



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

[REDACTED]
Hattie K,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Appeal No. 2024000957

Hearing No. 510-2023-00219X

Agency No. 4G-006-0051-22

DECISION

On November 8, 2023, Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's October 10, 2023 final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, we AFFIRM the Agency's final decision finding no discrimination.

ISSUES PRESENTED

The issue presented before the Commission is whether Complainant has proven that the Agency subjected her to discrimination and/or harassment based on her age and in reprisal for protected EEO activity.

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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a PSE Sales and Services Distribution Associate within the Kingshill Post Office in the Virgin Islands.

On October 11, 2022, Complainant filed a formal complaint alleging that the Agency subjected her to hostile workplace discrimination on the bases of age and reprisal for prior protected EEO activity, when on May 27, 2022, she was terminated during her probationary period.

The Agency accepted the claims and conducted an investigation which produced the following evidence.

Complainant has established that she has prior EEO activity. Specifically, Complainant submitted a PS Form 1767 report of harassment on May 21, 2022. She asserted that her first-line supervisor, the Supervisor of Customer Services ("CS Supervisor"), and the Postmaster received and signed the form on May 23 and 25, 2022, respectively.

Complainant stated that CS Supervisor terminated her from her PSE position during the same conversation in which she issued her 90-day evaluation. She recalled that CS Supervisor asked for her badge and key, proceeded with her evaluation, and then provided her with a letter of separation stating she was being terminated for failure to meet the requirements of her position. Complainant recounted that CS Supervisor rated her as "Unsatisfactory" on all performance elements except for one on her 30- and 60-day evaluations and "Unsatisfactory" on all elements on her 90-day evaluation. Complainant stated CS Supervisor rated her "Unsatisfactory" because she came to work out of uniform one of the days she had window training and blamed her for packages being placed in the wrong box sections and mail out of order. Complainant asserted CS Supervisor failed to properly train her in her position and alleged the mistakes referenced by CS Supervisor were actually made by other employees. Complainant asserted her age was a factor in her termination because CS Supervisor referred to her as "the older one" and referred to her co-worker as "the younger one."

Complainant stated that CS Supervisor and the Postmaster retaliated against her for her PS 1767 complaint of harassment in terminating her because they received the form on May 23 and terminated her a few days later on May 27, 2022.

She also stated that the Postmaster called her into his office to discuss her harassment complaint but became defensive in CS Supervisor's favor and stated he would never override CS Supervisor's decisions. Complainant recalled Postmaster also became angry when she responded "ok" to his inquiries for additional information. Complainant noted that CS Supervisor's demeanor changed, and she isolated herself from Complainant and refused to communicate with her in the days prior to her termination. Complainant provided fifteen written statements from employees affirming her satisfactory performance and good attitude as a PSE, including from her comparator.

CS Supervisor confirmed she terminated Complainant on May 27, 2022, with concurrence from the Postmaster for failure to demonstrate qualification for continued postal employment. CS Supervisor asserted that from the beginning of her employment on March 12, 2022, Complainant made recurring errors, including placing parcels in the wrong u-cart, not verifying customer addresses, arguing with customers, failing to verify customer addresses, and placing letters in the wrong PO Box. CS Supervisor stated she placed Complainant with the best employees to learn the tasks and provided her with over 200 hours of training, to include training in how to scan parcels, process small parcels and distribute letters in customer PO Boxes, and perform SPM boxes. She added she also provided RSS and ACE computer training on how to distribute incoming parcels to at least six zip codes. Nonetheless, CS Supervisor asserted that Complainant continued to make errors. She recalled from May 6 through 27, 2022, Complainant placed a customer parcel in the wrong PO Box, clocked incorrectly, did not perform a punch, could not find customer notices, placed a parcel in the wrong basket, and did not write a number on at least five parcels.

CS Supervisor denied she referred to Complainant as "the older one" and explained that Complainant's chosen comparator received less training than Complainant because she grasped the assignments in less time. CS Supervisor noted that the comparator was not terminated because she demonstrated ability in her duties. CS Supervisor acknowledged that she received the PS Form 1767 in which Complainant complained she felt pressured by her to perform. However, she averred Complainant merely detailed her responsibilities as supervisor to coach, mentor, and follow up with expectations regarding Complainant's performance. CS Supervisor stated Complainant improperly viewed her routine supervisory duties as intimidation.

She added that despite her coaching, mentoring, and training, Complainant continued to make errors and ran out of time during her probationary period to prove her ability to complete the tasks required for her position.

