



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Debbi V.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2024002932

Agency No. 20DR00052023152914

DECISION

On April 4, 2024, 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 March 5, 2024, final decision 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. For the following reasons, the Commission AFFIRMS the Agency's final decision finding no discrimination.

ISSUE PRESENTED

Whether the Agency correctly determined that Complainant was not subjected to discrimination on the basis of race.

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 Supervisory Program Analyst, GS-0343-14, at the Agency's Office of Information and Technology facility in Washington, D.C.

On August 2, 2023, Complainant filed a formal EEO complaint alleging discrimination based on race (Black) when on May 16, 2023, Complainant's first-level supervisor (Supervisor-1) denied Complainant's request to attend a Harvard University Women's Leadership Training.²

Complainant stated that she submitted the request to attend the Harvard training course on April 6, 2023, to Supervisor-1. Complainant reported Supervisor-1 denied the request on April 24, 2023. Complainant stated that management denied the training because of the alignment of the training to Complainant's responsibilities, business functions, and position description as well as the cost of the course. Complainant stated that her position description could not have been a proper rationale because the office was undergoing a reorganization. Complainant alleged that there were three similarly situated comparators (Comparator-1, Comparator-2, Comparator-3) who Supervisor-1 approved to attend external training courses, including the Harvard training course. Complainant stated that her race was a factor because these comparators were allowed to attend such training and they were a different race than Complainant.

Supervisor-1 stated that he reviewed Complainant's request for the Harvard training course. Supervisor-1 stated that a request to attend a training course offered by a source other than the Agency requires that there not be any Agency training or any government training resources covering the same topic. Supervisor-1 stated that even if those conditions are met, a decision whether a requester can attend the training depends on the cost, convenience, quality, and applicability. Supervisor-1 stated that budget constraints, mission impact due to the employee's absence, and whether the training is aligned to position or mission objections are factors affecting whether the training is approved.

² Complainant did not challenge the claim as framed. Complainant and the responding management official addressed the issue of the denial of Complainant's request to attend the training course at Harvard which was actually communicated to Complainant on April 24, 2023. The denial of Complainant's request to attend a Yale training course, which was communicated on May 16, 2023, is not addressed herein.

Supervisor-1 stated in the denial email that the Harvard training was not approved because of the lack of alignment between the course and Complainant's current responsibilities, position description, and business functions, as well as existing training courses for the requested topics available in the Agency's internal training system.

Supervisor-1 stated the external leadership development course was not in the best interest of Complainant's career development and growth. Supervisor-1 stated that Complainant has already demonstrated her effectiveness as a leader over her 30 years of federal service and her recent Outstanding performance rating. Supervisor-1 stated that areas where Complainant could develop are core business acumen skills and process improvement.

Supervisor-1 stated that he was the first-level approver for Complainant's training requests and Comparator-1. Supervisor-1 stated that the first-level approver role included evaluating whether the training requested meets position and mission requirements and whether the employee's absence would impact the mission. Supervisor-1 stated that Comparator-1 was approved for an external training course because Comparator-1 required improvement in his negotiation skills to perform his duty integrating a complex HR system. Supervisor-1 stated that he was only the second-level approver for Comparator-2 and Comparator-3, meaning that he was only required to evaluate the training request from the budgetary perspective and that a different individual evaluated whether the training was appropriate for the employee's position description and whether the Agency could withstand the employee's absence.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

CONTENTIONS ON APPEAL

Complainant recounts the content of her complaint on appeal. The Agency requests the affirmation of its final decision.

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”).

ANALYSIS

To prevail in a disparate treatment claim such as this, complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Complainant must initially establish a prima facie case by demonstrating that he or she was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Construction Co. v. Waters, 438 U.S. 567, 576 (1978). Proof of a prima facie case will vary depending on the facts of the particular case. McDonnell Douglas, 411 U.S. at 804 n. 14.

To establish a prima facie case of disparate treatment, a complainant must show that: (1) they are a member of a protected class; (2) they were subjected to an adverse employment action concerning a term, condition, or privilege of employment; and (3) they were treated differently than similarly situated employees outside their protected class, or there was some other evidentiary link between membership in the protected class and the adverse employment action. See Nanette T. v. U.S. Postal Serv., EEOC Appeal No. 0120180164 (March 20, 2019); McCreary v. Dep’t of Def., EEOC Appeal No. 0120070257 (Apr. 14, 2008); Saenz v. Dep’t of the Navy, EEOC Request No. 05950927 (Jan. 9, 1998).

Once Complainant has established a prima facie case, the burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Department of Community 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 Center v. Hicks, 509 U.S. 502 (1993).

Complainant must prove that the employer's reasons are not only pretext but are pretext for discrimination. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 507 and 516 (1993). A factual issue of pretext cannot be established merely on personal speculation that there was discriminatory intent. Complainant v. U.S. Postal Service, EEOC Appeal No. 01A11110 (May 22, 2002); Springer v. Durlinger, 518 F.3d 479, 484 (7th Cir. 2008). Pretext means that the reason offered by management is factually baseless, is not the actual motivation for the action, or is insufficient to motivate the action. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 120 S. Ct. 2097 (2000).

It is undisputed that Complainant established a prima facie case of discrimination based on race. We find the Agency articulated a legitimate, nondiscriminatory reason for denying Complainant's request to attend the training. Specifically, Supervisor-1 stated that the Harvard training was not aligned with Complainant's current responsibilities, position description, and business functions, as well as the Agency's internal training system offering training courses for the requested topics.

We find Complainant failed to show that the Agency's articulated reasons for the denial were a mere pretext for discrimination. Complainant relies solely on the three alleged comparators to demonstrate discriminatory motive. Comparator-2 and Comparator-3 are ineffective in demonstrating discriminatory motive because Supervisor-1 was not the first-level approver for these two employees. As such, he was not responsible for evaluating whether the requested training matched the employee's job duties and position description. Regarding Comparator-1, Supervisor-1 explained that Comparator-1's requested external training course directly addressed a need to strengthen that employee's negotiating skills, which was required for his position. Supervisor-1 stated, in contrast, that Complainant had already demonstrated leadership skills as demonstrated by her long-term successful performance on the job in a leadership role. Complainant failed to present any argument or evidence to rebut the articulated reasons regarding the approval of Comparator-1. As such, we find no basis on which to find discriminatory animus.

CONCLUSION

Accordingly, the Agency's decision finding no discrimination is AFFIRMED.

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)

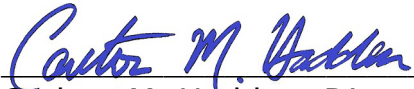
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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

December 16, 2024

Date