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

[redacted]
Nevada R.,[1]
Complainant,

v.

Deb A. Haaland,
Secretary,
Department of the Interior
(Geological Survey),
Agency.

Appeal No. 2024000549

Hearing No. 570-2023-00819X

Agency No. DOI-USGS-22-0856

DECISION

On October 18, 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 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. For the following reasons, the Commission AFFIRMS the Agency's final order.

ISSUE PRESENTED

The issue is whether the EEOC Administrative Judge (AJ) properly issued a decision without a hearing concluding that Complainant was not subjected to

[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.

discrimination and harassment based on race (white), color (white), sex (female), and reprisal.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Building Operations Assistant, GS-07, at the Agency's Office of Management Services in Reston, Virginia. Agency Case #DOI-USGS-22-0856 Report of Investigation (ROI) at 103. Complainant is a white Caucasian female. She engaged in EEO activity when she filed an administrative harassment complaint on September 21, 2022. ROI at 37, 104-05, and 111-12.

From May 2019 to October 2022, Complainant's first-line supervisor (Supervisor 1 [African-American, male]) was a Supervisory Facilities Operations Specialist. He was aware of Complainant's protected bases and later, her protected EEO activity. Complainant had a new first-line supervisor in October 2022 (later referred to as Employee 2). ROI at 43, 67, 104, 149-51, and 157. Complainant's third-line supervisor (Supervisor 3 [White, Caucasian male]) was the Chief. He was also aware of Complainant's protected bases and later, her protected EEO activity. ROI at 43, 67, 104, 196-98, and 202.

The Operations and Maintenance Section, where Complainant worked, had two GS-07 Building Operations Assistants, Complainant and a named coworker (Coworker 1 [Black]). ROI at 67, 70, 112, 117, 150, and 152-53. Complainant's job duties included receiving visitors and phone calls, reviewing correspondence for clerical errors, tracking correspondence in the Data Tracking System (DTS), time and attendance records, tracking project expenditures, maintaining work orders, Personal Identification Verification (PIV) badges, parking passes, conference room scheduling, property accounting, ordering and tracking keys, and taking meeting minutes. ROI at 73-4, 104, 198, and 208-09.

On December 12, 2023, Complainant filed an EEO complaint (with subsequent amendments) alleging that the Agency discriminated against her and subjected her to a hostile work environment on the bases of race (Caucasian), sex (female), color (White), and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 when:

1. On September 8, 2022, Supervisor 1 lied about a "Policy Change" and made an abrupt change to work Complainant had been doing for two consecutive years;

2. On September 22, 2022, Supervisor 1 expected Complainant to complete "data tracking system and meeting minutes duties" as compared to similarly situated employees;

3. On September 30, 2022, Supervisor 1 made a change to Complainant's regular assign duties and bypass Complainant for reviews and edits of documents which was Complainant's regular role and gave it to a coworker;

4. On October 4, 2022, Supervisor 1 and Supervisor 3 had a meeting with Employee Relations for the sole purpose of drafting a letter of warning to issue to Complainant;

5. On October 4, 2022, Supervisor 3 neglected to share with the Office of Human Resource (HR) the documentation of harassment that Complainant was subjected to by her coworkers;

6. On October 4, 2022, Supervisor 1 removed Complainant's access to his calendar;

7. On January 11, 2023, during a contract meeting, a coworker made an insulting comment to Complainant implying that Complainant could not take notes accurately;

8. On January 11, 2023, Supervisor 1 interrupted Complainant's "Admin" meeting and singled Complainant out for responding to a "snarky" comment made by a coworker during a contract meeting; and

9. On January 25, 2023, Supervisor 1 transferred Complainant's Property Inventory duties to a coworker.

The Agency conducted an investigation into the complaint. The investigation revealed that during the COVID-19 pandemic, the USGS National Center operations required that personnel coming to the National Center should contact their supervisor prior to arrival to ensure they are added to the approved access list. Individuals not on the approved access list would be denied entry to National Center buildings. See ROI at 151, 165, and 177. Under these requirements, Complainant and a Security Office Supervisor (Security Office Supervisor) entered non-USGS visitors into the building access list. ROI at 107, 121, 245, and 248-49.