The Postmaster stated that Complainant was terminated for failure to demonstrate qualification for continued postal employment. He noted that mistakes are typical during probation, but Complainant made repeated mistakes and showed episodes of anger around co-workers and customers. The Postmaster stated he regularly met with CS Supervisor to discuss and monitor Complainant's progress and attempted to help her achieve satisfactory performance. However, her performance did not improve. The Postmaster noted that he received Complainant's criticisms of CS Supervisor's conduct on PS Form 1767 but averred that the conduct alleged was consistent with the daily role of a supervisor: to monitor employees, set expectations, coach, and evaluate performance. The Postmaster recounted that he gave Complainant an opportunity to elaborate on how CS Supervisor erred in doing her job, but Complainant merely responded "ok."

The record contains e-mail correspondence between Complainant and CS Supervisor noting clocking errors by Complainant on May 8 and 13, 2022. The record also contains DSPS Product Tracking and Reporting documentation noting mail processing errors made by Complainant on at least three occasions. Per the Employee Evaluation Probationary Report dated May 27, 2022, CS Supervisor rated Complainant "Unsatisfactory" on all elements of her 90-day performance evaluation and stated Complainant did not meet all the requirements of the position.

The Letter of Separation dated May 27, 2022 and signed by CS Supervisor provided Complainant was being separated from the Postal Service because her performance during her probationary period failed to demonstrate qualification for continued postal employment.

At the conclusion of the investigation, Complainant was provided with a copy of the report of investigation and notice of her right to request either a final agency decision or a hearing before an EEOC Administrative Judge (AJ). Complainant requested a hearing. However, as noted in the AJ's August 31, 2023 Order of Dismissal, Complainant subsequently failed to comply with the explicit Orders of the AJ in that "she has failed or refused to cooperate in the processing of her complaint without good cause shown or to otherwise act with due diligence in pursuit of her claim." The AJ more fully noted:

[A]t no time has Complainant contacted the undersigned to advise of any difficulty in proceeding as Ordered or to otherwise explain her misconduct. In this regard, Complainant's failure to comply with previously issued orders coupled with her failure to contact this office to advise of any problems with proceeding as Ordered or to otherwise advise of her intention to proceed in this matter evinces that she is disinterested in pursuing her complaint in this forum. . . . **The electronic record reflects that Complainant is registered on the EEOC Public Portal and received the above referenced Orders at her email addresses of record as provided by her and listed in the Report of Investigation (ROI) and on the Portal. The record further reflects that Complainant has also downloaded everything issued to her through the Portal. In sum, the record reflects Complainant received the Orders in question, but she did not respond to any of the received Orders.** Moreover, the Orders afford notice that sanctions would be imposed for failure to follow orders issued by this office and to comply with the Commission's regulations. Complainant has not submitted any evidence or argument to show that she was incapacitated or otherwise unable to comply with said Orders. Additionally, Complainant has not provided any other explanation for her failure to proceed nor has she otherwise taken responsibility for her failure to act with due diligence in pursuit of her claim.

Therefore, the assigned AJ remanded the matter to the Agency for a final decision. The Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant specifically failed to produce preponderant evidence that the alleged incidents were motivated by her membership in a protected class. Complainant filed the instant appeal.

CONTENTIONS ON APPEAL

Complainant contends that she requested a hearing but did not have access to the EEOC Public Portal, as she is in the Virgin Islands and not on the mainland. Complainant further contends that she did not neglect to respond to any orders or requests made in this matter. Notably, Complainant does not proffer anything addressing the merits of her discrimination claims.

ANALYSIS

Standard of Review

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), 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”).

Disparate Treatment

A claim of disparate treatment based on indirect evidence is examined under the three-part analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). For Complainant to prevail, he or she must first establish a prima facie case 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. McDonnell Douglas, 411 U.S. at 802; Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978). The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Tex. Dep’t. of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the Agency has met its burden, 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. St. Mary’s Honor Ctr. v. Hicks, 509 U.S. 502 (1993).

In order to establish a prima facie case of discrimination based on age, a complainant may show: (1) that she is a member of the protected group (age 40 and over); (2) that she was subjected to an adverse employment action; and (3) that she was treated less favorably than other similarly situated employees outside of her protected group. We note that it is not necessary for a complainant to rely strictly on comparative evidence in order to establish an inference of discriminatory motivation necessary to support a prima facie case. O’Connor v. Consolidated Coin Caterers Corp., 517 U.S. 308, 312 (1996); EEOC Enforcement Guidance on O’Connor v. Consolidated Coin Caterers Corp., EEOC Notice No. 915.002, n. 4 (September 18, 1996).

Here, Complainant has not established a prima facie case of age discrimination. Complainant cannot show that employees outside of her protected classes were treated differently than she was under similar circumstances. Complainant has provided no credible indicator that her age served as a factor in management's actions in this matter.

