



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

[REDACTED]
Hollis B.,¹
Complainant,

v.

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

Appeal No. 2023005069

Agency No. 1C-131-0084-23

DECISION

Complainant appeals to the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated August 10, 2023, finding no discrimination regarding his 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 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, we AFFIRM the Agency's final decision finding no discrimination.

ISSUES PRESENTED

Whether the Agency correctly determined that Complainant was not subjected to harassment on the bases of race, age, and disability.

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 worked as a Mail Handler Equipment Operator, P-05, at the Agency's Springfield National Distribution Center in Springfield, Massachusetts.

On February 9, 2023, Complainant filed a formal complaint alleging that he was subjected to discriminatory harassment based on race (White), age (over 40), and disability (severe mental emotional stress disorder) when:

On December 1, 2022,² he was threatened by a coworker (C1) on the workroom floor and called a "cracker."

The Agency investigated the complaint. At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an EEOC Administrative Judge or a final Agency decision. When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The Agency concluded that Complainant failed to prove that the Agency subjected him to harassment as alleged.

Complainant indicated that on December 1, 2022, after he told C1 (Black American male, mid-30s) of C1's safety violation, C1 threatened him saying, "I'll knock out your F#*ken teeth out" and made the "cracker" comment to him. Report of Investigation (ROI), Affidavit (Aff.) A. Complainant stated that he did not know C1's name or title. Id.

Complainant's Manager (M1) indicated that on December 1, 2022, Complainant reported to him about an unsafe forklift driver but did not report the alleged threat or comment toward him. ROI, Aff. B. M1 stated that he contacted Complainant's Supervisor (S1) to address the incident. S1 later informed him that the situation was addressed.

S1 indicated that he talked to Complainant and C1 privately regarding the incident. S1 stated that when he asked Complainant about the incident and whether he was threatened, Complainant told him, "No, I was not threatened. I want his ass walked out now." ROI, Aff. C.

² Although the Agency indicated that the alleged incident occurred on December 5, 2022, Complainant alleged that it occurred on December 1, 2022.

S1 stated that Complainant stated that C1 almost hit his forklift but did not indicate C1 used a racial slur.

S1 stated that when S1 asked C1 about the incident, C1 told S1 that since he saw the blue light as Complainant was backing out of a truck, he beeped and as he proceeded to drive by, Complainant said, "You don't see me backing the fuck up. What the hell is wrong with you. Get out of here before I knock your fucking teeth out." ROI, Exhibit 4. C1 then responded to Complainant, "Who are you, what are you even talking about." Id. C1 then went back to work.

Complainant's Postmaster indicated that Complainant brought the alleged incident to his attention two weeks after the incident, and he told Complainant to contact M1 regarding the matter.

Based on the foregoing, the Agency determined that Complainant failed to establish a prima facie case of harassment. Specifically, the Agency stated that Complainant only reported a safety violation on the part of C1 and did not report any threats or racial slurs to management. Further, the Agency noted that Complainant did not allege that he was subjected to the purported threat or comment by C1 on any other occasions other than on this isolated occasion.

CONTENTIONS ON APPEAL

Complainant, providing copies of his medical records, challenges the credibility of M1's statement, and indicates his work environment was hazardous. The Agency raises no new contentions in response to the appeal.

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 (EEO MD-110), Chap. 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

In order to establish a prima facie case of harassment, Complainant must prove, by a preponderance of the evidence, the existence of five elements: (1) that Complainant is a member of a statutorily protected class; (2) that Complainant was subjected to unwelcome conduct related to Complainant's protected class; (3) that the harassment complained of was based on Complainant's protected class; (4) that the harassment had the purpose or effect of unreasonably interfering with Complainant's work performance and/or creating an intimidating, hostile, or offensive work environment; and (5) that there is a basis for imputing liability to the employer. See Celine B. v. Dep't of Navy, EEOC Appeal No. 2019001961 (Sept. 21, 2020); Humphrey v. U.S. Postal Serv., EEOC Appeal No. 01965238 (Oct. 16, 1998). See also Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); Flowers v. Southern Reg'l Physician Serv. Inc., 247 F.3d 229 (5th Cir. 2001). The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the victim's circumstances. Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (April 29, 2024).

In other words, to prove Complainant's hostile work environment claim, Complainant must establish that Complainant was subjected to conduct that was either so severe or so pervasive that a "reasonable person" in Complainant's 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. Only if Complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself.

Here, we find that Complainant failed to establish a prima face case of harassment. Other than his assertions, Complainant provided no evidence that the alleged remark was made as alleged. C1's version of what happened is completely different than Complainant's version. There were no other witnesses to the interaction at issue. Based on a thorough review of the record, considering all statements submitted on appeal, we find that Complainant failed to show that he was subjected to discriminatory harassment as alleged.

CONCLUSION

Accordingly, the Agency's final decision finding no discrimination 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

December 19, 2024
Date