



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

[REDACTED]  
Guadalupe H.,<sup>1</sup>  
Complainant,

v.

Merrick B. Garland,  
Attorney General,  
Department of Justice  
(U.S. Marshals Service),  
Agency.

Appeal No. 2024000759

Hearing No. 510-2021-00001X

Agency No. USM-2020-0043

DECISION

On October 12, 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 20, 2023 final order concerning his 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.

ISSUE PRESENTED

Did the final Agency decision, which adopted the EEOC Administrative Judge's (AJ's) findings, correctly determine that Complainant failed to establish that he was subjected to unlawful discrimination?

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<sup>1</sup> 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

During the period at issue, Complainant worked as a Deputy United States Marshal Trainee at the Agency's US Marshals Service (USMS) Academy, Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia.

In 2018, the Agency failed Complainant on its Basic Deputy United States Marshal (BDUSM) Training Program. In 2019, Complainant returned to BDUSM but again failed to complete the training. On his third attempt at BDUSM, Complainant passed the course and advanced to become a Deputy United States Marshall.

On January 16, 2020, Complainant filed a formal EEO complaint alleging that the Agency discriminated against him based on race (African American), color (Black), national origin (Haitian), and in reprisal for prior EEO-protected activity when:

- a. On January 6, 2020, Complainant received a letter from the Agency advising that he would be terminated from his position as a Deputy United States Marshal Candidate if he did not return to the USMS Academy to complete the Basic Deputy United States Marshal (BDUSM) Training Program.
- b. In December 2019, Complainant was dismissed from the BDUSM Training Program and, subsequently, escorted off the FLETC campus.
- c. On November 21, 2019, Complainant was denied permission to have a 10-minute telephone call with the U.S. Department of Veterans Affairs.
- d. Between October and December 2019, Complainant was removed from participating in certain training exercises and/or docked training hours.
- e. On October 16, 2019, Complainant was the only BDUSM trainee to not be issued a box of new body armor.
- f. In October 2019, Complainant was threatened with being written up for safety violations at the firing range and possible removal from the BDUSM Program.
- g. On December 7, 2018, the day before graduation, Complainant was dismissed from the BDUSM Training Program after sustaining an injury and not allowed to graduate even though he had completed and passed all examinations.

After an investigation into the complaint, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an EEOC Administrative Judge (AJ). Complainant timely requested a hearing. On February 8, 2022, the Agency moved for a decision without a hearing.

On February 23, 2022, through Counsel, Complainant objected to the Agency's motion. Over Complainant's objections, the assigned AJ granted the Agency's motion and issued summary judgment in favor of the Agency on August 18, 2023. On September 20, 2023, the Agency issued a final order adopting the AJ's finding of no discrimination or unlawful retaliation.

The instant appeal followed.

### STANDARD OF REVIEW

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. 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 . . ."); EEO Management Directive for 29 C.F.R. Part 1614 at Ch. 9, § VI.B. (Aug. 5, 2015) (providing that an AJ's determination to issue a decision without a hearing, and the decision itself, will both be reviewed de novo). This essentially means that we should look at this case with fresh eyes. In other words, we are free to accept (if accurate) or reject (if erroneous) the AJ's, and Agency's, factual conclusions and legal analysis – including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. *Id.* at Ch. 9, § VI.A. (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

The Commission's regulations allow an AJ to issue a decision without a hearing upon finding that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). EEOC's decision without a hearing regulation follows the summary judgment procedure from federal court. Fed. R. Civ. P. 56. The U.S. Supreme Court held summary judgment is appropriate where an AJ determines no genuine issue of material fact exists under the legal and evidentiary standards. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a summary judgment motion, the AJ is to determine whether there are genuine issues for trial, as opposed to weighing the evidence. *Id.* at 249. At the summary judgment stage, the AJ must believe the non-moving party's evidence and must draw justifiable inferences in the non-moving party's favor. *Id.* at 255. A "genuine issue of fact" is one that a reasonable judge could find in favor for the non-moving party. See Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A "material" fact has the potential to affect the outcome of a case.

An AJ may issue a decision without a hearing only after determining that the record has been adequately developed. Petty v. Dep't of Def., EEOC Appeal No. 01A24206 (July 11, 2003). We carefully reviewed the record and find that it is adequately developed. To successfully oppose a decision without a hearing, Complainant must identify material facts of record that are in dispute or present further material evidence establishing facts in dispute.

Here, Complainant's appeal did not identify deficiencies in the record nor present evidence to challenge the material facts of record.

Disparate treatment claims are examined under the three-party analysis first enunciated in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973). For complainant to prevail, he must first establish a prima facie of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. See McDonnell Douglas, 411 U.S. at 802; Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978). The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. See Texas Department of Cmty. 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 Ctr. v. Hicks, 509 U.S. 502 (1993).

The undisputed facts fully support the AJ's determination that the responsible management officials articulated legitimate, non-discriminatory reasons for its actions.

Regarding his 2018 dismissal from the BDUSM course (Claim g), the AJ held that Agency documentation confirmed that Complainant had failed a critical practical exercise in which Complainant was supposed to subdue one of his instructors simulating an arrest subject. Instead, Complainant was rendered defenseless by the instructor. While Complainant argued that a Caucasian BDUSM trainee was allowed to complete the course despite missing a physical training known as the "Marshal Mile," the record reflects that the Marshal Mile was not a critical component for passing BDUSM.

Regarding the "dirty" body armor that Complainant was issued during his second unsuccessful attempt to complete BDUSM training, the record revealed that in 2019, Complainant was actually reissued the same body armor that had been newly issued during his first attempt to complete BDUSM training.

Regarding Complainant's second dismissal from BDUSM training in 2019, Agency officials explained he was dismissed because Complainant was found to have missed more than 20 hours of BDUSM instruction.

Regarding Complainant's removal from the firing range in 2019, Agency officials explained that Complainant had committed a second violation of the rules governing expected conduct on the firing range. First, Complainant received a warning for bringing too few magazines to pistol training. Thereafter, Complainant was removed after he was observed going on the wrong side of the firing line.

Regarding the denial of Complainant's request for a ten-minute break to make a phone call to the Department of Veterans Affairs, the AJ concluded that it was not unreasonable for Agency officials to do so because it was time scheduled for formal classroom instruction.

Complainant alleged, that, after his 2019 dismissal, BDUSM instructors escorted him to the gate of the BDUSM training facility in a hostile manner. However, the record showed that Complainant had no evidence that Caucasian BDUSM who were dismissed were treated more favorably.

Concerning the letter Complainant received in 2020 stating his employment with the Agency would be terminated if he did not complete BDUSM on his third attempt, Complainant failed to show that other BDUSM trainees who were twice-dismissed from the course did not receive similar letters.

We concur with the AJ in that Complainant failed to evidence discrimination in any of the 2019 instances wherein he was docked hours or written-up for infractions during BDUSM training.

In sum, after careful consideration of all Complainant's allegations and the evidence of record, there is adequate support for the AJ's determination that the responsible management officials articulated legitimate, non-discriminatory reasons for the disputed actions. Beyond bare assertions, Complainant has simply provided insufficient evidence to support his claim that discriminatory animus against his protected characteristics or against his prior EEO activity played any role whatsoever in these matters. Oakley v. U.S. Postal Serv., EEOC Appeal No. 019982923 (Sept. 21, 2000).

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, we AFFIRM the Agency's final order implementing the AJ's summary judgement finding of no discrimination or unlawful retaliation as alleged.

### 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

January 25, 2024

Date