



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

[REDACTED]
Tori H.,¹
Complainant,

v.

Merrick B. Garland,
Attorney General.,
Department of Justice
(Federal Bureau of Prisons)

Appeal No. 2024000700

Agency No. BOP-2021-001877

DECISION

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's final decision dated October 12, 2023, concerning an equal employment opportunity (EEO) complaint claiming 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.

ISSUE PRESENTED

Did the final agency decision's findings correctly determine that Complainant failed to establish that she was subjected to unlawful discrimination based on race, sex, color and in reprisal for prior protected activity?

BACKGROUND

During the period at issue, Complainant worked as a Lieutenant, GS-11, at the Agency's Metropolitan Detention Center in Brooklyn, New York.

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 June 4, 2021, Complainant filed a formal EEO complaint alleging that the Agency discriminated against her based on her race (African-American), color (Black) and sex (female), as well as in retaliation for engaging in EEO protected activity (the instant matter), when:

On April 12, 2021, Complainant was subjected to bullying and harassment in the form of unwelcome comments by her second-level supervisor. Complainant's supervisor purportedly made the following statements during a closed-door meeting in the presence of another supervisor:

- “Let’s go amigo.”
- “What’s your personal beef with [a named Agency employee]?”
- “Any intel I receive from anyone I don’t have to tell you shit – you work for me.”
- “I took you from an 8 SIS Tech, to a GS-09 and GS-11 Lieutenant.”

After an investigation into the complaint, Complainant was provided a copy of the report of the investigation and with a notice of the right to request a hearing before an EEOC Administrative Judge or a final decision within thirty days of receipt of the correspondence. Complainant requested that the Agency issue a final decision.

On October 12, 2023, the Agency issued a final decision, finding no discrimination or unlawful retaliation was established as alleged.

The instant appeal followed.

ANALYSIS AND FINDING

To establish harassment sufficient to violate Title VII, Complainant must prove 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 her protected bases – in this case, her race, color, sex, or prior protected activity. Only if Complainant establishes both of these elements – hostility and motive – will the question of Agency liability present itself. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993). See also, Enforcement Guidance on Harris v. Forklift Systems Inc., EEOC Notice No. 915.002 (March 8, 1994).

The evidence developed during the investigation shows that the alleged statements occurred during a closed-door meeting held on April 12, 2021, between Complainant and her second-line supervisor (“the Captain”) (white male, Northern European ancestry). Complainant asserted that she was initially unaware of the reason for the meeting with the Captain, and that she had always enjoyed a “great professional relationship” with him. Complainant asserted that the Captain asked her to follow him to a conference room. Along the way, the Captain directed the Deputy Captain to also attend by gesturing and saying, “[l]et’s go amigo.”

Once in the conference room, Complainant stated that the Captain pointedly asked her, “[w]hat’s your personal beef with [named Intelligence Officer]?”

Complainant stated that she responded to the Captain’s question about the named Intelligence Officer by denying that she had a problem with him. The Captain referenced an email Complainant had sent to several recipients that was critical of the named Intelligence Officer.² Complainant stated that she then told the Captain that the email spoke for itself and she had a problem with the other employee’s actions, not with him. She said the Captain told her, “[a]ny intel I receive from anyone I don’t have to tell you shit, you work for me, you work for me period.” Complainant perceived the last comment as reflecting an offensive proprietary claim on her. She also said that at one point the Captain said, “I took you from an 8 SIS Tech, to a GS-09 and GS-11 Lieutenant,” which she perceived, among other things, as threatening her job assignment.

The Captain stated that he was advised by the Warden to “pull in” Complainant regarding the email she had sent to staff at the National Gang Unit. He said that he asked Complainant about her email and requested that she refrain from sending emails that could be perceived as confrontational. The Captain noted that during the meeting, Complainant was very aggressive with him, and left the room for a few minute and then returned. The Captain stated that he did not know why she was being so aggressive and denied he used any unprofessional or inappropriate language during the discussion.