On August 24, 2022, Supervisor 1 emailed Supervisor 3 about changing the access policies given the loosening of pandemic restrictions. ROI at 169. Supervisor 1 did not communicate the policy change, including to Complainant or Security Office Supervisor. See ROI at 248-49. On September 8, 2022, two unidentified coworkers of Complainant's asked her to add USGS visitors to the visitor access database list. ROI at 151-52, 185-86, 198-99, and 248. Complainant declined to assist her coworkers and followed the prior policy, stating that the visitors would need to go through their office points of contact (POCs [Security Office Supervisor's area]) for assistance or security. ROI at 107. Complainant then exchanged messages with Supervisor 1, who told her she needed to assist under the new policy. Supervisor 1 told Complainant that the policy had changed, and that he had not yet implemented it. He also accepted responsibility for not having implemented the new policy. ROI at 107 and 168. See ROI at 198-99.

Complainant and Coworker 1 had the same grade level, title, and job description. ROI at 153. Complainant believed her workload was heavier than Coworker 1's. ROI at 109 and 126.

The Agency uses DTS for tracking incoming and outgoing office correspondence, but the system is rarely used. Complainant had prior experience using DTS and was initially the office lead on using it. Coworker 1 was then trained on DTS. ROI at 154. Complainant also served as the primary taker of minutes for a regular contract meeting because of her prior experience; Coworker 1 served as Complainant's back-up. ROI at 153. Complainant asked Supervisor 1 to rebalance the workload between herself and Coworker 1. Supervisor 1 directed Coworker 1 to begin taking meeting minutes and be trained in using DTS and charge card issues so that he could reassign that work. ROI at 109, 124, 126, 154, 159-60, and 269.

The Agency received a notice of violation from the Fairfax County Department of Environmental Quality related to the building's wastewater discharge permit on or around September 21, 2022. ROI at 155, 200, and 305. A Facilities Operations Specialist (Operations Specialist) was responsible for the building's wastewater permit. Operations Specialist worked with Complainant to enter the action into DTS and draft the initial response. Supervisor 1 reviewed and approved the response, and Operations Specialist mail it by certified mail that day. According to Supervisor 1, the letter had to go out in the mail before 1:30 pm or it would have resulted in another violation. ROI at 156 and 200.

On or about October 4, 2022, Supervisor 1, as Complainant's supervisor, met with HR regarding Complainant.

He was concerned with Complainant's behavior in the office in recent months and wanted to proceed according to policy. HR suggested issuing a letter of expectations (also referred to as a letter of warning) for office behavior. ROI at 106 and 156.

On August 29, 2022, Complainant emailed Supervisor 1 and Supervisor 3, complaining that Operations Specialist had looked into her overhead cabinet looking for something. He had also commented that Complainant and Coworker 1 needed more overhead cabinet space and informed Complainant she had a visitor while pointing to her office couch. Complainant considered Operations Specialist's actions to be rude and degrading, stating that she hated coming to the office. ROI at 227-28.

On September 9, 2022, Supervisor 3 forwarded Complainant's email to the Anti-Harassment Program Manager in compliance with applicable agency policy, and asked if there would be time for a meeting to discuss Complainant's "harassment" allegation to be sure management was properly addressing it. The anti-harassment coordinator responded stating that she did not consider the email to be harassment. ROI at 202 and 315. On September 21, 2022, Complainant filed two reports of alleged harassment with the Agency, one against Operations Specialist and one against a named employee. ROI at 78-81, 121, and 198.

Prior to October 2022, Supervisor 1 allowed Complainant and Coworker 1 access to his electronic work calendar to schedule meetings. ROI at 152. On or around October 4, 2022, Complainant accessed Supervisor 1's work calendar and saw that he had a meeting scheduled with the Agency's human resources office. ROI at 152, 205, and 313. Complainant opened and read a draft letter that was attached to Supervisor 1's email meeting invite, which was a letter of warning addressed to her. Supervisor 1 then changed the access to his work calendar so that everyone in the office could see when he was available or busy, but no one could add to or change his calendar entries or see the details of his meetings. Complainant was not singled out. ROI at 115, 153, 157, 192, 201, and 313.

