



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

[REDACTED]  
Adan N.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2024003114

Hearing No. 520-2023-00202X

Agency No. 1C-631-0327-22

**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 March 19, 2024, notice of final action 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 action.

**ISSUE PRESENTED**

Whether substantial evidence supports the Agency's final action fully implementing the EEOC Administrative Judge's post-hearing finding that Complainant did not establish that he was subjected to discrimination.

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<sup>1</sup> 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 an Operations Support Specialist, EAS-17, at the Agency's Processing and Distribution Center located in Brooklyn, New York.

On November 29, 2022, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of age (Y.O.B. 1971) and in reprisal for prior protected EEO activity when:

On July 14, 2022, he became aware that he was not selected for the EAS-17 Supervisor, Maintenance Operation position.

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). Complainant requested a hearing. The Agency filed a motion for summary judgment, which the AJ denied. Subsequently, the Agency requested leave to submit a supplemental summary judgment motion based on the argument that Complainant withdrew his application for the position at issue prior to a selection being made. Noting the withdrawal of the application prior to a selection being made would have a bearing on the outcome of the case, the AJ permitted the parties to provide submissions on the issue. Both parties provided submissions.

The Agency provided a declaration from the Manager of Human Resources (HR Manager) for the New York 1 District who stated that based on his review of the data for the position at issue, Complainant withdrew his application for that position on July 14, 2022. HR Manager noted that based on his understanding of the eCareer system, only the employee can withdraw their own application. Additionally, the Agency provided a declaration from Software Architect III who stated that based on his review of the eCareer user access data, Complainant withdrew his application on July 14, 2022. Both the HR Manager and the Software Architect provided screenshots of data regarding Complainant's application which they explained showed Complainant withdrew his application on July 14, 2022.

Complainant provided a declaration stating he did not withdraw his application on July 14, 2022. In his declaration, he stated he withdrew his application on August 15, 2022, the same day he emailed the Selecting Official regarding the Selectee being chosen. In his declaration, Complainant noted this was not the first time eCareer made an error.

Complainant stated in October 2016, he submitted an application for another position and the eCareer showed he was not selected, when in fact he states the Agency selected him.

The record contains an email dated August 15, 2022, which Complainant sent to the Selecting Official regarding the relevant position. In the email Complainant stated he learned Selectee was selected for the position. Complainant stated given his years of service, education, qualifications, and Level-17, he was more deserving of the position than the Selectee.

On February 14, 2024, the AJ held a hearing limited in scope to the withdrawal issue. Complainant was the sole witness to testify at the hearing. Following the limited hearing, the AJ found that Complainant applied for the position through the Agency's eCareer system on June 17, 2022. He interviewed for the position on July 14, 2022, and withdrew his application later the same day. The AJ noted the Agency selected another candidate on July 21, 2022. Although Complainant claimed he did not withdraw his application until August 15, 2022, the AJ noted the email he cited as evidence of this assertion did not show that he withdrew his application at that time, but instead in the email he only protested the selection of the Selectee. The AJ noted Complainant admitted he had no other documentary evidence which might show he withdrew his application on August 15, 2022. Further, the AJ noted the Agency provided evidence from witnesses familiar with the eCareer system and documentation showing that the July 14, 2022 withdrawal entry was accurate. The AJ found Complainant failed to credibly rebut the clear evidence that he withdrew his application on July 14, 2022.

The AJ found that Complainant failed to establish by a preponderance of the evidence that the Agency engaged in age discrimination or reprisal. The Agency subsequently issued a notice of final action fully implementing the AJ's finding that Complainant failed to show that the Agency subjected him to discrimination. Thereafter, Complainant filed the instant appeal.

#### CONTENTIONS ON APPEAL

On appeal, Complainant argues the AJ erred in considering the Agency's supplemental motion for summary judgment. Complainant states the material the Agency relied on in its motion was available at the time it made its initial motion for summary judgment and that the Agency previously omitted reference to the issue. Thus, complainant argues the Agency should not have been able to renew its motion for summary judgment.

Further, Complainant contends that even if it was proper for the AJ to consider the Agency's supplemental motion and take Complainant's testimony, he should have directed that management official testify as well to allow him to more fully develop his argument that he did not withdraw his application on July 14, 2022. Finally, Complainant states he credibly testified that he did not withdraw his application on July 14, 2022.

In response to Complainant's appeal, the Agency argues the AJ correctly concluded that Complainant could point to no explanation or supporting evidence to counter the Agency's presentation of metadata. The Agency notes its metadata confirmed that Complainant withdrew his own application for the position prior to a selection decision being made. The Agency notes the only evidence he did not withdraw his application on July 14, 2022, is his own attestation, which the Agency states is self-serving, unsupported, and conclusory.

#### STANDARD OF REVIEW

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held.

An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony, or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See EEOC Management Directive 110, Chapter 9, at § VI.B. (Aug. 5, 2015).

#### ANALYSIS

At the outset, we address Complainant's contention that the AJ improperly considered the Agency's supplemental motion for summary judgment. The Commission notes that an AJ has full responsibility for the adjudication of the complaint, including overseeing the development of the record, and has broad discretion in the conduct of hearings. 29 C.F.R. § 1614.109(a), (e).

We find Complainant failed to show the AJ abused his discretion in considering a supplemental motion for summary judgment. Moreover, regarding Complainant's contention that the AJ should have directed that management officials testify to allow him to more fully develop his argument that he did not withdraw his application on July 14, 2022, we note that he does not claim that he made such a request to the AJ or that the AJ denied such a request. Further, we note he does not name any specific management official who he claims had knowledge surrounding the withdrawal of his application. Thus, we find he did not show the AJ should have allowed further testimony.

Additionally, we note an Administrative Judge may dismiss complaints within his jurisdiction pursuant to 29 C.F.R. § 1614.107(a) on his own initiative, after notice to the parties, or upon an agency's motion to dismiss a complaint. See 29 C.F.R. § 1614.109(b) and EEOC Management Directive 110, Chapter 7, at § III.C. (Aug. 5, 2015).

Under the regulations set forth at 29 C.F.R. Part 1614, an agency shall accept a complaint from an aggrieved employee or applicant for employment who believes that they have been discriminated against by that agency because of race, color, religion, sex, national origin, age or disabling condition. 29 C.F.R. §§ 1614.103, .106(a). The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994). If the complainant cannot establish that they are aggrieved, the agency shall dismiss a complaint for failure to state a claim. 29 C.F.R. § 1614.107(a)(1).

Upon review, we find the Complainant's complaint is properly dismissed for failure to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1). We find substantial evidence supports the AJ's finding that Complainant withdrew his application on July 14, 2022, prior to a Selectee being chosen. By withdrawing his application prior to a selection decision being made, we find Complainant is not aggrieved. Oral T. v Dep't of Labor, EEOC Appeal No. 2020003041 (Oct.7, 2020) (citing Trevillion v. Commerce, EEOC Appel No. 01A45754 (Feb. 2, 2005)). Furthermore, since we find substantial evidence supports the AJ's finding that Complainant withdrew his application, we find no discrimination.

## CONCLUSION

Accordingly, we AFFIRM the Agency's final action fully implementing the AJ's decision.

### 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 11, 2025

Date