



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

[REDACTED]
Ivelisse S.,¹
Complainant,

v.

Stephen Ehikian,
Acting Administrator,
General Services Administration,
Agency.

Appeal No. 2024000937

Hearing No. 410-2023-00106X

Agency No. GSA-22-R4-P-0013

DECISION

On November 8, 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 October 25, 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 the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 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 Division Director, GS-15 at the Agency's Public Buildings Service (PBS) facility in Atlanta, Georgia.

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 February 28, 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 race (African-American), sex (female), age (58), and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 when:

1. Since May 29, 2020, management has publicly and widely undermined Complainant's leadership authority;
2. Since May 29, 2020, management has subjected Complainant to treatment and scrutiny disparate from her peers;
3. Since June 21, 2020, management has made demeaning and threatening comments to Complainant and about her to senior leadership;
4. On March 22, 2022, Complainant was informed that she would be reassigned to the Leasing Division, effective May 7, 2022.
5. On April 13, 2022, Complainant was issued a Warning Notice;
6. On April 27, 2022, Complainant was informed that she would be detailed to the Office of the Chief Architect; and
7. On May 23, 2022, a second mid-year performance appraisal was issued to Complainant in which false and damaging comments were added.

Regarding Claim 4, Complainant's second-line supervisor (Supervisor 2) asserted that he wanted to move six of his directors because rotating leaders promoted their abilities to ask why things are done as they are which facilitates improvement. He stated that he told his directors in June of 2021 that he was intending to rotate people but decided to postpone the action. In March 2022, he notified six different directors, including Complainant, that they would be moved in May 2022. The reassignments were further postponed. On August 14, 2022, the reassignments were implemented; and Complainant was moved from Facilities Director to Leasing Director.

Regarding Claim 5, management explained that Complainant was given the letter of warning because she was directed to change an employee's rating; she did not change the rating; and she informed her supervisor that if he wanted it changed, he could change it himself.

Complainant also sent rude emails to her leadership, Supervisors 1 and 2, copying her coworkers and subordinate employees on the emails.

Regarding Claim 7, according to Complainant's first-line supervisor (Supervisor 1), he provided a mid-year appraisal and stated that while numerical ratings were not given at the mid-year, he would assess Complainant a 4 at this point in anticipation of her reassignment to a new position as the Leasing Director. Supervisor 1 added additional comments to Complainant's mid-year appraisal after Complainant asked why she would not be rated a 5 on the mid-year. In response, Supervisor shared critiques that: "Notwithstanding the overall success and achievement of general performance metrics and her emphasis on EVS (undefined acronym) scores, [Complainant's] leadership approach with regard to Leading Change, Leading People and Building Coalitions is lacking." "She is less inclined to take direction and feedback favorably and has exhibited defensiveness if her position or approach is not fully supported." "Her interaction and general demeanor with her supervisor and broader leadership team suggests an underlying leadership approach of intimidation rather than collaboration. This does not instill trust or confidence." "[Complainant] could improve her overall leadership skill through occasional introspection and she should be mindful of her interactions with peers and colleagues and the impact those interactions may have on her performance." Notably, employees are not given a numerical rating on the mid-year appraisal.

Regarding her remaining claims, Complainant described comments that management allegedly made to her as "vile", "demeaning", and "threatening." According to Complainant, she was asked whether her heart was in her job. She also stated that Supervisor 2 routinely rolled his eyes at her, stiffened his body language, and breathed through his mouth.

Complainant believed that she was being undermined when Supervisor 1 granted her subordinate employee's grievance for his FY22 appraisal. She was directed to raise the subordinate's rating. She also acknowledged that Supervisor 2, just two years prior, was directed to raise Complainant's score in FY20 after a higher-level manager directed him to raise her score.

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 AJ assigned to the case allowed either party to supplement the record by producing any document which would provide further details relative to their position in the case. In a February 21, 2023, Acknowledgment Order, the AJ also gave the parties the opportunity to supplement the record by March 29, 2023. Complainant submitted an additional document on March 27, 2023. The parties also discussed the facts of the case in detail during the Initial Conference.

After reviewing the ROI and conducting an initial conference with the parties to afford them the opportunity to supplement the record, the AJ found that further development of the record was unlikely to lead to a finding of discrimination; and that preponderant evidence failed to show that Complainant was subjected to discrimination. On September 18, 2023, the AJ issued a decision without a hearing in favor of the Agency.

Assuming *arguendo* that Complainant established a *prima facie* case of race, sex, age, and reprisal discrimination concerning the challenged management actions in Claims 4, 5, and 7, the AJ found that the Agency provided legitimate, nondiscriminatory reasons for its actions.

The AJ observed Complainant's argument regarding Claim 4 that Supervisor 2's decision to move six GS-15 directors was paternalistic and unnecessarily meddled in their career trajectories. Regardless, asserted the AJ, Complainant had not demonstrated that the reassignments were conducted in a discriminatory manner. Citing to applicable Commission precedent, the AJ stated that Complainant had not shown that her reassignment was based on her race, sex, age, or past EEO activity.

The AJ likewise determined regarding Claim 5 that Complainant had not established that the Agency's warning letter was pretext. Therefore, observed the AJ, Complainant failed to prove race, sex, age, or reprisal discrimination concerning her warning letter.

As for Claim 7, the AJ found that the comments Supervisor 1 included in Complainant's mid-year performance evaluation were added to explain why he did not believe Complainant could be rated a 5 at that point in the appraisal period. The AJ observed that Complainant just a month earlier received a warning for her rude emails and refusal to change a rating as directed. The AJ found that the mid-year appraisal comments, while unflattering, were not discriminatory. The AJ determined that Complainant had not established pretext in the Agency's response.

Therefore, observed the AJ, Complainant had failed to prove discrimination based on race, sex, age, or reprisal concerning her mid-year appraisal.

Regarding Complainant's remaining claims that involved alleged harassment, the AJ asserted that Complainant had not reported any language that could be accurately described as vile, demeaning, or threatening. The AJ also observed that there were no comments about Complainant's race, sex, age, or EEO activity. According to the AJ, the whole of Complainant's allegations was a disagreement with her leadership style and the Agency's management decisions. Therefore, the AJ found that Complainant's harassment claim failed.

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. The instant appeal followed

On appeal, Complainant contests the AJ's decision, asserting that it was in error. She also raised arguments that were previously considered and addressed by the AJ. The Agency expresses agreement with the AJ's decision, opposing Complainant's appeal statements.

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. We note on appeal, Complainant has not argued that the AJ improperly failed to consider her March 27, 2023, additional document; and we do not find an abuse of discretion by the AJ in holding a teleconference as Complainant described. Moreover, we note only the issues identified above are considered in this case.

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 fact-finder could not find in Complainant's favor.

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