On or around January 11, 2023, during a contract meeting, Operations Specialist and Employee 2, Complainant's to be new first-line supervisor, disagreed about closing an action item. ROI at 116. Complainant, who was in attendance via Teams videoconference and taking meeting minutes, told Operations Specialist that she "had captured his concerns in the meeting notes," to which Operations Specialist responded "[w]hen I review the minutes, I will see what that is supposed to mean." ROI at 116 and 232.

Complainant responded "[i]t wasn't that difficult." ROI at 116. Operations Specialist and Complainant were under a mutual no-contact agreement at the time of the meeting. Id.

On or around January 11, 2023, during a meeting attended by Supervisor 1, Complainant, Coworker 1, and Employee 2 to discuss administrative matters, Supervisor 3 briefly pulled Supervisor 1 from the meeting. ROI at 116, 193, 205-06, and 237. Complainant theorized, without support, that Supervisor 3 pulled Supervisor 1 from the meeting to inform him that Complainant had contacted Operations Specialist during the earlier contract meeting in violation of a no contact order. ROI at 118. Complainant alleged that Employee 2 sent her an email two days later stating she "made a comment that was 'not needed' . . . at the contract meeting and to remind me that direct communications were to go through him and not to [Operations Specialist]." ROI at 116.

During FY22, Complainant complained to Supervisor 1 that she felt unfairly burdened because Coworker 1 did not have duties related to property. In or around January 2023, the office received new computers for specific employees. ROI at 125 and 194. Supervisor 1 assigned Coworker 1, who was present in the office while Complainant was working remotely, the task of copying the names and property numbers from the computer boxes, notifying staff that the new computers had arrived, and providing him with a list of the computer assignment and property numbers. ROI at 119, 155, and 194-95. Supervisor 1 asserted that he did not transfer Complainant's property inventory duties; and that she remained responsible for property inventory. He also asserted that the annual property inventory process had not been initiated for the current fiscal year.

Complainant alleged that prior to the COVID-19 pandemic, Supervisor 1 had asked her, one of the least paid in the office, to supply candy to his customers. She alleged that the expense came from her personal account on a monthly basis for a good year, questioning Supervisor 1's ethical and moral competence as a manager. ROI at 189 and 263.

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.

On September 5, 2023, the AJ assigned to the case issued a Notice of Proposed Summary Judgment (the Notice).

The Notice described the grounds for summary judgment, citing to the undisputed facts and the Agency's articulated reasons for its actions contained in the record. On September 16, 2023, Complainant submitted a response to the Notice (Complainant's Response). On September 20, 2023, the Agency submitted its response to the Notice (Agency's Response).

After reviewing the record, including the ROI and the parties' submissions, and drawing all justifiable inferences in Complainant's favor, the AJ determined that the record was sufficiently developed and summary judgment in favor of the Agency was appropriate. On September 29, 2023, the AJ issued a decision and order pursuant to 29 C.F.R. § 1614.109(g) (2023), entering judgment in favor of the Agency.

Assuming Complainant could establish a prima facie case of discrimination, the AJ determined that the Agency articulated legitimate, nondiscriminatory reasons for the alleged discriminatory actions and treatment. According to the AJ, the Agency provided specific, clear, and individualized explanations for its actions, the terms and conditions of Complainant's employment, and Complainant's treatment.

The AJ determined that beyond assertion, assumption, and conjecture, Complainant provided no evidence showing that the responsible officials' actions and treatment of Complainant were motivated by race, color, sex, or reprisal, or that such bases of discrimination factored into the alleged actions. The AJ observed that the complaint was unsupported by any direct or circumstantial evidence of discrimination; and that there was no evidence establishing a bias against Complainant's protected classes. The AJ asserted that there were no indicia of discrimination. Citing to applicable Commission precedent, the AJ stated that even assuming the responsible officials knew about Complainant's protected classes, mere knowledge is, without more, insufficient to establish pretext for discrimination.

Even assuming the incidents occurred as Complainant alleged, asserted the AJ, under the totality of circumstances of this case, the conduct and treatment neither created the required chilling effect nor rose to the level of severity or pervasiveness necessary to establish discriminatory harassment. Therefore, the AJ found there were no genuine issues of material fact in this case and entered summary judgment in favor of the Agency.

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.

