



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

[REDACTED]
Jeannie T.,¹
Complainant,

v.

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

Appeal No. 2023005318

Hearing No. 490-2021-00159X

Agency No. 4G-720-0025-21

DECISION

On September 23, 2023, 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 23, 2023 final order concerning her 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 Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission AFFIRMS the Agency's final order.

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.

ISSUES PRESENTED

Whether the Administrative Judge's grant of summary judgment in favor of the Agency was appropriate, or whether genuine disputes of material fact exist that require a hearing.

Whether the Agency's final order properly found that Complainant was not subjected to discrimination based on disability and in reprisal for prior protected EEO activity.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Rural Carrier at the Agency's Atkins Post Office in Atkins, Arkansas.

On March 10, 2021, Complainant filed (and subsequently amended) an EEO complaint alleging that the Agency discriminated against her and subjected her to a hostile work environment on the basis of disability (physical and mental) and in reprisal for prior protected EEO activity when:

1. Management falsely accused her of wrongdoing and poor work performance, compared her to co-workers, taunted her, directed her to break rules and laws, directed her to falsify scans, talked to her customers about Complainant, defamed her, directed her to drive and answer the phone at the same time, and directed her to call management when requesting leave;
2. Complainant was directed to submit medical documentation;
3. Complainant did not receive requested leave slips back; and
4. Management purposefully delayed scans which will affect her pay for her route.

Claim 1 – Hostile Work Environment

Complainant stated that she experiences complications from several conditions including Radiculopathy, cervical region, headaches, post-traumatic stress disorder, single episode of major depression, stomach and duodenal disorders, diaphragmatic hernia without obstruction or gangrene, gastric ulcer, heartburn and loss of appetite. According to Complainant, she has no work restrictions. Report of Investigation (ROI) at 147-148. The Postmaster averred she was not aware of Complainant's medical condition. Complainant stated that the Postmaster was aware of her medical condition, because in her interactive District Reasonable Accommodation Committee

(DRAC) meeting, she requested an accommodation of separating herself from her supervisor. The Agency did not provide the requested accommodation.

The record shows that Complainant had filed numerous grievances regarding the Postmaster's conduct and claimed violations of the Agency's rules and protocol. Complainant also raised allegations of a hostile work environment with the Human Resources Generalist on December 17, 2019. Those claims were forwarded to upper management for investigation. ROI at 213-221. Following an Initial Management Inquiry Process (IMIP) investigation, officials determined that there were communication issues in the office between the Postmaster and the employees. The Postmaster was assigned and completed training courses on Communication, Emotional Intelligence at Work, and Effective Listening. Complainant admitted that the negative interactions between the Postmaster and the employees happened "regardless of whether there [was] discrimination/favoritism involved." ROI at 170.

Complainant claimed that management began to manufacture evidence against her from February to March 2021. For example, Complainant alleged that the Postmaster and a clerk would call her out on the workroom floor in front of her co-workers at any opportunity given. Complainant stated that the Postmaster and the clerk made several false allegations that Complainant did something "violent" towards the clerk. In one instance, the clerk accused Complainant of throwing letters at her. ROI at 180. Complainant also stated that the clerk approached her regarding a certified letter from February 24, 2021, that was not scanned. The Postmaster confirmed that she received a report from the clerk regarding an altercation with Complainant in which Complainant engaged in name-calling. The Postmaster affirmed that she gave Complainant an official discussion instructing her not to call other employees derogatory names.

In February 2021, the Postmaster gave a talk, stating that due to snow accumulation from a winter storm, rural carriers may have to occasionally leave their vehicles to physically deliver the mail. She told them that city carriers do that all the time. ROI at 226.

Complainant stated she was accused of misdelivering a Christmas card containing cash. Complainant averred that the Postmaster talked to customers about her and defamed her. The Postmaster stated she was contacted by a customer who received a Christmas card in error.

The Postmaster took delivery of the card and wrote a note to the customer regarding what occurred. The Postmaster denied that she accused Complainant of misdelivering mail or taunting Complainant. ROI at 225.

On March 11, 2021 and March 17, 2021, the Postmaster put Complainant on the "Poor Performance" log, because she failed to perform the "stop the clock" scans on parcels on those dates. Complainant averred the Postmaster put her on the Postmaster's "Poor Performance" list as a way of humiliating her in front of her co-workers. Other employees were also annotated on the same log.

