



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

████████████████████
Maxima C.,¹
Complainant,

v.

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

Appeal No. 2023005330

Agency No. 1C-631-0348-22

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 31, 2023, final decision 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 decision.

ISSUE PRESENTED

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

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 Group Leader, Custodial, at the Agency's Morgan Processing and Distribution Center in New York, New York.

On December 9, 2022, Complainant filed an EEO complaint alleging that the Agency subjected her to harassment based on disability (unspecified) and in reprisal for prior protected EEO activity when, as defined by the Agency:

1. On dates to be specified since September 2, 2022, she was provoked and put in hostile situations by management;
2. On dates to be specified, she was not utilized in her job description the way she should; and
3. On dates to be specified, her pay was altered.

The Agency initially defined the complaint as consisting of only two claims (claims 1 and 3, with the wording somewhat altered) and dismissed the complaint, pursuant to 29 C.F.R. § 1614.107(a)(1). After Complainant appealed the dismissal, the Commission reversed in part the Agency's decision (based on the Agency's lack of supporting documentation) and remanded claim 1 for investigation. See Aliza C. v. U.S. Postal Serv., EEOC Appeal No. 2023001897 (May 17, 2023). The Agency subsequently added claim 2 to the complaint.

Despite a request from the investigator who was investigating the complaint on remand, Complainant did not submit an affidavit in support of her claims.² At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of her right to request a hearing before an EEOC Administrative Judge. When Complainant did not request a hearing within the timeframe 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 her to discrimination as alleged. The instant appeal followed.

² The record indicates that the investigator emailed both Complainant and a representative with the affidavit form, but that Complainant failed to respond. ROI at 68, 97.

Regarding claim 1, Complainant stated in her complaint that on several occasions she was placed in a hostile and discriminating position by Manager of Maintenance Operations (Manager). ROI at 5. Complainant told an EEO Counselor that Manager was "harass[ing] and provok[ing] [Complainant] everyday." Id. at 18. Complainant stated to the EEO Counselor that this caused her "a great deal of stress leading to [m]ental [a]nguish." Id. Manager, who submitted an affidavit, averred that she was not aware of Complainant's "allegations and accusations" and added that Complainant in fact had been out of work since August 22, 2022. Id. at 100.

Regarding claim 2, Complainant stated to the EEO Counselor that her job description was "not being utilized" in the way it should be. ROI at 18. Manager stated, however, that Complainant had not been assigned "any duties outside of her job description." Id. at 102.

Regarding Complainant's protected bases, Manager stated that she was aware of some of Complainant's prior EEO activity but was unaware of any medical conditions or impairments of Complainant and that Complainant had never submitted any medical documentation.

In its final decision, the Agency first found that Complainant failed to establish that she is a person with a disability as defined by the Rehabilitation Act. The Agency reasoned that Complainant's assertion that she suffered from a disability (such as saying she had mental anguish) was merely general and therefore insufficient to demonstrate that she was substantially limited in a major life activity.

As for a prima facie case of retaliation, the Agency found that Complainant failed to show she was subjected to adverse treatment, as her allegations on the whole were vague and she provided no evidence to support them, especially in light of Manager's sworn statements indicating that Manager was unaware of any harassment accusations, and that Complainant was not assigned work outside of her position description. The Agency further found that the record was devoid of any evidence that Manager took any action toward Complainant based on her prior EEO activity.

Regarding Complainant's claim of harassment, the Agency found that Complainant could not show that any actions were taken because of her protected bases or that she was subjected to severe or pervasive conduct. The Agency concluded that Complainant did not offer any documents, witness statements, or other evidence of unwelcome behavior or of any conduct by management based on her membership in any protected group.

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 she is a member of a statutorily protected class; (2) that she was subjected to unwelcome conduct related to her protected class; (3) that the harassment complained of was based on her protected class; (4) that the harassment had the purpose or effect of unreasonably interfering with her 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 her hostile work environment claim, Complainant must establish that she 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.

As to retaliatory harassment, the Commission has held that reprisal claims are considered with a broad view of coverage and that the threshold for establishing retaliatory harassment is different than for discriminatory harassment. Retaliatory harassing conduct can be found even if it is not severe or pervasive enough to alter the terms and conditions of employment. See Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53 (2006). To prevail on her claim of retaliatory harassment, Complainant must show that she was subjected to conduct sufficient to dissuade a “reasonable person” from making or supporting a charge of discrimination. See Janeen S. v. Dep’t of Com., EEOC Appeal No. 0120160024 (Dec. 20, 2017) (citing Burlington N., 548 U.S. at 57), request for recons. denied, EEOC Request No. 0520180224 (May 31, 2018); EEOC Enforcement Guidance on Retaliation and Related Issues, EEOC Notice No. 915.004, § II(B)(3) & n.137 (Aug. 25, 2016); Carroll v. Dep’t of the Army, EEOC Request No. 05970939 (Apr. 4, 2000)).

Here, the record is devoid of evidence to indicate that the events occurred as Complainant alleged. Manager denied in her sworn affidavit that the incidents took place or that she was even aware of many of the allegations. Complainant, who declined to submit an affidavit in support of her complaint and did not submit any statement or brief on appeal, therefore has not established sufficiently persuasive evidence to contradict Manager’s version of events.³ Therefore, we find that Complainant cannot establish a claim of harassment.

Even if the events had occurred as alleged, we find that Complainant failed to prove that Manager, or any management official, harbored discriminatory or retaliatory animus or that such allegations rise to the level of 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).

³ We note that statements in an EEO Counselor’s report are not actual statements by the witnesses and are instead conversations summarized by an EEO Counselor. Such unsworn statements are therefore not as persuasive evidence as an affidavit. See Complainant v. Gen. Servs. Admin., EEOC Appeal No. 0120130973 (Apr. 22, 2015) (declining to consider statements made in an EEO Counselor’s report).

Accordingly, we find that Complainant has not established that she was subjected to a hostile work environment as alleged.

CONCLUSION

The Agency's final order 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

January 21, 2025

Date