CONTENTIONS ON APPEAL

On appeal, Complainant reiterates her allegations and previously raised arguments that the AJ had reviewed in Complainant's Response to the Notice. Complainant outlines 16 bases for her belief that the AJ and the EEO Investigators, who investigated her complaint, "cherry-picked" facts that the AJ eventually considered to reach what Complainant feels is an unfair decision. Complainant also raises issues of a settlement offer, mediation, and failure to include management's statements as well as documentation of denied promotion opportunities that she believes constitute admissions of guilt by the Agency.

In response, the Agency expresses agreement with the AJ's decision, asserting that Complainant had offered no evidence to disrupt the AJ's holding. The Agency requests that the Commission affirm its final order adopting the AJ's decision.

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 animus. Here, however, Complainant has failed to establish such a dispute. We note Complainant's previously raised arguments that the AJ had reviewed in Complainant's response to the Notice. However, Complainant did not describe or present any evidentiary corroboration for her allegations that would support a different conclusion in this case than the one reached by the AJ.

For example, Complainant did not identify any issues of material facts in dispute. Instead, as she did in her response to the Notice, Complainant raises complaints about a settlement offer, mediation and other matters that Complainant considers to be admissions of guilt by the Agency. 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 based on race, color, sex, and reprisal (Claims 1-9)

The Commission has adopted the burden-shifting framework for analyzing claims of discrimination outlined in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). To establish a prima facie case of disparate treatment, a complainant must show that: (1) they are a member of a protected class; (2) they were subjected to an adverse employment action concerning a term, condition, or privilege of employment; and (3) they were treated differently than similarly situated employees outside their protected class, or there was some other evidentiary link between membership in the protected class and the adverse employment action. See Nanette T. v. U.S. Postal Serv., EEOC Appeal No. 0120180164 (March 20, 2019); McCreary v. Dep't of Def., EEOC Appeal No. 0120070257 (Apr. 14, 2008); Saenz v. Dep't of the Navy, EEOC Request No. 05950927 (Jan. 9, 1998).

The Commission applies the McDonnell Douglas analysis to complaints involving retaliation claims. Orlando O. v. Department of Health and Human Services, EEOC Appeal No. 0120170253 (Aug. 8, 2018) (citing Hochstadt v.

Worcester Found, for Experimental Biology Inc., 425 F. Supp. 318, 324 (D. Mass.), aff'd, 545 F.2d 222 (1st Cir. 1976)). The Commission also applies the McDonnell Douglas analysis to complaints involving disability claims. Kenneth M. v. Dep't of Justice, EEOC Appeal No. 2022004767 (Nov. 17, 2022).

In order to establish a prima facie case of retaliation, a complainant must demonstrate that: (1) she participated in EEO activity; (2) an Agency official(s) was aware of the protected activity; (3) a subsequent adverse action took place, and (4) there is a causal link between the adverse action and the employer's knowledge of protected activity. Nida R. v. Dep't of Def., EEOC Appeal No. 0120152884 (Apr. 22, 2016) (internal citations omitted); see also EEOC Enforcement Guidance on Retaliation and Related Issues, § II.C.2, n. 154 (Aug. 25, 2016) (citing Henry v. Wyeth Pharm., 616 F.3d 134, 148 (2d Cir. 2010)). Furthermore, "[t]he cases that accept mere temporal proximity between an adverse employment action as sufficient evidence of causality to establish a prima facie case uniformly hold that the temporal proximity must be 'very close' [in time]." Clark County Sch. Dist. v. Breeden, 532 U.S. 268 (2001) (citing to O'Neal v. Ferguson Constr. Co., 237 F.3d 1248, 1253 (C.A.10 2001); Richmond v. ONEOK, Inc., 120 F.3d 205, 209 (C.A.10 1997) (finding a three-month period insufficient); Hughes v. Derwinski, 967 F.2d 1168, 1174-1175 (finding a four-month period insufficient).

Once Complainant has established a prima facie case, the burden of production then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). If the Agency is successful, the burden reverts back to Complainant to demonstrate by a preponderance of the evidence that the Agency's reason(s) for its action was a pretext for discrimination. At all times, Complainant retains the burden of persuasion, and it is her obligation to show by a preponderance of the evidence that the Agency acted on the basis of a prohibited reason. St. Mary's Honor Center v. Hicks. 509 U.S. 502 (1993).