Complainant alleged she was instructed to drive and answer the phone at the same time, which is against Agency policy. Complainant claimed that the Postmaster had mentioned her not answering her phone for over a year. However, Complainant stated that she stopped answering her phone when the Postmaster scolded her and told her she was not to have a phone call on the workroom floor. According to Complainant, she was contacted by Agency personnel while on her route on February 20, 25, and 27, 2021. The Postmaster acknowledged that management at times would need to call carriers while they are on the route to ask them about the status of certain mail items and packages. If a carrier answers a phone call while on the route, they are trained and instructed to pull over and stop the vehicle to ensure that they are not operating the vehicle while speaking on the phone. The Postmaster added that Complainant refuses altogether to answer her phone while on her route and they have had to send clerks or she would personally go out to Complainant's route if they needed to contact her.

Claims 2 and 3 – Time and Attendance Issues

Complainant stated the Postmaster "would make up her own rules concerning the time sheets and start times." Complainant stated that she was required to submit documentation any time she took sick leave.

The Postmaster explained that Complainant has had many absences and she noted on her leave request that some of these absences were "job-related." The Postmaster noted that Complainant had no workers' compensation claim on file; therefore, she requested documentation from Complainant in connection with her claim of job-related injuries or illness. The Postmaster added that at a later point Complainant had other absences that she did not denote were "job-related."

The Postmaster affirmed that she consulted with the attendance control officer and determined that Complainant had an approved Family and Medical Leave (FMLA) case at that time and the appropriate documentation was on file.

Complainant claimed that between August 2020, and February 2021, she had filed grievances over leave and turned in paperwork asking about her FMLA leave slips. Complainant stated carriers have the right to a copy of their leave slips, but the Postmaster never provided an explanation why she has given her trouble about her leave.

The Postmaster asserted that Complainant did not follow this process to properly request leave and Complainant was told by the union steward that she needed to sign/date the leave slip and submit to her. The Postmaster affirmed that because Complainant failed to follow these procedures, she could not approve or deny the leave, and therefore did not give the leave slip back to Complainant. The Postmaster added that once she receives a signed and dated leave slip and has either approved or denied the leave she then returns a copy of the leave request to the employee.

Claim 4 – Delayed Scans

Complainant was a rural carrier, and rural carriers are paid the daily evaluated time for their routes, regardless of whether they finish their route. Complainant's route received the incoming mail addressed to the post office. When the post office received new stamp stock in the mail, Complainant's route would receive the stamp stock; and it was an accountable item of value. Complainant was not aware how often stamp stock came in, but she averred that she had missed scans. ROI at 195-197.

The Postmaster stated that rural carriers are paid according to the evaluated times for their respective routes. The Postmaster stated that Complainant's route would receive the stamp stock. The Postmaster noted that the stamp stock was an accountable item of value, frequently worth thousands of dollars. The Postmaster affirmed that Complainant would often set the stamp stock on a counter rather than handling it like an accountable item by obtaining a signature and ensuring a proper transfer of custody. As a result, the clerks began taking the stamp stock out of Complainant's incoming mail for a couple of months to ensure that this accountable item was not misplaced.

The Postmaster stated this issue was discussed with the union and it was determined that Complainant would obtain a signature and properly transfer custody of the stamped stock in the future. There is no evidence that her pay was affected due to any missing scans.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. The AJ issued a summary judgment decision in favor of the Agency.

In the decision, the AJ determined that Complainant failed to raise a genuine issue of material fact as to management's discriminatory or retaliatory intent, and therefore, she failed to establish a hostile work environment claim. Complainant provided no evidence that any of the Agency's actions were taken because of a discriminatory or retaliatory motive. The AJ concluded that the conduct at issue was more likely the result of routine work assignments and personality conflicts. As a result, the AJ found that Complainant was not subjected to discrimination, reprisal, or a hostile work environment as alleged.

The Agency subsequently issued a final order fully adopting the AJ's decision. The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that the Postmaster's actions were not in accordance with Agency policy and, therefore, the Agency failed to proffer adequate legitimate nondiscriminatory reasons for its actions. She disputes the Postmaster's contention that Complainant improperly submitted her leave requests, saying she signed and dated all of the leave requests. She also disputes that management was unaware of her medical conditions, which she says were made known through the reasonable accommodation process. Complainant argues that the AJ did not consider her evidence and what little was allowed was "picked apart, piece by piece, and was all "discredited" by him, while taking all of the Agency evidence at face value. Additionally, Complainant submits new documents and evidence in support of her complaint. Accordingly, Complainant requests that the Commission reverse the final order.

STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, 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").

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. (Aug. 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*).

ANALYSIS

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 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 or retaliatory animus. Here, however, Complainant has failed to establish such a dispute. Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable fact-finder could not find in Complainant's favor.

Disparate Treatment

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 she was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Corp. v. Waters, 438 U.S. 567, 576 (1978). 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. Affairs v. Burdine, 450 U.S. 248, 253 (1981). To ultimately prevail, Complainant must prove, by a preponderance of the evidence, that the Agency's explanation is pretextual. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 120 S. Ct. 2097 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993).

To establish a prima facie case of discrimination, a complainant must show that: (1) she is a member of a protected group; (2) she suffered an adverse employment action; and (3) the circumstances give rise to an inference of discrimination. We note that, although a complainant bears the burden of establishing a "prima facie" case, Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 252-53 (1981), the requirements are "minimal," St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 506 (1993), and complainant's burden is "not onerous." Burdine, 450 U.S. at 253.

Complainant may establish a prima facie case of reprisal by showing that she (1) engaged in a protected activity; (2) the Agency was aware of her protected activity; (3) Complainant was subjected to adverse treatment by the Agency; and (4) a nexus exists between the protected activity and the adverse action. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2010).

Here, looking at the evidence in the light most favorable to Complainant, she failed to establish a prima facie case of discrimination or reprisal. Complainant has not shown that similarly situated employees outside of her protected groups were treated more favorably. She conceded the Postmaster treated nearly all employees in the same manner. Furthermore, Complainant has not demonstrated a nexus between any adverse actions and her protected classes. Complainant has not provided any evidence otherwise raising an inference of discrimination.

Notwithstanding, the Commission finds that the Agency articulated legitimate, nondiscriminatory reasons for its actions. Regarding claim (1), the Postmaster denied that she falsely accused Complainant of committing any act of violence. She explained that Complainant engaged in name-calling directed at the clerk and in response to Complainant's behavior she issued Complainant an official discussion instructing her not to call other employees derogatory names. The Postmaster added that she addressed all work performance issues with Complainant as needed, including missed deliveries and scanning errors. As to claims (2) and (3), the Postmaster affirmed that she requested documentation in support of Complainant's absences that were claimed to be "job-related" because Complainant had no approved workers' compensation claim. When Complainant requested leave that was not deemed "job-related," the Postmaster consulted with the attendance control officer and learned that Complainant had an approved FMLA case at the time. The Postmaster added that Complainant did not receive her leave request slips back because she failed to follow the process to properly request leave.

Finally, with regard to claim (4), the Postmaster explained that Complainant's route would receive the stamp stock for delivery to the Post Office, which was an accountable item of high value. The Postmaster stated that Complainant would often set the stamp stock on a counter rather than handling it like an accountable item. As a result, the clerks began taking the stamp stock out of Complainant's incoming mail for a couple of months to ensure that this accountable item was not misplaced. The Postmaster stressed that at no time was Complainant's pay affected because she, as a rural carrier, was paid the daily evaluated time for her route.

Complainant bears the burden of establishing that the Agency's stated reasons are merely a pretext for discrimination. Complainant can do this directly by showing that the Agency's proffered explanation is unworthy of credence. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. at 256.

The Commission finds no persuasive evidence that Complainant's disability or prior EEO was a factor in any of the alleged actions. At all times, the ultimate burden remains with Complainant to demonstrate by a preponderance of the evidence that the Agency's reasons were not the real reasons and that the Agency acted based on discriminatory or retaliatory animus. Complainant failed to carry this burden.

Furthermore, to the extent that Complainant claims that the alleged incidents constitute a claim of harassment, the Commission notes that under the standards set forth in Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993), a claim of hostile work environment must inevitably fail. See Enforcement Guidance on Harris v. Forklift Systems, Inc., EEOC Notice No. 915.002 (Mar. 8, 1994). A finding of a hostile work environment is precluded by our determination that Complainant failed to establish that any of the actions taken by Agency management were motivated by discriminatory or retaliatory animus. See Oakley v. U.S. Postal Serv., EEOC Appeal No. 01982923 (Sept. 21, 2000).

CONCLUSION

Based on a thorough review of the record, we AFFIRM the Agency's final order.

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

November 25, 2024

Date