



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

[REDACTED]
Giselle T.,¹
Complainant,

v.

Robin Carnahan,
Administrator,
General Services Administration,
Agency.

Appeal No. 2024000226

Agency No. GSA-22-R7-P-0074

DECISION

On October 10, 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 12, 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. For the following reasons, the Commission AFFIRMS the Agency's final decision.

ISSUES PRESENTED

Whether the Agency correctly determined that Complainant was not subjected to discrimination and harassment on the bases of race, color, or sex.

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 Realty Specialist, Lease Contracting Officer, GS-1170-12, at the Agency's Leasing Division within the Greater Southwest Region in Fort Worth, Texas.

On October 11, 2022, Complainant filed a formal EEO complaint alleging discrimination based on race (African American), color (black), and sex (female), when on June 16, 2022, Complainant was not selected for the position of Supervisory Realty Specialist, GS-1170-13², advertised under vacancy announcement number 22PBSA564LRMP.

Complainant stated that she applied for the vacancy on May 4, 2022. Complainant stated that the Agency found her to be qualified and referred her to later stages in the process. Complainant stated that an interview panel consisting of Panelist-1, Panelist-2, and Panelist-3 interviewed her on June 9, 2022. Complainant stated that Panelist-1, who is also her second-line supervisor, told her that she was not selected for the position on June 15, 2022. Complainant stated that Panelist-1 sent an email to the office on June 21, 2022, which stated that Selectee had accepted the position. The record shows that Complainant is a Caucasian female. Complainant stated that she is a superior candidate for the position than Selectee. Complainant cited to her twelve years of experience in leasing while receiving excellent performance appraisals and that she had a Master of Public Administration while Selectee had a Master of Business Administration. The record shows that Selectee worked within the Agency's leasing division since February 2011.

Panelist-1 stated that he was a member of the three-person interview panel that interviewed candidates for the vacancy. Panelist-1 stated that Human Resources reviewed the applications to determine which candidates should be referred for further consideration. Panelist-1 reported that there were 16 candidates referred for further consideration. Panelist-1 stated that two withdrew themselves from the process and that the remaining 14 candidates were interviewed. Panelist-1 stated that the interview panel scored each candidate based on their responses to the same interview questions and their resume. Panelist-1 explained that the interview panel discussed each candidate after their interview and reached a consensus score for the candidates. Panelist-1 stated that the top scoring candidate was referred for selection.

² The claim as accepted misidentified the position as GS-1107-13.

Panelist-1 stated that Complainant earned a weighted score of 2.175 on a scale of zero to five where zero meant unsatisfactory and five meant outstanding. Panelist-1 stated that Complainant's score placed her as the 10th highest scoring candidate while Selectee earned the highest, weighted score of 3.575. Panelist-2 and Panelist-3 described the interview process and results in the same way.

The record contains the panelists' notes from the interviews which corroborates the score that Complainant received. For instance, Panelist-1 indicated that Complainant listed some authorities not relevant to leasing and failed to mention Leasing Certification Program (LCP)³ with regard to the first question. For question 2, Panelist-1 noted that Complainant provided a good list of roles and details with some minor inaccuracies, but that Complainant was too vague in responding to the second part of the question. For question 3, Panelist-1 noted that Complainant failed to address the question of how she equipped and developed others. Panelist-1 notes indicated that Complainant failed to address question 5 in her response. Panelist-2's interview notes indicated that Complainant had a lot of strong talking points regarding question 3 that had "absolutely nothing to do with answering this question." Report of Investigation (ROI) at 247. Panelist-2 noted that Complainant missed the point of question five and failed to provide much detail in her response to question six. Panelist-3's interview notes indicated that Complainant failed to identify Complainant's warrant level or LCP in response to question one. Panelist-3 noted that Complainant failed to answer question three. Panelist-3 also noted a lack of clarity in Complainant's response to question five.

The panelists' interview notes also support that Selectee performed better during the interview. For example, Panelist-1 noted that Selectee mentioned her LCP for question one. For question 2, Panelist-1 noted that Selectee had accurately explained all core roles. For question five, Panelist-1 noted that Selectee provided a good example of a policy and process she developed and influenced at the regional level. Panelist-3's interview notes for Selectee indicate that Selectee's responses did not contain any obvious deficits.

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). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b).

³ There are three levels of certification, LCP I, LCP II, and LCP III.

The decision concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

CONTENTIONS ON APPEAL

Complainant contends that the Agency did not articulate a specific, clear, and individualized explanation for why Complainant was not selected for the vacancy.

The Agency contends that the members of the interview panel articulated a specific, clear, and individualized explanation for why Complainant was not selected for the vacancy. The Agency further contends that Complainant has failed to demonstrate that the legitimate, nondiscriminatory reasons for her non-selection were pretext for discrimination.

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

To prevail in a disparate treatment claim such as this, 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 he or she was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Construction Co. 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.

A prima facie case of discriminatory non-selection may be established by showing: (1) the complainant is a member of a protected group; (2) the complainant applied and was qualified for a position for which the employer was seeking applicants; (3) that complainant was not selected for the position; and (4) that an applicant not in complainant's protected group was chosen for the position under circumstances that, if explained, would support an inference of discrimination. Emery S. v. Fed. Deposit Ins. Corp., EEOC Appeal No. 2020001130 (Sept. 11, 2020) (citing McDonnell Douglas v. Green, 411 U.S. 792, 802 (1973)).

Once Complainant has established a prima facie case, the burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the agency has met its burden, the complainant bears the ultimate responsibility to persuade the fact finder by a preponderance of the evidence that the agency acted on the basis of a prohibited reason. See St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

Complainant must prove that the employer's reasons are not only pretext but are pretext for discrimination. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 507 and 516 (1993). A factual issue of pretext cannot be established merely on personal speculation that there was discriminatory intent. Complainant v. U.S. Postal Service, EEOC Appeal No. 01A11110 (May 22, 2002); Springer v. Durflinger, 518 F.3d 479, 484 (7th Cir. 2008). Pretext means that the reason offered by management is factually baseless, is not the actual motivation for the action, or is insufficient to motivate the action. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 120 S. Ct. 2097 (2000).

It is undisputed that Complainant established a prima facie case of discriminatory non-selection on the bases of race, color and sex. We find the Agency articulated a legitimate, nondiscriminatory reason for not selecting Complainant for the vacancy. Specifically, Panelist-1 stated that Selectee was the highest scoring candidate whereas Complainant was the 10th highest scoring candidate. Furthermore, contrary to Complainant's contention on appeal, the three panelists' interview notes provide a specific, clear, and individualized explanation for why Complainant did not earn a higher score. For example, all three panelists noted that Complainant failed to adequately answer questions three and five out of the six question interview. Panelist-1 and Panelist-3 also noted that Complainant failed to mention her LCP certification with regard to question one.

We find Complainant failed to show that the Agency's articulated reasons for not selecting her were a mere pretext for discrimination. Complainant reported a personal belief that her personal qualifications were superior to Selectee's qualifications based on Complainant's twelve years working in the Agency's leasing division and the master's degree that each had earned. The record shows, however, that Selectee also had approximately 11 years of experience working with the Agency's leasing division. Complainant also failed to show a qualitative difference between the Master degrees of her and Selectee in terms of their relationship to real estate leasing.

CONCLUSION

Accordingly, the Agency's final decision 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)

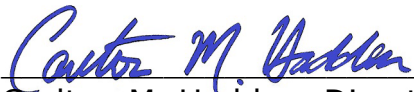
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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 15, 2025

Date