For the following reasons, we find that Complainant failed to establish a prima facie case of discrimination based on race, sex, color and reprisal.

Complainant meets the elements required to establish her prima facie case of reprisal to the extent that she had filed an administrative complaint of harassment of which management was aware. Management also took adverse actions against Complainant following their awareness of her EEO activity.

Complainant also established a prima facie case of discrimination only to the extent that she is a White Caucasian female. Complainant failed to identify any other similarly situated employees outside of her protected categories who were treated more favorably under similar or same circumstances. Therefore, Complainant has not established a prima facie case of disparate treatment based on race, sex, color or reprisal. The Agency has also provided legitimate nondiscriminatory reasons for the challenged management actions; and we also find no persuasive proof of pretext.

For Claim 1, Supervisor 1 changed a building access policy after COVID restrictions loosened; he did not timely tell staff as the new policies were formalized, but he did not "lie." See ROI at 248-49 and 283. Complainant believed it was not Supervisor 1's place to make or enforce a policy change but she failed to tie the alleged action to any of her protected bases.

With respect to Claim 2, Supervisor 1 divided work between the two assistants, Complainant and Coworker 1, based on experience. After Complainant complained, Supervisor 1 took steps to rebalance the workload. ROI at 109, 124, 126, and 153-54. Complainant herself asserted that Coworker 1 was less experienced than she was.

In Claim 3, Complainant participated in processing and drafting a response to a violation notice (as part of her assigned duties), but Supervisor 1 used his discretion to have the POC finalize and mail the letter due to a time crunch. ROI at 155, 200, and 305. Complainant herself admitted that this was a one-time incident. See ROI at 119.

In Claim 4, Supervisor 1, as Complainant's supervisor, met with HR regarding Complainant on or about October 4, 2022, to discuss his concerns with her behavior. ROI at 156.

As to Claim 5, Supervisor 3 shared documentation of Complainant's harassment allegations with the anti-harassment team on September 9, 2022 as required by applicable Agency policy in DOI PB 18-01. ROI at 202 and 315. Per the policy, that team reaches out to Complainant, and she had an opportunity to detail her allegations. ROI at 78-81, 121, and 198. The record is devoid of any evidence of the alleged October 4, 2022, meeting between Supervisor 3 and HR or the alleged purpose for such a meeting. Supervisor 3 also clarified that he had already reached out to the anti-harassment team and was not meeting with employee relations regarding taking some sort of action with her; and would not have had a responsibility to share her memos with HR at that point. ROI at 202.

Regarding Claim 6, Supervisor 1 changed his calendar access so that everyone in the office could see when he was available or busy, but no one could add to or change his calendar entries or see the details of his meetings after he realized staff, including Complainant, could improperly read private documents attached to his meetings. ROI at 153, 157, and 192.

Regarding Claim 9, Supervisor 1 transferred Complainant's property inventory duties to Coworker 1 on January 25, 2023, because Complainant wanted the workload rebalanced to give Coworker 1 more responsibilities. Complainant was also teleworking and Coworker 1, who was onsite in person, could better track inventory. ROI at 119, 125, 155, and 194-95.

We next turn to Complainant to show pretext. The Commission has stated that proof of pretext includes discriminatory statements or past personal treatment attributable to the named managers, unequal application of agency policy, deviations from standard procedures without explanation or justification, or inadequately explained inconsistencies in the evidentiary record. See Ricardo K . v. Dep't of Veterans Affairs, EEOC Appeal No. 2019004809 (date/year) (citing January B. v. Dep't of the Navy, EEOC Appeal No. 0120142872 (Dec. 18, 2015) (Citing Mellissa F. v. U.S. Postal Serv., EEOC Appeal No. 0120141697 (Nov. 12, 2015)). We find no such proof here.

Here, Complainant was aggrieved that she did not get promoted, and she did not feel adequately compensated for the work she performed. Complainant however did not dispute managements explanations or show that those explanations lack credence and should not be believed. Nor did Complainant demonstrate, by preponderant evidence, that their actions were motivated by discriminatory or retaliatory animus; and she failed to establish a link between the challenged management actions and any of her protected bases.

