No. 915.002 at 6 (Mar. 8, 1994).

Here, we find that Complainant failed to prove that the conduct at issue was based on his membership in a statutorily protected class. Rather, the record indicates that the incidents were more likely the result of personality conflicts and general workplace disputes. For example, the record reveals that Complainant reported his interactions with Coworker following the demise of their friendship, and management instructed Coworker to remain out of Complainant’s space unless he had a work-related reason to be in the area. ROI at 57, 88, 97-98, 124-126. Moreover, we find that the incidents, even if accurately described by Complainant, were not sufficiently severe or pervasive enough to establish a hostile work environment. We note that antidiscrimination laws are not civility codes. Rather, they forbid “only behavior so objectively offensive as to alter the conditions of the victim's employment.” Oncale v. Sundowner Offshore Serv., Inc., 523 U.S. 75, 81 (1998). We find that Complainant failed to do so here.

CONCLUSION

Based on a thorough review of the record, 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 29, 2024

Date