



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

[REDACTED]
Jared F.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Southern Area),
Agency.

Appeal No. 2023005243

Hearing No. 420-2023-00033X

Agency No. 4G-390-0072-20

DECISION

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's August 16, 2023, final order 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 order.

At the time of events giving rise to this complaint, Complainant worked as a Lead Sales and Service Associate at the Agency's Biloxi North Bay Post Office in D'Iberville, Mississippi.

On August 10, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (African American),

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.

sex (male), and color (Black), and in reprisal for prior protected EEO activity, when:

1. beginning on or about March 20, 2020, Complainant was constantly followed; his breaks were monitored; and management spoke to him in a hostile manner;
2. beginning on or around March 20, 2020, Complainant's request to train as an Acting Supervisor was not granted;
3. in or about March 2020, management made an inappropriate comment when Complainant inquired about training as an Acting Supervisor;
4. beginning on or about March 20, 2020, Complainant was denied overtime opportunities; his schedule was changed; and his work hours reduced;
5. in or about June 2020, Complainant's software program was revoked;
6. in June and/or July 2020, Complainant was excluded from signing an alleged document given to all his coworkers;
7. beginning on or about July 11, 2020, and other unspecified dates, management undermined Complainant's Lead Clerk position and allowed clerks to not follow his instructions; and
8. on unspecified dates, the Manager discussed Complainant's work hours and personal business with coworkers and made false statements.²

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 Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. Over Complainant's objections, the AJ granted the Agency's motion and issued a decision without a hearing on August 10, 2023.

² Complainant also included an allegation regarding his request for a union representative, which the Agency dismissed as a collateral attack. Report of Investigation at 45-6. The Commission has the discretion to review only those issues specifically raised in an appeal. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chap. 9, § IV.A.3 (Aug. 5, 2015). On appeal, Complainant did not contest the Agency's dismissal; as such, we will not address it in the instant decision.

The Agency subsequently issued a final order fully implementing the AJ's finding that Complainant failed to prove that the Agency subjected him to discrimination as alleged. The instant appeal followed.

The Commission's regulations allow an AJ to grant summary judgment when he or she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). An issue of fact is "genuine" if the evidence is such that a reasonable fact finder could find in favor of 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 fact is "material" if it has the potential to affect the outcome of the case. 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. (as revised, August 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*).

Upon review, we find the record in the present case was fully developed. In order 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 he 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 offered no arguments on appeal has failed to establish such a dispute. A review of the record does not reveal any genuine disputes of material facts.

The Agency provided legitimate, nondiscriminatory reasons for the actions. Regarding Complainant's request for Acting Supervisor training (claims 2 and 3), the former Postmaster responded that being an Acting Supervisor was a right and not a privilege, and that Complainant needed to strive to be the best at his current position and perform above average to earn an opportunity by displaying good work ethics, such as following all rules and regulations. ROI at 177, 180. Complainant was previously issued letters of warning for unacceptable conduct; failure to follow instructions; and failure to be in regular attendance. These were later reduced to official discussions following his union grievances. Agency Supplement to the Record, Exhibit M and N.

While Complainant believed the Postmaster's comments were inappropriate because they implied that Complainant did not follow rules and regulations, he did not show that they were based on a protected category. ROI at 92.

For claim 4, the Manager explained that Complainant was on the Overtime Desired List and has worked overtime since March 20, 2020. She noted that employees were given overtime based on the needs of the service. While Complainant specified five dates in June 2020 when he was purportedly denied overtime, his time records show that he worked overtime on four of those dates. ROI at 140, 165, 96, 217-22. On or about March 20, 2020, the Manager changed Complainant's schedule and instructed him to end his tour at his scheduled time of 1:30 p.m. because there was no need for him to work overtime since they were fully staffed. ROI at 142-3.

In response to claim 5, the District Finance Manager averred that the Postmaster revoked Complainant's access to Skype/Lync because they were "not needed." Agency Supplement to the Record, Exhibit R. Complainant did not present evidence that he used or needed these programs. The Manager was uncertain of the document that Complainant claimed to have not received in claim 6, but she noted that Complainant stated that this document was given to a Rural Carrier, and oftentimes, they get information that is not relevant to clerks. ROI at 168. Complainant did not show that the proffered reasons are not worthy of belief, and his bare assertions that management officials discriminated against him are insufficient to prove pretext or that their actions were discriminatory.

Regarding the remaining incidents, such as the alleged following and monitoring; and discussion of Complainant's work hours and comment that he was "hiding," the Commission has held that routine work assignments, instructions, and admonishments do not rise to the level of harassment because they are common workplace occurrences. See Gray v. U.S. Postal Serv., EEOC Appeal No. 0120091101 (May 13, 2010). Unless it is reasonably established that the common workplace occurrence was somehow abusive or offensive, and that it was taken in order to harass Complainant on the basis of his protected class, we do not find such common workplace occurrences sufficiently severe or pervasive to rise to the level of a hostile work environment or harassment as Complainant alleges. See Complainant v. Dep't of Veterans Affairs, EEOC Appeal No. 0120130465 (Sept. 12, 2014). There is no evidence that the work-related incidents were abusive or offensive, or taken in order to harass Complainant on the basis of his protected activity.

Further, antidiscrimination statutes are not general civility codes, and the Commission has found that personality conflicts; general workplace disputes; and trivial and petty annoyances do not rise to the level of harassment. See Jeffrey R. v. Dep't of Justice, EEOC Appeal No. 2022003500 (Aug. 9, 2023); Rita F. v. U.S. Postal Serv., EEOC Appeal No. 2021002876 (Aug. 16, 2022); Lassiter v. Dep't of the Army, EEOC Appeal No. 0120122332 (Oct. 10, 2012). Accordingly, we find that Complainant did not establish that the Agency subjected him to harassment based on his race, color, or sex, or in reprisal for prior protected EEO activity.

Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable factfinder could not find in his favor. Upon careful review of the AJ's decision and the evidence of record, we conclude that the AJ correctly determined that the preponderance of the evidence did not establish that Complainant was discriminated against by the Agency as alleged.

Accordingly, we AFFIRM the Agency's final order fully implementing the AJ's decision 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).

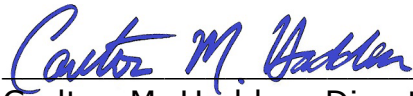
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0124)

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

March 6, 2025
Date