



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

[REDACTED]
Josephine S.,¹
Complainant,

v.

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

Appeal No. 2024000048

Agency No. 4E-970-0024-23

DECISION

On October 2, 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 September 22, 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.

ISSUES PRESENTED

The issue is whether Complainant has established, by a preponderance of the evidence, that she was discriminated against based on sex when, in October 2022, she reported to management that she had been subjected to sexual harassment by a coworker.

BACKGROUND

During the period at issue, Complainant worked as a City Letter Carrier, at the Agency's Oak Grove Station in Portland, Oregon.

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.

Complainant alleged that at one point she confronted her Co-worker (male) for smelling her hair. Coworker admitted that he did so because he said he perceived a cigarette odor. Some time thereafter, Co-worker moved into the same residential complex occupied by Complainant. In late October 2022, Co-worker invited Complainant to his house to watch a football game. When Complainant declined the invitation, Co-worker said words to the effect of: “I wouldn’t be sniffing your hair this time.”

Complainant reported the matter to another co-worker who then informed their supervisor, the Station Manager (male), about Complainant’s allegations of harassment.

The Agency conducted interviews regarding Complainant’s allegations against Co-worker in early December 2022. On December 22, 2022, Complainant contacted an EEO Counselor to claim that Station Manager had not responded to her report of harassment in a manner that she found sufficiently adequate or prompt. By notice dated December 31, 2022, the Agency suspended Co-worker for unacceptable conduct – specifically making inappropriate comments to Complainant. The Agency and Complainant did not resolve the matter she alleged to be discriminatory through informal EEO counseling.

On March 27, 2023, Complainant filed a formal EEO complaint alleging that the Agency discriminated against her based on sex (female) when:

On October 27, 2022, management failed to take action on Complainant’s report of sexual harassment by Coworker.

After an investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). In accordance with Complainant’s request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b), finding no discrimination was established.

The instant appeal followed.

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). EEO Management Directive for 29 C.F.R. Part 1614, at Ch. 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 AND FINDINGS

It is well-settled that sexual harassment in the workplace constitutes an actionable form of sex discrimination under Title VII. See Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986). In order to establish a prima facie case of sexual 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 sex; (3) that the harassment complained of was based on her sex; (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 Agency. McCleod v. Soc. Sec. Admin., EEOC Appeal No. 01963810 (August 5, 1999) (citing Hanson v. City of Dundee, 682 F.2d 987, 903 (11th Cir. 1982)).

In cases of co-worker harassment, the Agency is responsible for harassment in the workplace where it (or its agents) knew or should have known of the conduct, unless it can be shown that it took immediate and appropriate corrective action. The Agency can raise an affirmative defense when it shows that it took immediate and appropriate corrective action. EEOC Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors, No. 915.002 (June 18, 1999). What is appropriate remedial action will necessarily depend on the particular facts of the case, such as the severity and persistence of the harassment and the effectiveness of any initial remedial steps. Taylor v. Dep't Of Air Force, EEOC Request No. 05920194 (July 8, 1992).

Here, we determine that even if the co-worker's actions were harassing in violation of Title VII, the Agency cannot be held liable under the circumstances of record. Complainant has expressed her disapproval regarding the amount of time that elapsed between late October 2022, when the Station Manager was informed of Co-worker's impropriety. and when the Agency began to interview Complainant, Coworker and witnesses in early December 2022. Thereafter, Complainant criticized the Agency's corrective action as insufficient. According to Complainant, the Station Manager should also be disciplined for not taking her claim more seriously because she is a woman. We disagree and find the Agency's remedial action following Complainant's sexual harassment allegation was sufficient. It was not unreasonable that there was a delay between Complainant's report and the Agency's interviews because both Complainant and Station Manager took leave in the weeks between October 2022 and December 2022. Moreover, given the single incident of misconduct at issue, we find appropriate the Agency's determination to discipline Coworker with a fourteen-day suspension. We also note that Complainant has not alleged any further harassment from Coworker following reporting the matter to management.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, we AFFIRM the final Agency decision which found the Agency not liable for sexual harassment.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0920)

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 his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit his or her 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 his or her 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(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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 his or her 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 22, 2024

Date