



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

[REDACTED]
Zada C.,¹
Complainant,

v.

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

Appeal No. 2023004510

Agency No. 4B-120-0126-23

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 6, 2023, dismissing her complaint of 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. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

ISSUES PRESENTED

Whether the Agency correctly dismissed the complaint for failure to state a claim.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Lead Sales Services and Distribution Clerk at the Agency's Uptown Station in

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.

Kingston, New York. On June 22, 2023, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of race (White)², sex (female; LGBT)³, color (White), age (YOB: 1964), and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 when:

1. On or about April 14, 2023, the postmaster sent her an upsetting email, left a voicemail about the email for another postmaster (Complainant's husband), and entered her duty station through the back door;
2. On June 2, 2023, a supervisor came to her duty station to discuss cleaning it.⁴

The Agency dismissed the complaint for failure to state a claim, finding that Complainant had not established that she suffered any adverse action or that the alleged incidents rose to the level of harassment.

Complainant appealed.

CONTENTIONS ON APPEAL

Neither Complainant nor the Agency filed a brief on appeal.

STANDARD OF REVIEW

The Agency's decision to dismiss a complaint is subject to de novo review by the Commission, which requires the Commission to examine the record without regard to the factual and legal determinations of the previous decision maker and issue its decision based on the Commission's own assessment of the record and its interpretation of the law. 29 C.F.R. § 1614.405(a).

² We note that Complainant identified her race as "Woman," which we will address as a claim of discrimination based on her sex.

³ In Bostock v. Clayton Cty., the Supreme Court held that discrimination based on sexual orientation or transgender status is prohibited under Title VII. 590 U.S. _____, 140 S. Ct. 1731 (2020); see also Baldwin v. Dep't of Transp., EEOC Appeal No. 0120133080 (July 15, 2015) (an allegation of discrimination based on sexual orientation states a claim of sex discrimination under Title VII because sexual orientation is inherently a sex-based consideration).

⁴ Complainant added reprisal for the instant EEO complaint as a basis for claim 2 only.

The Commission should construe the complaint in the light most favorable to the complainant and take the complaint's allegations as true. See Cobb v. Department of the Treasury, EEOC Request No. 05970077 (March 13, 1997). Thus, all reasonable inferences that may be drawn from the complaint's allegations must be made in favor of the complainant.

ANALYSIS

An agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that Agency because of race, color, religion, sex, national origin, age or disability. 29 C.F.R. §§ 1614.103, 106(a). The Commission's federal sector case precedent has long defined an "aggrieved employee" 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. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (April 21, 1994). The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that an agency shall dismiss a complaint that fails to state a claim.

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. The Court explained that an "objectively hostile or abusive work environment [is created when] a reasonable person would find [it] hostile or abusive:" and the complainant subjectively perceives it as such. Harris, supra at 21-22. We have repeatedly found that allegations of a few isolated incidents of alleged harassment usually are not sufficient to state a harassment claim. See Phillips v. Dep't of Veterans Affairs, EEOC Request No. 05960030 (July 12, 1996); Banks v. Dep't of Health and Human Servs., EEOC Request No. 05940481 (Feb. 16, 1995). Thus, not all claims of harassment are actionable.

For claims of reprisal, the Commission has stated that adverse actions need not qualify as "ultimate employment actions" or materially affect the terms and conditions of employment to constitute retaliation. Lindsey v. U.S. Postal Serv., EEOC Request No. 05980410 (Nov. 4, 1999). Instead, claims based on statutory retaliation clauses are reviewed "with a broad view of coverage. Under Commission policy, a complainant is protected from any retaliatory discrimination that is reasonably likely to deter... complainant or others from engaging in protected activity." Maclin v. U.S. Postal Serv., EEOC Appeal No. 0120070788 (Mar. 29, 2007).

Where, as here, a complainant does not challenge an agency action or inaction regarding a specific term, condition or privilege of employment, a claim of harassment is actionable only if, allegedly, the harassment to which the complainant has been subjected was sufficiently severe or pervasive to alter the conditions of the complainant's employment.

Here, Complainant's claim of harassment consists of an email sent to her by the Postmaster which she found to be upsetting, a voicemail which the Postmaster later left for another postmaster, Complainant's husband, and the fact that the Postmaster entered her duty station from the back door at a time when she was alone at the duty station, which she asserted was an attempt to intimidate her. In the email in question, the Postmaster responded to an email Complainant sent to him questioning him about some employees' work schedules to which the Postmaster responded, saying "I'm not trying to be a *** you want to ask you[r] supervisor ask her I don't care don't matter to me. Hell's [sic] gonna [sic] tell you for me now you know..." Complainant insisted that the use of asterisks to mask his meaning was unprofessional and disrespectful.

We agree with the Agency that even taken in the light most favorable to Complainant, these incidents, while Complainant may have found them to be unprofessional, are not sufficiently severe or pervasive to rise to the level of harassment. At best, Complainant is taking issue with the Postmaster's language and behavior as being unprofessional and rude, but the Commission has repeatedly stated that such allegations involving offhand comments and otherwise isolated incidents do not constitute harassment. See e.g. Brito v. U.S. Postal Serv., EEOC Appeal No. 0120120929 (April 13, 2012) (finding allegations that the complainant's manager spoke rudely to the complainant and snapped his fingers at her did not render the complainant aggrieved); James v. Dep't of Health & Human Servs., EEOC Request No. 05940327 (Sept. 20, 1994) (finding no harassment where coworker screamed at the complainant, accused him of harassment, and their supervisor required them to attend two meetings to resolve the conflict). To the extent that Complainant insists that the incidents caused her emotional distress, the Commission has long held that where an allegation fails to render an individual aggrieved, the complaint is not converted into a cognizable claim merely because complainant alleges physical and/or emotional injury. See Jackson v. U.S. Postal Serv., EEOC Appeal No. 0120083579 (Dec. 8, 2008). Even taken together, we find that the incidents of alleged harassment are not sufficiently severe or pervasive to alter the conditions of Complainant's employment.

Finally, with respect to Complainant's allegation that a supervisor coming to her duty station to discuss cleaning her office was intended to intimidate her out of retaliation for her EEO activity because it occurred on the same day as an EEO meeting, we find that the conduct at issue is not reasonably likely to deter either Complainant or any others from engaging in protected activity and as such, fails to state a claim of actionable harassment. See Turner v. U.S. Postal Serv., EEOC Appeal No. 0120110113 (Dec. 2, 2011).

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint 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

November 20, 2024
Date