



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

[REDACTED]  
Iesha G.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2023004636

Hearing No. 4B-190-0126-21

Agency No. 530-2022-0298X

DECISION

On March 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 August 21, 2023, final order 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 Title II of the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff et seq. For the following reasons, the Commission AFFIRMS the Agency's final order.

ISSUES PRESENTED

Whether the EEOC Administrative Judge properly issued a decision by summary judgment finding that Complainant was not subjected to discrimination or retaliation as alleged.

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<sup>1</sup> 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 Window Clerk at the Agency's Point Breeze Post Office in Philadelphia, PA.

On December 22, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the basis of reprisal (unspecified) and genetic information when:

1. On August 24, 2021, Manager allowed a co-worker to question Complainant about complaints that Complainant had made against the co-worker.
2. On dates to be specified since August 24, 2021, Complainant was denied overtime opportunities.
3. On September 9, 2021, there was almost a physical confrontation between Complainant and a co-worker and management did nothing.

The Agency conducted an investigation which revealed the following pertinent facts.

Complainant was a Window Clerk at the Agency's Point Breeze Post Office. She described that she was the lead clerk, and that she stood in for management when a manager was not available. She claimed that clerks were not wearing uniforms and missing for 3-4 hours on the clock, and nothing was being done. She testified that on August 24, 2021, and September 9, 2021, and several other dates she informed Manager about these issues, but Manager did not take any action and let the clerks do whatever they wanted. Complainant said that when she brought the issues to higher management, Manager allowed the clerks to question her.

Complainant testified that on September 9, 2021, her co-worker approached her, pointed her finger in Complainant's face and shouted, "keep my name out of your mouth." Complainant said her co-worker remarked she was not going to do anything Complainant asked of her and that she would not work at the window if Complainant was at the window. Complainant said that she responded by telling her co-worker that no one was talking about her. Complainant claimed that her co-worker moved in closer, so Acting Supervisor jumped in the middle of them to prevent a physical altercation. Complainant said that she remarked that she was not going to keep dealing with this "shit." She said that she gave Manager a leave slip and wrote "hostile work environment" in the comments. Complainant stated that after that day, Manager denied her overtime opportunities.

When the EEO investigator asked Complainant to identify her prior EEO activity and whether Manager was aware of her prior EEO activity, she replied that she had "no prior EEO case." The EEO investigator asked Complainant what genetic information was disclosed, she was unable to describe what genetic information that had about her and indicated that management was not aware of any genetic information about her family.

Manager stated that she was unaware of Complainant's prior EEO activity, and that she had no knowledge of Complainant's genetic information. In response to Complainant's allegations about the incident on September 9, 2021, when Complainant's co-worker allegedly pointed her finger in Complainant's face and shouted, Manager testified that she was absent from work that day and had no knowledge of the incident. In response to Complainant's allegation that she was denied overtime, Manager said that Complainant had in fact worked overtime.

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). Complainant timely requested a hearing.

The AJ assigned to the case determined *sua sponte* that the complaint did not warrant a hearing and issued a decision without a hearing on February 28, 2023. The AJ found that Complainant failed to establish a prima facie case of retaliation because she admitted that she had not engaged in prior protected EEO activity. The AJ dismissed Complainant's genetic discrimination claim for failure to state a claim under 29 C.F.R. § 1614.107(a)(1), on the ground that her genetic information was not disclosed to management. Because there was no prior protected activity or disclosed genetic information, the AJ found that Complainant was unable to demonstrate reprisal-based harassment or harassment in violation of Title II of the Genetic Information Non-Discrimination Act of 2008 (GINA).

The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

#### CONTENTIONS ON APPEAL

Complainant submitted a new document on appeal. However, she did not file a statement or brief, or provide an explanation on why she seeks to introduce the new document into the record. The new evidence is a letter from the Department of Labor, stating that Complainant has been diagnosed with anxiety disorder.

The Agency filed a brief in opposition to the appeal, arguing that the AJ's decision should be upheld.

#### STANDARD OF REVIEW

In rendering this appellate decision, we must scrutinize the AJ's legal *and* factual conclusions, and the Agency's final order adopting them, de novo. See 29 C.F.R. § 1614.405(a) (stating that a "decision on an appeal from an Agency's final action shall be based on a de novo review . . ."); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (Aug. 5, 2015) (providing that an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed de novo). This essentially means that we should look at this case with fresh eyes.

