



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

[REDACTED]
Miles N.,¹
Complainant,

v.

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

Appeal No. 2023005270

Hearing No. 510-2023-00187X

Agency No. 4G-330-0113-23

DECISION

Complainant appeals to 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 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. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission AFFIRMS the Agency's final decision finding no discrimination.

ISSUE PRESENTED

Whether the Agency correctly determined that Complainant was not subjected to harassment on the bases of race (Native American) and age (62).

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 City Carrier at the Agency's Coconut Grove Station in Miami, Florida.

On March 20, 2023, Complainant filed an EEO complaint alleging that the Agency harassed him based on race (Native American) and age (62) when:

1. On December 23, 2022, Complainant alleged he was verbally threatened (I will shoot you) by management; and
2. On March 13, 2023, Complainant alleged management waved their hand with a pen in his face.

Complainant does not challenge the Agency's framing of the complaint, though during his pre-complaint counseling, Complainant indicated that claim 2 occurred on February 4, 2023.

Complainant requested a hearing before an EEOC Administrative Judge (AJ) prior to the completion of the investigation into his complaint. The AJ therefore dismissed Complainant's hearing request without prejudice. 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 AJ. 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.

In its final decision, the Agency first noted that Complainant had failed to submit an affidavit in support of the complaint to the investigator, despite having received the affidavit form by email. ROI at 110-11. Through his complaint forms and other documents, such as the EEO Counselor's report, the Agency found that Complainant alleged Manager, Customer Services (MCS) verbally threatened him on December 23, 2022, when MCS told Complainant that he would shoot Complainant. Complainant had not seen MCS speak that way to his coworkers. Complainant also stated that several months later Supervisor, Customer Services (SCS) waved a pen that SCS was holding in Complainant's face. Complainant alleged that there were witnesses to both events, but he did not identify them.

In his affidavit, MCS denied that the incident as alleged in claim 1 occurred. He stated that he had made no threats to Complainant. ROI at 123-24. SCS also denied in his affidavit that the incident with the pen as alleged in claim 2 had occurred. He stated that he did not “know why [Complainant] claims that I wa[]ved a pen in his face. I never did such acts.” ROI at 130.

In analyzing Complainant’s harassment claim, the Agency found that there was no evidence outside of Complainant’s own allegations that his protected bases motivated the incidents or that even substantiated the events had occurred. The Agency further found that Complainant failed to show that he was subjected to conduct sufficiently severe or pervasive to create a hostile work environment. The instant appeal followed.

CONTENTIONS ON APPEAL

Neither Complainant nor the Agency submits a brief 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

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 he is a member of a statutorily protected class; (2) that he was subjected to unwelcome conduct related to his protected class; (3) that the harassment complained of was based on his protected class; (4) that the harassment had the purpose or effect of unreasonably interfering with his 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. See Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (Apr. 29, 2024).

In other words, to prove his hostile work environment claim, Complainant must establish that he 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, in this case his race or age. Only if Complainant establishes both of those elements—hostility and motive—will the question of Agency liability present itself.

Here, neither party disputes that Complainant satisfied the first element, but the record is devoid of evidence to indicate that the events occurred as Complainant alleged. Both MCS and SCS denied in their sworn affidavits that either incident took place. Complainant, who declined to submit an affidavit in support of his complaint, therefore cannot establish sufficiently persuasive evidence to contradict management's version of events. Therefore, we find that Complainant did not establish a prima facie case of discrimination as alleged.

Even if the events had occurred as alleged, we find that Complainant failed to prove that MCS or SCS harbored discriminatory animus or that such events were sufficiently severe or pervasive to constitute harassment. We note that the antidiscrimination statutes are not a civility code. Rather, they forbid "only behavior so objectively offensive as to alter the conditions of the victim's employment." Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 81 (1998). We therefore find that Complainant has not established that he was subjected to a discriminatory hostile work environment as alleged.

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 30, 2024
Date