Regarding reprisal, we note that the incidents alleged in Claims 1 and 6 occurred on September 8, 2022, prior to Complainant's September 21, 2022, protected activity; and thus cannot be reprisal. Complainant did allege management actions that occurred after her protected activity, including minor changes to her duties, her supervisors' meetings with human resources, Operations Specialist alleged "snarky" comment, and Supervisor 1 excusing himself from a meeting. See Notice at 4. However, based on management's explanations that Complainant failed to dispute with any corroboration, none of these actions was based on Complainant's administrative filing.

Moreover, as a supervisor, Supervisor 1 was acting within his supervisory authority to assign work, move correspondence through the DTS and change policies. This includes policies regarding visitor access and calendar access that were within his control as he deemed necessary and appropriate in support of the Agency's mission. Supervisor 1 was also acting within his supervisory authority when he took actions to meet deadlines. Complainant failed to provide evidence that any of management's alleged actions were motivated by discriminatory or retaliatory animus.

Complainant also alleged, without supporting evidence, that Coworker 1 was Supervisor 1's "favorite"; she repeatedly complained about perceived unfairness; and she complained that she was held to a "higher standard." She however failed to establish any nexus between these unsupported allegations and any of her protected bases. While Complainant is correct that Supervisor 1 and Coworker 1 were both Black African-Americans, Complainant's perception that Supervisor 1 favored Coworker 1 is unsupported by the record which reflects that Supervisor 1 took steps to address Complainant's complaints regarding workload by reassigning Coworker 1 more work. See ROI at 108, 119, and 126. Yet Complainant was unsatisfied.

Notably, Supervisor 1 did not assign any task to Complainant outside of her position description. He also only reassigned tasks and duties to Coworker 1 at Complainant's own request. Complainant asserted that Coworker 1 received ratings of "Outstanding" for work not performed. Complainant however did not present any evidence, such as documentation reflecting Coworker 1's performance rating, to support this assertion. Supervisor 1 also explained that distribution of administrative duties between Complainant and Coworker 1 was based on his understanding of their skill sets. See ROI at 153-54.

To the extent that Complainant alleged she was subjected to a hostile work environment, that allegation is precluded by the determination above that the Agency's explanations demonstrate that Claims 1-6, and 9 did not involve discriminatory or retaliatory animus. See Oakley v. U.S. Postal Serv., EEOC Appeal No. 01982923 (Sept. 21, 2000).

Harassment and Retaliatory Harassment (Claims 7-8)

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).

With regard to retaliatory harassment, Complainant need only show that the alleged actions were the type of action that would dissuade a reasonable employee from making or supporting a charge of discrimination. See Burlington N. & Santa Fe Ry. Co. v. White, 548 U. S. 53 (2006); see also EEOC Enforcement Guidance on Retaliation and Related Issues, No. 915.004 (Aug. 25, 2016); Carroll v. Dep't of the Army, EEOC Request No. 05970939 (Apr. 4, 2000).

Here, Complainant is Caucasian. She also engaged in prior EEO activity when she filed an administrative complaint. Management was aware of that activity. She however failed to describe any severe or pervasive management conduct that is sufficient to constitute actionable harassment.

As to Claims 7 and 8, even if Complainant felt that Operations Specialist, a coworker, "insulted" her during a meeting, there is no evidence that Operations Specialist was intentionally insulting Complainant as opposed to trying to get through a difficult conversation. Complainant and Operations Specialist were also not supposed to be interacting and the Agency sent her an email reminding her of that fact. ROI at 116.

Likewise, Operations Specialist's conduct in going through Complainant's overhead cabinet was inappropriate and would have been annoying. However, none of these alleged actions amount to either adverse treatment or can reasonably be viewed as taken to "dissuade a reasonable worker from making or supporting a charge of discrimination." See Carroll R. v. Yellen, EEOC Appeal No. 2020002891 (February 14, 2022); EEOC, Enforcement Guidance on Retaliation and Related Issues § II- B-3 (Aug. 25, 2016).

Beyond conclusory and speculative assertions, and even assuming that additional statements by the parties would have favored Complainant, Complainant has presented no other affidavits, declarations, or unsworn statements from other witnesses nor documents which contradict or undercut the explanations provided by management.

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 subjected to discrimination, unlawful reprisal, harassment or retaliatory harassment as alleged.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the AJ's decision and the Agency's final order adopting it.

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 20, 2024
Date