



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

[REDACTED]
Allegra P.,¹
Complainant,

v.

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

Appeal No. 2023004188

Agency No. 4J-606-0101-23

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated June 8, 2023, dismissing a formal EEO complaint alleging unlawful 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.

BACKGROUND

During the period at issue, Complainant worked as a City Letter Carrier, Grade Level 01/Q, at the Agency's Ravenswood Post Office in Chicago, Illinois.

On December 12, 2022, a co-worker contacted police accusing Complainant of communicating a threat against that co-worker while they were working at the Ravenswood Post Office. The resultant police report stated that a postal supervisor and union representative were "on scene and aware of the situation."²

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 Complainant proffered an excerpt from the police report in support of her claim. It does not indicate that Complainant was arrested or charged as a result of the police visit to the Ravenswood Post Office on December 12, 2022.

Thereafter, Complainant made reports to management counter-accusing her co-worker of harassment and stalking.

On January 26, 2023, Complainant initiated informal EEO counseling, but the parties were unable to resolve the matter.

On May 16, 2023, Complainant filed the instant formal EEO complaint alleging that the Agency subjected her to discrimination based on race and in reprisal for prior EEO-protected activity.

The Agency framed her claim as follows:

On December 12, 2022, a co-worker filed a false police report against Complainant because management did not investigate her reports of harassment.

On June 8, 2023, the Agency issued a final decision dismissing the complaint, pursuant to 29 C.F.R. 1614.107(a)(1), for failure to state a claim.

The instant appeal followed. On appeal, Complainant states that as a result of the tension with her co-worker she received mental healthcare through the Agency's Employee Assistance Program. Complainant asserts that her manager did not interview witnesses following her allegations against the co-worker and failed to address the problem. According to Complainant, because of what has transpired in her workplace she must work to clear her name on the police report.

ANALYSIS AND FINDINGS

The regulation at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that the Agency shall dismiss a complaint that fails to state a claim. The Agency shall accept a complaint from an aggrieved employee or applicant who believes that he has been discriminated against by the Agency because of a prohibited consideration or because of retaliation. 29 C.F.R. §§ 1614.103, 1614.106(a). This Commission's federal sector case precedent consistently defines an "aggrieved" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy under EEOC regulations. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994).

In Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993), the Supreme Court reaffirmed the holding of Meritor Savings Bank v. Vinson, 477 U.S. 57, 67 (1986), that harassment is actionable if it is sufficiently severe or pervasive to alter the conditions of the complainant's employment. Thus, not all claims of harassment are actionable. Here, we have presumed Complainant's version of events true and considered the matter in the light most favorable to Complainant. Cobb v. Dep't of the Treasury, EEOC Request No. 05970077 (Mar. 13, 1997). Even so, we concur with the Agency, in that Complainant has not articulated a specific harm or loss with respect to a term, condition, or privilege of her employment.

A review of the record reveals that Complainant and her co-worker exchanged accusations before Agency management and their union that included the co-worker contacting the police. However, Complainant does not allege the police arrested her as a result, or that Agency management disciplined or even verbally counseled her as a result of the co-worker's actions. Thus, it is unclear how Complainant's acrimony with her co-worker has adversely impacted her employment. In other words, Complainant has described conduct that was insufficiently severe or pervasive to state a viable claim of a discriminatory hostile work environment.

The Agency properly dismissed Complainant's formal EEO complaint for failure to state a claim under 29 C.F.R. § 1614.107(a)(1).

CONCLUSION

Therefore, the Agency's final decision dismissing Complainant's formal EEO complaint for failure to state a claim 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

January 31, 2024

Date