



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

[REDACTED]
Jeremy S.,¹
Complainant,

v.

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

Appeal No. 2024003109

Agency No. 1C-931-0240-23

DECISION

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 April 8, 2024, final decision 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. 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 decision.

ISSUE PRESENTED

Whether the Agency correctly determined that Complainant was not subjected to discrimination as alleged.

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 fulltime Electronic Technician at the Northern Virginia Processing and Distribution Center in Merrifield, Virginia.

Complainant stated he was on the overtime desired list (ODL) during the relevant time but not offered the opportunity to work overtime which he claimed should have been assigned based on seniority. Complainant stated he had the seniority over all involved and had qualifications for the overtime work. He stated the Manager Maintenance Tour II (Manager), and Supervisor Maintenance Tour II (Supervisor) were responsible for bypassing him for overtime. Complainant stated that Coworker (Y.O.B. 1987) was a Maintenance Mechanic MPE (undefined) who was also denied overtime opportunities. Complainant claimed that individuals working overtime were not qualified to work on the machine as they had not attended any school and did not have training to work alone on the machine. Complainant stated his race was a factor because he was Black and the other individual not offered overtime was also Black. He stated age was a factor because another manager previously asked him his age and why he was not retiring. He stated reprisal for his prior EEO was a factor because this was another way to retaliate.

Supervisor stated he was aware of Complainant's race and guessed Complainant was 60 years old. Supervisor stated he was not aware of Complainant being involved in prior EEO activity. Supervisor stated Complainant signed the ODL during the relevant time and was entitled to work overtime during the period of May 23, 2023, and continuing. Supervisor noted that all of the automation group was offered the opportunity to clean machines two hours before the tour began and that school had no bearing. Supervisor stated Complainant was not bypassed for overtime. Supervisor explained that Complainant's days off were Saturday and Sunday when full day overtime was not necessary. Supervisor stated Complainant was still offered two hours before tour overtime like all other automation personnel. Regarding the Coworker, Supervisor stated the Coworker was White and was offered overtime before tour.

Manager stated he knew Complainant's race but did not know Complainant's age. Manager stated he was aware of Complainant's prior EEO activity and noted he was named as a responsible management official in Complainant's prior EEO complaints. Manager noted Complainant was entitled to work overtime and was given overtime during the relevant period.

Manager stated overtime schedules were prepared and assigned by the employee's direct Supervisor. Manager stated he had no knowledge regarding employees working on the machine without training. Regarding the Coworker, Manager stated the Coworker was White.

The record contains ODLs for the relevant period. The ODL for April 1, 2023, through June 30, 2023, shows Complainant signed up for overtime but excluded himself from before-tour overtime. The ODL for July 1, 2023, through September 20, 2023, shows Complainant signed up for overtime without exception.

The record contains Complainant's Employee Everything Report and an Overtime Alert Report for the relevant period. The report shows Complainant and Coworker were granted overtime during the relevant time.

On October 13, 2023, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (Black), age (Y.O.B. 1953), and in reprisal for prior protected EEO activity when:

Since May 23, 2023, and continuing, he has been bypassed for overtime.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), 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 him to discrimination as alleged.

Thereafter, Complainant filed the instant appeal. Neither party submitted any contentions on appeal.

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

For a complainant to prevail on a claim of disparate treatment, they must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). A complainant must initially establish a prima facie case by demonstrating that they were subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. 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) he is a member of a protected class; (2) he is subjected to an adverse employment action concerning a term, condition, or privilege of employment; and (3) he is 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).

To establish a prima facie case of disparate treatment on the basis of reprisal, a complainant must show that: (1) he engaged in a protected activity; (2) the Agency was aware of the protected activity; (3) subsequently, he was subjected to adverse treatment by the agency; and (4) a nexus exists between the protected activity and the adverse treatment. See Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120132503 (Aug. 28, 2014), citing Whitmire v. Dep’t of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000).

The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dep’t of Cmty. Aff. v. Burdine, 450 U.S. 248, 253 (1981). A complainant must ultimately prove, by a preponderance of the evidence, that the agency’s explanation is pretext for discrimination.

Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 143 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993); Burdine, 450 U.S. at 256.

Given his race and age and the claim that he was allegedly denied overtime opportunities, we find Complainant established the first two elements of a prima facie case. However, we find Complainant failed to meet prong three as he failed to establish that he was treated differently than similarly situated employees outside his protected classes, or there was some other evidentiary link between membership in the protected class and the adverse employment action. Additionally, we find Complainant established the first three elements of a prima facie case of reprisal in that he engaged in protected activity; Supervisor was aware of the activity; and that he was subjected to adverse treatment when he was allegedly denied overtime opportunities. However, we do not find that Complainant met prong four as he has not established a nexus between the protected activity and the alleged denial of overtime. Further, we note the Agency articulated legitimate, nondiscriminatory reasons for its actions.

Supervisor explained that all automation employees were offered the opportunity to clean the machines two hours before their tour and that schooling had no bearing on the assignment. Supervisor also noted that Complainant's off days were Saturday and Sunday when full day overtime was not necessary. Manager stated Complainant was given overtime during the relevant period. Manager also stated he had no knowledge of employees working on the machine without training.

In an attempt to prove pretext, Complainant stated he was bypassed for overtime because he was Black and that Coworker, also Black, was not offered overtime.² Complainant stated his age was a factor because he was 70 and had been asked previously by another manager about his age and when he was retiring. Further, Complainant claimed his prior EEO activity was a factor because this was just another way to retaliate. In the present case, we find Complainant failed to present evidence that the Agency's explanation for its action was a pretext for discrimination. The record is devoid of any evidence of discriminatory animus on the part of the Agency beyond Complainant's speculative beliefs.

² We note that Complainant stated Coworker was Black, but that Supervisor and Manager stated Coworker was White. Although the record is not clear about the Coworker's race, if Coworker was White, this would undermine Complainant's claim of discrimination based on race.

The Commission has held that mere assertions or conjecture that the Agency's explanation is a pretext is insufficient because subjective belief, however genuine, does not constitute evidence of pretext. Frederick A. v. Equal Employment Opportunity Commission, Appeal Nos. 2022003887, 2022004927 (Feb. 21, 2004).

The record indicates both Complainant and Coworker received overtime during the relevant time, which Complainant does not dispute on appeal. Further, Complainant does not refute the evidence that he had not signed up for begin tour overtime for the period of April 1, 2023, through June 30, 2023. Additionally, we note Complainant does not identify a named employee who was allegedly granted overtime on a specific date that he claims he should have received such overtime. Regarding his contention that had been asked previously by another manager about his age and when he was retiring, we note he does not claim that the manager who made the prior statement was involved in scheduling overtime in the instant matter. Finally, we note that Coworker who Complainant claimed was also denied overtime opportunities was younger (Y.O.B. 1987) than him, which undercuts his claims of age discrimination. In the present case, we find Complainant failed to show by a preponderance of evidence that the Agency's actions were a pretext for discrimination.

CONCLUSION

Accordingly, the Agency's final 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

February 12, 2025

Date