



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

[REDACTED]
Celine D.,¹
Complainant,

v.

Dorothy Fink,
Acting Secretary
Health and Human Services
(Health Resources and Services),
Agency.

Appeal No. 2023004353

Agency No. HHS-FDAOC-070-22

DECISION

On July 26, 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 July 3, 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.

ISSUES PRESENTED

Whether the Agency properly found that Complainant was not subjected to discrimination on the bases of race, color, or age.

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 was an applicant for employment seeking to be hired into the position of Accountant, GS-0510-12/13, at the Agency's facility in Beltsville, Maryland.

On October 26, 2022, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (African American), color (Black), and age (56) when on June 2, 2022, the Branch Chief did not select Complainant for the position for which she applied, and instead selected a younger Caucasian woman for the position.

On January 21, 2022, the Agency posted Vacancy Announcement No. FDA-00-MP-11357528-LW on USAJobs for the position of Accountant, GS-0510-12/13, at the Office of Operations (OO), Office of Finance (OF), Budget Acquisitions and Planning (BAP), Office of Financial Management (OFM), Division of Accounting. On January 31, 2022, Complainant applied for the position. At the time of her application, Complainant worked at a different federal agency as an Auditor, GS-0511-12.

Complainant was referred to the selecting official, Branch Chief, for consideration at the GS-12 grade level. She was not referred for the GS-13 grade position because her application did not contain proof of her time-in-grade. To be qualified at the GS-13 grade level, applicants had to have at least one year of specialized experience equivalent to the GS-12 grade level in the Federal service. Complainant was not one of the four candidates selected for an interview. Following the interviews, Branch Chief selected another candidate (Selectee), who was Caucasian, White, and younger.

Branch Chief stated that she did not know Complainant and was unaware of her age, race, and color. Branch Chief explained that she reviewed and rated the resumes for all eligible candidates on the certificate of eligibles and she determined that the top third (four candidates) would be interviewed. She stated an interview panel conducted structured interviews for each candidate in the top third to identify the best candidate to fill the vacancy.

The HR Specialist prepared the selection certificates. She stated she was unaware of Complainant's race, but she may have been aware of her age due to the information submitted on her SF-50.

She referred Complainant for the GS-12 position, but not the GS-13 position under the Merit Referral certificate. She explained that Complainant was not referred for the GS-13 grade for this vacancy announcement as her SF-50 did not show sufficient proof of time-in-grade to qualify.

Branch Chief explained that, in comparison to Complainant, Selectee's experience, including general ledger analysis, budgetary/proprietary accounting, Sub-Ledger Accounting, and United States Standard General Ledger (USSGL) stood out to her based on the needs of the Division. Therefore, Selectee was one of the individuals selected for an interview and ultimately selected.

On June 2, 2022, Complainant was notified that she was not selected for the GS-12 position.

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). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b).

In the decision, the Agency determined that Agency officials articulated legitimate, nondiscriminatory reasons for not selecting Complainant. Branch Chief reviewed resumes and application packages of the eligible candidates and selected the top third for further review. Complainant's resume was not scored high enough for further consideration. The interview panel ultimately chose Selectee because she had scored the highest, gave the best answers during the interview, and her experience stood out. Further, Complainant was not qualified for the GS-13 position because she did not have a one-year full performance level of a GS-12 according to the SF-50. Branch Chief confirmed that what stood out was Selectee's experience in general ledger analysis, budgetary/proprietary accounting, Sub-Ledger Accounting, and USSGL. Selectee made a clear distinction to show her specific level of experience and addressed the needs of this position. As a result, Selectee was chosen as the best candidate for the position.

The Agency concluded that Complainant failed to show that Agency management's reasons for its actions were pretextual. As a result, the Agency found that Complainant was not subjected to discrimination as alleged.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that she successfully established a prima facie case of discrimination. Complainant argues that the Agency reasons for not choosing her for an interview are insufficient and not worthy of belief. Complainant challenges that Selectee was more highly qualified for the position. Accordingly, Complainant requests that the Commission reverse the final decision.

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

To prevail in a disparate treatment claim, 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 Constr. Corp. 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. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). To ultimately prevail, Complainant must prove, by a preponderance of the evidence, that the Agency's explanation is pretextual. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 120 S. Ct. 2097 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993).

To establish a prima facie case of discrimination, a complainant must show that: (1) she is a member of a protected group; (2) she suffered an adverse employment action; and (3) the circumstances give rise to an inference of discrimination. We note that, although a complainant bears the burden of establishing a "prima facie" case, Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 252-53 (1981), the requirements are "minimal," St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 506 (1993), and complainant's burden is "not onerous." Burdine, 450 U.S. at 253.

Here, Complainant failed to establish a prima facie case of discrimination on the bases of her race, color or age. Neither Branch Chief nor the interview panelists were aware of Complainant's race, color, or age during the selection process. These officials did not become aware of Complainant's protected classes until the investigation of the instant complaint. The record is otherwise devoid of evidence raising an inference of discrimination

Notwithstanding, the Commission finds that the Agency met its burden of production, as the Agency articulated legitimate, nondiscriminatory reasons for its actions. Branch Chief reviewed and rated the resumes of the eligible candidates and selected the top four applicants for interviews. Branch Chief stated that Complainant's resume did not stand out to her like Selectee's application; therefore, she was not rated as one of the top candidates. Branch Chief explained that, in comparison to Complainant, Selectee's specific experience impressed the Hiring Manager based on the needs of the Division and, as a result, Selectee was one of the individuals selected for an interview. Ultimately, Branch Chief considered Selectee to be the candidate best suited for the position as she was the person who had the highest score and was the only one recommended by the interview panel.

Complainant bears the burden of establishing that the Agency's stated reasons are merely a pretext for discrimination. 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 based on discriminatory animus. Complainant failed to carry this burden. In response to the question of why she believed that she was not selected because of her age, race, and color, Complainant simply stated, "Prejudgment," without any further explanation.

In this case, Selectee had attributes that justified her selection, and management officials stated that they believed Selectee was better equipped to meet the Agency's needs.

We find that Complainant failed to present any persuasive evidence establishing that the Agency's selection or the selection process were tainted by discriminatory animus. As a result, the Commission finds that Complainant has not established that she was subjected to the discrimination as alleged.

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)

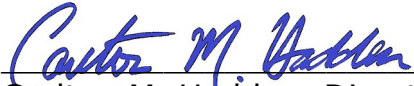
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department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

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 13, 2025

Date