



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Demetria G.,¹
Complainant,

v.

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

Appeal No. 2024001304

Agency No. 4B-070-0441-23

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated November 16, 2023, dismissing her complaint of unlawful 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 reasons presented below, the Agency's final decision dismissing the complaint is VACATED and the matter is REMANDED for further processing.

ISSUE PRESENTED

Whether the Agency's dismissal was proper.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier at the Agency's Post Office in Edison, New Jersey.

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 November 7, 2023, Complainant filed a formal complaint. The Agency, in its final decision, characterized the complaint as follows:

Complainant alleged discriminatory harassment based on retaliation (not specified) when, on August 31, 2023, a supervisor walked close by and slapped the phone on Complainant's leg to order Complainant to do something.

The Agency dismissed Complainant's complaint for failure to state a claim under 29 C.F.R. § 1614.107(a)(1), reasoning that Complainant was not aggrieved by the supervisor's action. The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant argues the Agency misidentified her claim. She alleged that a management official "used others" in the office to punish her for filing an EEO complaint in May 2023. She alleged that the management official influenced her supervisor to harass her daily and that her supervisor had tried to fight her and spit on her. In addition, Complainant claimed that the management official stated, among other things, that he was "sick and tired of seeing [her] black ass in the office" and "wanted to fire all the black people in the office." She said the management official created a hostile work environment by spreading rumors about her that were not true. According to Complainant, he spread a rumor that she transferred to the Edison Post Office because she filed a sexual harassment case against the Postmaster at her previous office and had been sleeping with that Postmaster. Complainant said that the management official had problems with her hairstyles and would tell her that the scarfs on her head were not "uniform approved." Lastly, Complainant described an incident where the management official told Complainant's coworker to hit Complainant on the work room floor. Complainant stated that after her co-worker punched her, the management official covered up the assault. She described that she did not feel safe at work, and that she went to the Employee Assistance Program (EAP) for counselling.

The Agency did not submit a statement in response to the appeal.

STANDARD OF REVIEW

The Agency's decision to dismiss a complaint is subject to de novo review by the Commission, which requires the Commission to examine the record without regard to the factual and legal determinations of the previous

decision maker and issue its decision based on the Commission's own assessment of the record and its interpretation of the law. 29 C.F.R. § 1614.405(a). The Commission should construe the complaint in the light most favorable to the complainant and take the complaint's allegations as true. See Cobb v. Department of the Treasury, EEOC Request No. 05970077 (March 13, 1997). Thus, all reasonable inferences that may be drawn from the complaint's allegations must be made in favor of the complainant.

ANALYSIS

The matter before us is whether the Agency properly dismissed Complainant's complaint pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim. To state a viable claim of retaliation, Complainant must allege that: 1) she was subjected to an action which a reasonable employee would have found materially adverse, and 2) the action could dissuade a reasonable employee from making or supporting a charge of discrimination. Id. See also EEOC Enforcement Guidance on Retaliation and Related Issues, No. 915.004 (August 25, 2016); Carroll v. Department of the Army, EEOC Request No. 05970939 (April 4, 2000).

We disagree with the Agency's finding that Complainant failed to allege a viable claim of retaliation. Complainant stated, among other things, that a management official had "used others" in the office to punish her for filing an EEO complaint. She said the management official told her co-worker to punch her and when her coworker punched her, she did not feel safe and went to EAP for counselling. Complainant claimed that the management official influenced her supervisor to harass her, and that her supervisor tried to fight her and spit on her. Complainant said the management official said he was "sick and tired of seeing [her] black ass in the office" and voiced that he had problems with her hairstyles. The actions taken by management as *alleged by Complainant* could dissuade a reasonable employee from pursuing a claim of discrimination. As such, we conclude that the Agency erred in dismissing the complaint in this matter for failure to state a claim.

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is VACATED. The complaint is hereby REMANDED to the Agency for further processing in accordance with this decision and the Order below.

ORDER (E0224)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, a copy of complainant's request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action."

29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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 (R0124)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. 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. **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