



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Ludie M.,¹
Complainant,

v.

Jeremy Pelter,
Acting Secretary,
Department of Commerce,
Agency.

Appeal No. 2024000425

Hearing No. 570-2023-00194X

Agency No. 64-2022-00170

DECISION

On October 15, 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 27, 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.

At the time of events giving rise to this complaint, Complainant worked as a Writer-Editor, GS-1082-13, at the Agency's Editorial Services, Office of Inspector General (OIG) in Washington, DC.

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.

On April 25, 2022, Complainant filed an EEO complaint alleging that the Agency discriminated against her and subjected her to a hostile work environment on the bases of disability (mental) and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 and Section 501 of the Rehabilitation Act of 1973 when:

1. On an ongoing basis, Complainant has been subjected to inappropriate and offensive comments. Examples include:
 - A. On or about January 19, 2022, Complainant's second-level supervisor (Supervisor 2), the Chief of Staff, asked Complainant during a video conference call with the entire Editorial Services (ES) Team if she was being "glib.";
 - B. On or about February 3, 2022, Complainant's first-level supervisor (Supervisor 1) a Writer-Editor, and Supervisor 2 "laughed" and "scoffed" at Complainant's concerns and suggestions;
 - C. Also on February 3, 2022, Supervisor 2 called Complainant "activated," in a derogatory reference to her mental disability, Attention Deficit Hyperactivity Disorder (ADHD);
 - D. On or about February 4, 2022, in response to Complainant's concerns regarding workload in OIG and the disclosure of her prescribed medication, Supervisor 1 referred her to the Agency's Employee Assistance Program (EAP), due to her "personal problems."; and
 - E. On or about February 14, 2022, at 9:54 a.m., Supervisor 1 called Complainant on her personal cellphone and verbally accosted her, demanding that she not write any more emails on her day off. Approximately three hours later that day, Supervisor 1 again called Complainant on her personal cell phone and yelled at her for sending emails;
2. On February 14, 2022, Supervisor 1, Supervisor 2, and the Deputy Inspector General (Deputy), declined Complainant's request for a meeting concerning the hostile work environment she was experiencing;

3. On February 24, 2022, Deputy informed Complainant that because she mentioned her "diagnosis" this "puts [her] into the reasonable accommodation process" instead of addressing the issue with her directly. Complainant felt that this forced her into requesting a reasonable accommodation;
4. On or about March 3, 2022, Deputy dismissed Complainant's concerns and requests for assistance by stating, "I would not characterize the work environment in Editorial Services as toxic or hostile."; and
5. On or about March 10, 2022, Supervisor 2 forced Complainant to use her sick leave to continue to self-advocate for her mental and physical health and remove herself from the hostile work environment.

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 Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing.

The parties engaged in discovery. The Agency filed a motion for summary judgment (Agency's motion) on July 11, 2023. Complainant filed her Opposition to the Agency's motion (Complainant's opposition) on July 25, 2023. The Agency filed a reply on August 2, 2023. After close consideration, the AJ assigned to the case determined that the record was adequately developed. Viewing the facts in the light most favorable to Complainant, and drawing all justifiable inferences in Complainant's favor, the AJ found that there were no genuine issues of disputed material fact or credibility; and that summary judgment was proper. On September 20, 2023, the AJ assigned to the case issued a decision granting the Agency's motion and entering judgment in favor of the Agency.

According to the AJ, this case involves allegations of discrimination under the disparate treatment and hostile work environment theories of discrimination. Claim Numbers 2 to 4 are the only timely alleged adverse actions, alleging disparate terms and conditions of employment. Thus, the AJ only analyzed these claims under the disparate treatment theory of discrimination.

Assuming that Complainant could establish a prima facie case of discrimination, the AJ determined that the Agency articulated legitimate, nondiscriminatory reasons for its actions and treatment of Complainant. The AJ asserted that the Agency's reasons for its actions in this case were specific, clear, and individualized.

The AJ determined that no reasonable fact finder could find that the Agency's reasons were pretext for discrimination. According to the AJ, beyond Complainant's assertion, assumption, and conjecture, Complainant produced no evidence raising any question of fact that the responsible officials' treatment of Complainant was motivated by disability or reprisal or that such prohibited bases factored in Complainant's treatment. The AJ found that the complaint was unsupported by any direct or circumstantial evidence of discrimination. There was no evidence establishing a bias against Complainant's protected class. There were also no indicia of discrimination.

According to the AJ, Complainant did not establish that she was treated differently from others based on disability or reprisal. Even assuming the responsible officials knew about Complainant's disability and protected activity, observed the AJ, mere knowledge is, without more, insufficient to establish pretext for discrimination.

The AJ observed that the hostile work environment claim comprised Claim Numbers 1A to 1E. Regarding the harassment claim, the AJ asserted that it was clear that Complainant was frustrated about her treatment. Complainant, however, did not show that the Agency was motivated by discriminatory or retaliatory animus, as opposed to personal reasons. Therefore, the AJ determined that under the standards of Harris v. Forklift Systems, Inc., 510 U.S. 17, 22 (1993), Complainant's harassment claim must fail.

Even so, the AJ cited to applicable Commission precedent, stating that the Commission has repeatedly found that not every unpleasant or undesirable action which occurs in the workplace constitutes an EEO violation. The AJ determined that the evidence did not support a finding of such prohibited conditions.

As Complainant alleged, under the totality of circumstances of this case, the AJ again cited to applicable Commission precedent, determining that the conduct and treatment neither created the required chilling effect nor rose to the level of severity or pervasiveness necessary to establish discriminatory harassment.

The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged. This appeal followed; and Complainant did not submit an appeal statement. In its appeal brief, the Agency agrees with the AJ's decision, opposing Complainant's appeal.

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. (as revised, August 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).

Upon review, we find the record in the present case was fully developed. Moreover, despite Complainant's contentions, arguments and allegations as she described them, we do not find the Agency's took any action based on discriminatory or retaliatory animus.

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 factfinder could not find in Complainant's favor.

Complainant's allegations revolve around workload and stress. Complainant did not allege that she was reassigned or that her duties were altered. Nor did Complainant receive any discipline. She also failed to establish a causal nexus between the Agency's conduct and any disability or alleged protected activity. Rather, the record reflects that the Agency's alleged actions were taken in response to Complainant's work-related stress concerns and in providing supportive information and resources. Complainant presented no evidence of pretext on any accepted claim.

Importantly, the record reflects that the alleged conduct occurred on just seven sporadic days in a remote environment over two months (more than a third of which Complainant was not even in the environment because she was on vacation, using fit time, or taking leave); and no adverse actions were taken against Complainant. ROI at 1061-70. Therefore, Complainant has presented insufficient evidence to meet the requisite severity and pervasiveness to support a prima facie case of harassment.

We agree with the AJ's statements that Complainant was given the opportunity to engage in essential discovery, ample notice of the Agency's motion, a statement of the undisputed material facts, and the opportunity to respond to the Agency's motion. However, Complainant did not identify or produce evidence that tended to disprove the facts asserted by the Agency. Nor did Complainant explain how the facts that were in dispute were material under applicable legal principles.

Upon careful review of the AJ's decision and the evidence of record, as well as the parties' arguments on appeal, we conclude that the AJ correctly determined that the preponderance of the evidence did not establish that Complainant was discriminated against by the Agency as alleged.

Accordingly, we AFFIRM the Agency's final order fully implementing the AJ's decision 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)

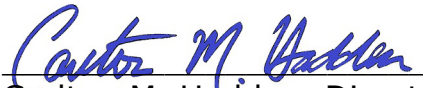
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department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

March 6, 2025

Date