



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

[REDACTED]
Nathan S.,¹
Complainant,

v.

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

Request No. 2023004799

Appeal No. 2023001835

Agency No. 1C-531-0036-23

DECISION ON REQUEST FOR RECONSIDERATION

The Agency timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Nathan S. v. U.S. Postal Service, EEOC Appeal No. 2023001835 (July 25, 2023). EEOC Regulations provide that the Commission may, in its discretion, grant a request to reconsider any previous Commission decision issued pursuant to 29 C.F.R. § 1614.405(a), where the requesting party demonstrates 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. See 29 C.F.R. § 1614.405(c).

During the period at issue, Complainant worked as a Mail Processing Clerk at the Agency's Processing and Distribution Center in Atlanta, Georgia. Complainant filed an EEO complaint alleging that he was discriminated against and subjected to a hostile work environment on the bases of his race, age, sex, and in reprisal for prior protected EEO activity when:

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.

1. Since September 2021, the Distribution Operations Manager subjected Complainant to constant harassment and hostility, including attacks on Complainant's professional character;
2. In approximately February/March 2022, the Distribution Operations Manager failed to approve a revised schedule request that Complainant had submitted without justification, forcing Complainant to make other arrangements;
3. In October 2022, Complainant learned that the Distribution Operations Manager was upset that Complainant had arranged with another manager to stay in the automation department under Supervisor-E rather than move back under the supervision of Supervisor-H;
4. In October 2022, Complainant learned that the Distribution Operations Manager was trying to get Complainant decertified as a Union Steward and move him back to Tour 1;
5. On October 5, 2022, Complainant was summoned to meet with the Distribution Operations Manager in the Distribution Operations Manager's office and the Distribution Operations Manager interrogated Complainant over the reasons that he did not want to work with Supervisor-H;
6. In October 2022, the Distribution Operations Manager changed Complainant's work schedule and forced Complainant to return to his prior operation to work under the supervision of Supervisor-H;
7. On November 4, 2022, Supervisor-H stopped and glared at Complainant while Complainant was talking with another co-worker with a hateful and angry expression, making Complainant uncomfortable and intimidated; and
8. On November 4, 2022, Supervisor-H confronted Complainant while he was on assigned Union time for purposes of starting an argument and ordered Complainant to return to his operation.

In the previous decision, the Commission vacated the Agency's decision dismissing the complaint. The Commission first found that the Agency improperly framed Complainant's allegations by omitting Claims 1, 5, and 6, and that the Agency mischaracterized the remaining claims. The Commission found that, as properly framed, Complainant's claims in their entirety sufficiently alleged that he was subjected to a hostile work environment between September 2021 and November 4, 2022. The Commission further rejected the Agency's contention that some of Complainant's allegations constituted a collateral attack on the negotiated grievance process. As we explained, the complaint did not allege that Complainant was denied union time or was otherwise challenging the negotiated grievance process. We vacated the Agency's dismissal of the complaint and remanded the matter to the Agency for further processing.

The Agency filed this request for reconsideration. In its request, the Agency argued that our prior decision involved a clearly erroneous interpretation of fact and law when we concluded that the claims did not constitute a collateral attack on the negotiated union grievance. In its argument, the Agency said that Complainant's references to "union time" and "union duties" are "[m]atters concerning the negotiated grievance procedure [and] do not state a claim within the EEOC's jurisdiction." The Agency further argued that Claims 3, 5, and 6 "needlessly expound on already accepted claims."

After reviewing the previous decision and the entire record, the Commission finds that the request fails to meet the criteria of 29 C.F.R. § 1614.405(c), and it is the decision of the Commission to deny the request. The Agency's arguments fail to recognize that a fair reading of Complainant's allegations does not demonstrate he is lodging claims against the union grievance process. Rather, a fair reading of the complaint shows that Complainant's union status was incidental to his allegations, and therefore Complainant stated a claim of discrimination within the EEOC's jurisdiction. The Commission emphasizes that a request for reconsideration is not a second appeal. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), Chap. 9 § VI.A (Aug. 5, 2015); see, e.g., Lopez v. Dep't of Agric., EEOC Request No. 0520070736 (Aug. 20, 2007). Rather, a reconsideration request is an opportunity to demonstrate that the appellate decision involved a clearly erroneous interpretation of material fact or law, or will have a substantial impact on the policies, practices, or operations of the Agency. The Agency has not done so here. Thus, we conclude that the Agency has not presented any persuasive evidence to support reconsideration of the Commission's decision.

The decision in EEOC Appeal No. 2023001835 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request. The Agency shall comply with the Order as set forth below.

ORDER (E0618)

The Agency is ordered to process the remanded eight claims (ongoing harassment) in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall acknowledge to the Complainant that it has received the remanded claims within thirty (30) calendar days of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights within one hundred fifty (150) calendar days of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision within sixty (60) days of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, a copy of complainant's request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0124)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency or filed your appeal with the Commission. 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. **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 30, 2024

Date