In other words, we are free to accept (if accurate) or reject (if erroneous) the AJ's, and the Agency's, factual conclusions and legal analysis – including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. See id. at Chap. 9, § VI.A. (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

#### *New evidence on appeal*

The Commission will not consider new evidence on appeal unless there is an affirmative showing that the evidence was not reasonably available prior to the investigation or during the hearing process. EEO Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), Ch. 9, § VI.A.3 (August 5, 2015). See also Federal Sector Equal Employment Opportunity, 64 Fed. Reg. 37,654 (July 12, 1999) (“[N]o new evidence will be considered on appeal unless the evidence was not reasonably available during the hearing process”).

Here, Complainant, on appeal, submitted a letter from the Department of Labor. This document was not part of the record available to the AJ when she issued the decision without a hearing. Complainant offered no explanation why the documents were not previously available to the AJ. She has also given no explanation on why the documents are relevant or how they point to material facts in dispute in this matter. For these reasons, the new evidence will not be considered.

#### *Summary Judgment Decision*

The Commission’s regulations allow an AJ to issue a decision without a hearing upon finding that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). EEOC’s decision without a hearing regulation follows the summary judgment procedure from federal court. Fed. R. Civ. P. 56. The U.S. Supreme Court held summary judgment is appropriate where a judge determines no genuine issue of material fact exists under the legal and evidentiary standards. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a summary judgment motion, the judge is to determine whether there are genuine issues for trial, as opposed to weighing the evidence. Id. at 249. At the summary judgment stage, the judge must believe the non-moving party’s evidence and must draw justifiable inferences in the non-moving party’s favor. Id. at 255. A “genuine issue of fact” is one that a reasonable judge could find in favor for the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A “material” fact has the potential to affect the outcome of a case.

To successfully oppose a decision by summary judgment, a complainant must identify, with specificity, facts in dispute either within the record or by producing further supporting evidence and must further establish that such facts are material under applicable law. Such a dispute would indicate that a hearing is necessary to produce evidence to support a finding that the agency was motivated by discriminatory animus. Here, however, Complainant failed to establish such a dispute. As already noted, on appeal, Complainant submitted no argument challenging the AJ's summary judgment decision. Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable factfinder could not find for Complainant.

### *Genetic Discrimination Claim*

Complainant alleged discrimination on the basis of "genetic information" under GINA. GINA prohibits employers from discriminating against any employee because of genetic information with respect to the employee. 29 C.F.R. § 1635.1. Genetic information means information about (i) an individual's genetic tests; (ii) the genetic tests of that individual's family members; and (iii) the manifestation of a disease or disorder in family members of such individual (family medical history). 29 C.F.R. § 1635.3(c). On her formal complaint form, Complainant hand wrote "disparity of treatment" when asked to specify the genetic information that was the alleged basis of discrimination. Because Complainant fails to make any reference her medical history or genetic information, we find she has not alleged a violation of GINA. We concur with the AJ's decision to dismiss her claim for failure to state a claim in violation of GINA.

### *Retaliation*

Complainant can establish a *prima facie* case of reprisal by showing that: (1) she engaged in protected activity; (2) the Agency was aware of the protected activity; (3) subsequently, she was subjected to adverse treatment by the Agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Department of the Air Force, EEOC Appeal No. 01A00340 (September 25, 2000).

Here, we concur with the AJ that Complainant has not established a *prima facie* case of retaliation. Complainant admitted that she had not engaged in prior protected EEO activity, and there is no evidence that management was aware of any protected activity, therefore, she does not meet requirements 1, 2, 3 or 4.

### *Harassment*

Complainant alleged that she was subjected to harassment when she reported her co-workers for allegedly not wearing the correct the uniforms, which resulted in one co-worker yelling and pointing her finger at Complainant. She also alleged that she was denied overtime opportunities.

To prove her harassment claim, Complainant must establish that she was subjected to conduct that was either so severe or so pervasive that a "reasonable person" in her position would have found the conduct to be hostile or abusive.

Complainant must also prove that the conduct was taken because of a protected basis – in this case, her prior EEO activity and genetic information. Only if Complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993). See also, Enforcement Guidance on Harris v. Forklift Systems Inc., EEOC Notice No. 915.002 (March 8, 1994).

Complainant failed to show that the unwelcomed conduct from Manager and her co-worker was taken based on her prior protected activity or genetic information. As discussed above she has not engaged in prior EEO activity, and her genetic information was unknown. Therefore, we conclude that she has failed to establish that she was subjected to harassment.

### 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 action adopting the AJ's 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

July 29, 2024  
Date