



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Shaun N.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2023005240

Agency No. 4G-330-0108-23

**DECISION**

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 22, 2023, final decision concerning his 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. For the following reasons, the Commission AFFIRMS the Agency's final decision.

**ISSUE PRESENTED**

Whether the Agency correctly determined that Complainant was not subjected to discrimination on the bases of race (African American) and national origin (American).

---

<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 City Carrier at the Agency's Flamingo Branch facility in Pembroke Pines, Florida.

On March 29, 2023, Complainant filed an EEO complaint alleging that the Agency discriminated against him based on race (African American), national origin (American), and sex (male)<sup>2</sup> when, on December 30 and 31, 2022, and January 4, 6, 7, 9, 11, 17, 18, 19, and 27, 2023, and possible subsequent dates to be specified, he was denied overtime opportunities.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of his right to request a hearing before an EEOC Administrative Judge. 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 decision concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged. The instant appeal followed.

In its final decision, the Agency noted that its policy regarding overtime and auxiliary assistance required management to determine whether the Carrier requesting overtime could complete their route within the scheduled time and whether the work could instead be "leveled" by giving the excessive mail volume to City Carrier Assistants (alternates for regular Carriers) to deliver. The Agency also cited record evidence of Complainant's time and attendance reports, which indicated that Complainant in fact worked overtime for 15 of the days in January 2023, including all the January dates listed in his complaint. The Agency further found that the Flamingo Branch facility's Overtime Alert Report indicated that, from December 24, 2022, through January 27, 2023, Complainant received an equitable distribution of overtime hours compared to the other Carriers. See ROI at 171-80.

Complainant's first-level supervisor (S1), Supervisor Customer Services, averred that Complainant worked overtime on his own route almost every day whether she had approved it or not. She further stated that Complainant was on the "overtime desired" list and that he requested overtime each day of the week regardless of his mail volume.

---

<sup>2</sup> Complainant later withdrew sex as an alleged basis of discrimination. We therefore will not address this basis herein.

S1 averred that when she denied Complainant's overtime requests, it was either because it was not justified by the volume of mail, or because City Carrier Assistants needed work to do and were given the excess volume of mail. According to S1, whenever she denied an overtime request from Complainant, he would become belligerent and say that it was his route and that he would take overtime anyway.

Complainant's second-level supervisor (S2), Manager Customer Services, confirmed that any request for overtime would result in management first attempting to give the excess volume to City Carrier Assistants before regular Carriers. The Agency noted in its decision that Complainant took overtime often on his route—with or without approval from his supervisors—and that he was not disciplined for doing so. The Agency concluded that there was no evidence Complainant was treated differently from other Carriers with regard to overtime.

The Agency found that Complainant could not establish a prima facie case of disparate treatment because he failed to present similarly situated employees outside of his protected bases who were treated more favorably. However, assuming arguendo that Complainant had established a prima facie case of race and national origin discrimination, the Agency found that management articulated legitimate, nondiscriminatory reasons for its actions. The Agency then concluded that Complainant failed to prove that these reasons were pretextual. The Agency also found that Complainant's subjective beliefs and speculation about S1 and S2's discriminatory animus was insufficient to establish pretext, as nothing in the record indicated that S1's reasons for denying Complainant overtime on only a few occasions was false. Instead, the Agency found the record replete with evidence that Complainant received ample overtime, including on many of the dates at issue in his complaint. Moreover, the Agency found that Complainant's overtime allocation was similar and often greater than other Carriers' overtime allocation.

#### CONTENTIONS ON APPEAL

On appeal, Complainant argues that under S1, he never gets overtime opportunities but that when S1 went on maternity leave, such opportunities occurred on almost a daily basis. Along with his own brief, Complainant submits a signed statement from his non-attorney representative.

The representative states that Complainant has been treated discriminatorily by S1 and that S1's approach with Complainant has been unprofessional and that one of the ways she punishes him is by denying him overtime. The Agency did not submit a statement on 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, 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 Complainant was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Co. v. Waters, 438 U.S. 567, 576 (1978).

To establish a prima facie case of disparate treatment based on race or national origin, Complainant must show that: (1) he is a member of a protected class; (2) he was subjected to an adverse employment action concerning a term, condition, or privilege of employment; and (3) he was treated differently than similarly situated employees outside his protected class, or there was some other evidentiary link between membership in the protected class and the adverse employment action. See Nannette T. v. U.S. Postal Serv., EEOC Appeal No. 0120180164 (Mar. 20, 2019); McCreary v. Dep't of Def., EEOC Appeal No. 0120070257 (Apr. 14, 2008), request for recons. denied, EEOC Request No. 0520080545 (June 20, 2008); Saenz v. Dep't of the Navy, EEOC Request No. 05950927 (Jan. 9, 1998). 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. Affs. v. Burdine, 450 U.S. 248, 253 (1981).

Once the Agency has met its burden, Complainant bears the ultimate responsibility to persuade the factfinder by a preponderance of the evidence that the Agency's explanation was pretextual. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 143 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993). Complainant can do this by showing that the proffered explanations were unworthy of credence or that a discriminatory reason more likely motivated the Agency. Burdine, 450 U.S. at 256. A showing that the employer's articulated reasons were not credible permits, but does not compel, a finding of discrimination. Hicks, 509 U.S. at 511.

We find that Complainant has not established a prima facie case of disparate treatment. He identified his race as African American and his national origin as American, therefore satisfying the first prong of the prima facie case. He also was denied overtime on at least several occasions, satisfying the second prong. However, regarding the third prong, we find no evidence of a causal connection between Complainant's protected bases and any denial of overtime. Upon review of the record, there is no evidence that other employees outside of Complainant's protected bases took noticeably more overtime. We find that Complainant has not presented evidence from which an inference of discrimination can be drawn.

We also find that the Agency articulated legitimate, nondiscriminatory reasons for its actions that Complainant failed to rebut as pretextual. Per Agency policy, managers like S1 are responsible for determining if overtime is warranted given the mail volume on the day in question and whether City Carrier Assistants should receive the extra workload. Even when S1 denied Complainant overtime for these reasons, Complainant often took it anyway and did not suffer any adverse consequences for doing so. Outside of Complainant's bare assertions and speculation, he has failed to establish that the Agency's reasons were pretext for discrimination based on race or national origin. We further note that Complainant's non-attorney representative's general opinion that S1 discriminated against Complainant is insufficient to establish pretext.

### CONCLUSION

Accordingly, we AFFIRM the Agency's final order finding no discrimination.

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 9, 2024

Date