The Deputy Captain said that the Captain asked him to be a witness to his conversation with Complainant. The Deputy Captain said the Captain discussed an email Complainant sent out to several staff members in the agency. He said that when the Captain questioned Complainant regarding her email, she became irate and very unprofessional. Specifically, he said Complainant said in a loud manner regarding the email, “Why? Because I can, because that is [the named employee’s] supervisor and since he wants to circumvent the chain of command and go directly to you with intelligence that he gathered, then I can circumvent the chain of command and go

² The email was sent by Complainant to the named Intelligence Officer, his supervisor, the Captain, and the “SIS Techs”, and stated:

[Named Intelligence Officer,] it's apparent you have no respect for authority, there's a Chain of Command you must follow, and still today you refuse to follow it. I would appreciate if you acknowledge the fact I'm the SIS Lt. @ MDC BRO. If there's intelligence that you need to share, its only respectful, at least that you email me as well. **FYI...**a shakedown was conducted on this inmate cell today, I'm sure from whatever information you passed on to the Captain, should I notify you of the results? Or have you already been made aware? If you would like to return to MDC BRO and run the SIS shop, you're more than welcome. If this behavior continues, I will notify your Supervisor, unless of course [the Captain] is your still your Supervisor.

directly to his supervisor too.” He averred the Captain attempted to defuse the situation several times and explain to her that he had a responsibility to act on the intelligence received, especially when it involved a security concern. He contends the Captain’s statement angered Complainant even more and she stepped out of the room for several minutes. When Complainant returned, the Deputy Captain said he tried to calm her down and explain the situation to little avail.

The Warden confirmed that he told the Captain that he believed the email Complainant sent to the staff at the National Gang Unit was inappropriate. He advised the Captain to seek clarification from Complainant about the situation.

Complainant stated that she believed the actions of the Captain and Deputy Captain during the meeting in question were deliberately undertaken with the purpose and effect “to willfully embarrass me as an African American female in a room alone with two Caucasian males.” She said she “felt bullied, and attacked by these large Caucasian males, who were defending another Caucasian male, while I was in a room alone as an African American female.” She added that she feared retaliation from them in regard to any vouchering for promotion, lateral reassignment, or in her performance evaluation.

The image which emerges from considering the totality of the record is that Complainant had an admitted good working relationship with the Captain until the meeting at issue. Both the content and the tone of the meeting left Complainant feeling aggrieved. She described feeling attacked by what she perceived as the supervisors’ defense of the other employee whose actions she felt she had justifiably criticized. However, the statutes under the Commission's jurisdiction do not protect an employee against all adverse treatment due simply to a supervisor's personality quirks or autocratic attitude. See Bouche v. U.S. Postal Serv., EEOC Appeal No. 01990799 (Mar. 13, 2002). See also Jackson v. City of Killeen, 654 F.2d 1181, 1186 (5th Cir. 1981) (“Title VII is not a shield against harsh treatment at the workplace; it protects only in instances of harshness disparately distributed. The essence of the action is, of course discrimination.”). Discrimination statutes prohibit only harassing behavior that is directed at an employee because of their protected bases. Here, beyond her bare assertions, the preponderance of the evidence does not establish that the Captain was motivated by discriminatory or retaliatory animus. Even assuming the Captain was harsh in his confrontation with Complainant about the email she sent, there is little doubt that he was motivated by the email and the potential workplace friction it caused, and not discriminatory or retaliatory animus. Moreover, Complainant’s expressed fears about future negative repercussions from this event are nothing but speculation. Complainant’s claim of harassment sufficient to violate Title VII is precluded based on our findings that Complainant failed to establish that this isolated event was motivated by her protected bases. See Oakley v. U.S. Postal Service, EEOC Appeal No. 01982923 (Sept. 21, 2000).

CONCLUSION

We AFFIRM the Agency's final agency decision because of the preponderance of the evidence of record does not establish that discriminatory or retaliatory harassment in violation of Title VII occurred.

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 29, 2024
Date