Complainant can establish a prima facie case of reprisal by showing that: (1) Complainant engaged in protected activity; (2) the Agency was aware of the protected activity; (3) subsequently, Complainant was subjected to adverse treatment by the Agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Department of the Air Force, EEOC Appeal No. 01A00340 (September 25, 2000). In general, a complainant can demonstrate a causal connection using temporal proximity when the separation between the employer's knowledge of the protected activity and the adverse action is very close. See Clark County School District v. Breeden, 532 U.S. 268 (2001) (holding that a three-month period was not proximate enough to establish a causal nexus). Complainant can also establish a prima facie case of reprisal by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination. Shapiro v. Social Security Admin., EEOC Request No. 05960403 (Dec. 6, 1996) (citing McDonnell Douglas, 411 U.S. at 802). Here, because Complainant has established that she has prior EEO activity by the filing of her harassment complaint with management, we find Complainant has established a prima facie case based on reprisal.

Concerning Complainant's various claims, the Agency has provided legitimate, nondiscriminatory reasons (above) for its actions. The record reflects that CS Supervisor terminated Complainant on May 27, 2022, with concurrence from the Postmaster for failure to demonstrate qualification for continued postal employment. CS Supervisor asserted that from the beginning of her employment on March 12, 2022, Complainant made recurring errors, including placing parcels in the wrong u-cart, not verifying customer addresses, arguing with customers, failing to verify customer addresses, and placing letters in the wrong PO Box. Both CS Supervisor and the Postmaster stated that despite their efforts to help Complainant acclimate to her position, Complainant's performance did not improve. Complainant fails to show that the Agency's reasons for its actions are pretext for unlawful discrimination.

Hostile Work Environment

To prove her harassment claim, Complainant must establish 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 a protected basis – in this case, her age or prior EEO activity. Only if Complainant establishes both of those 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 Harassment in the Workplace](#), EEOC Notice No. 915.064 (April 29, 2024).

Furthermore, an employer is subject to vicarious liability for harassment when it is created by a supervisor with immediate (or successively higher) authority over the employee. See [Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 118 S.Ct. 2257, 2270 \(1998\)](#); [Faragher v. City of Boca Raton, 524 U.S. 775, 118 S.Ct. 2275, 2292-93 \(1998\)](#). However, where the harassment does not result in a tangible employment action (e.g., a discharge, demotion, or undesirable reassignment) the employer can raise an affirmative defense, which is subject to proof by a preponderance of the evidence, by demonstrating that it exercised reasonable care to prevent and correct promptly any harassing behavior; and the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. See [Burlington Industries, supra](#); [Faragher, supra](#); [Enforcement Guidance on Harassment in the Workplace \(Supervisor – Vicarious Liability\)](#), EEOC Notice No. 915.064 (April 29, 2024).

In order to establish a prima facie case of age or reprisal harassment, a complainant must prove, by a preponderance of the evidence, the existence of five elements: (1) that they are a member of a statutorily protected class; (2) that they were subjected to unwelcome conduct related to their class; (3) that the harassment complained of was based on their class; (4) that the harassment had the purpose or effect of unreasonably interfering with their 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. [Celine B. v. Dep’t of Navy](#), EEOC Appeal No. 2019001961 (Sept. 21, 2020).

While Complainant meets prong (1) concerning her age of the prima facie case outlined above, and has prior EEO activity, she cannot meet any of the remaining prongs, (2)-(5). The record does not contain evidentiary support for any alleged harassment of Complainant because of a protected category.

Agency actions in this matter do not evince an unlawful motive, and Complainant has not produced evidence to support that responsible management officials were motivated by discriminatory animus. Moreover, drawing all inferences in favor of Complainant, she cannot establish a prima facie case of harassment. Complainant's allegations of harassment are based on either legitimate, nondiscriminatory management decisions, Agency policy, or constitute nothing more than ordinary workplace occurrences. Beyond conjecture, Complainant has not shown that she was subjected to a hostile work environment based upon her claimed bases. In sum, the preponderance of the evidence does not establish that management was motivated by discriminatory animus.

Finally, regarding Complainant's hearing request and her failure to respond to the AJ's Orders, Complainant asserts that she did not have access to the EEOC Public Portal. We disagree. The record reflects that Complainant received the AJ's Orders in question through the EEOC Portal, but Complainant did not respond to any of the received Orders. Thus, the AJ's Decision to remand this matter to the Agency for a final decision was appropriate.

CONCLUSION

After a review of the record in its entirety, including consideration of all statements submitted on appeal, it is the decision of the Equal Employment Opportunity Commission to affirm the Agency's final decision because the preponderance of the evidence of record does not establish that discrimination or retaliation 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 22, 2025
Date