



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Jermaine I.,<sup>1</sup>  
Complainant,

v.

Louis DeJoy,  
Postmaster General,  
United States Postal Service  
(Headquarters),  
Agency.

Appeal No. 2024003128

Hearing No. 430-2024-00088X

Agency No. 6X-250-0021-23

**DECISION**

On April 17, 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 April 4, 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. 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.

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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 a Carrier (City), Level 6, at the Agency's Cross County Branch located in Charleston, South Carolina. During the relevant time, Manager of Customer Services was Complainant's first level supervisor (S1).

Complainant stated he also began working as an Ad-Hoc Driving Safety Instructor (DSI) on August 26, 2020. He stated there was a three-person rotation and he would normally work monthly in the Ad-Hoc DSI position. When Complainant was not an Ad-Hoc DSI he would perform his Carrier duties.

On December 13, 2022, Complainant was assigned to serve as an Ad-Hoc DSI to conduct vehicle familiarization training on a rental van assigned to the North Charleston Post Office. Complainant stated when he arrived for the training, he realized Safety Manager for the South Carolina District (Safety Manager) wanted him to conduct vehicle familiarization training which Complainant believed would violate the Agency's safety handbook and instructions from headquarters. Complainant stated Person A (Charleston DSI) told him that Person A had been asked to conduct the training and that Person A told Safety Manager it would violate Agency policy and instructions. Complainant chose not to perform the training. Thereafter, Complainant was not given another opportunity to serve as Ad-Hoc DSI. Complainant stated that Safety Manager made the decision to take him out of the rotation. Complainant also stated S1 and the Postmaster were involved in the decision.

Complainant claimed that his race was a factor because accommodations were made to other Ad-Hoc DSIs to keep him out of the rotation. Complainant noted Person B was accommodated with driving the Postmaster's vehicle to conduct training in Charleston even though Complainant was in the building and available. Complainant stated Person C was hired as an Ad-Hoc DSI despite not meeting the qualifications and then promoted to full time DSI still without meeting the qualifications. Complainant stated Person C drove two hours to conduct training outside of his jurisdiction. Also, Complainant stated Person D was driving two hours to perform training outside of her jurisdiction. When asked if there were other Ad-Hoc DSIs who also questioned management instructions but were allowed to continue as Ad-Hoc DSIs, Complainant stated Person A, Person B, Person C, and Person D were all Black and he was Latino.

Safety Manager noted the training at issue on December 13, 2022, was for rental vehicles that were not owned by the Agency and which operated as a regular vehicle. Safety Manager stated Person A did provide training on vehicle familiarization. However, on December 13, 2022, Person A had a doctor's appointment and left work. Safety Manager stated she did not remove Complainant from the rotation but that the Postmaster did. Safety Manager stated Person B, Carrier Technician for the St. Andrews Post Office, and Person D, Rural Carrier for the Myrtle Beach-Socastee Post Office, were allowed to continue as Ad-Hoc DSIs by their management team. Safety Manager stated she was unaware of a situation where Person B or Person D failed to follow the instructions of their management team. Safety Manager stated Person A, DSI-Charleston Processing and Distribution Center, and Person C, DSI for the South Carolina District Office were not Ad-Hoc DSIs but were in permanent DSI positions.

S1 stated that on December 13, 2022, she received a call from the Postmaster asking if S1 sent Complainant to North Charleston that day. S1 replied that she did. S1 stated she then called Complainant who at that time told her he did not train the carriers. S1 stated when she asked Complainant the reason, he said that Person A instructed him otherwise. S1 stated all training was initiated by the Safety Office, which DSI falls under, and that no instructions were violated. S1 stated she did not remove Complainant from any DSI and was not aware of any manager removing Complainant from DSI.

The investigator contacted Postmaster for an affidavit on September 26, 2023. The investigator stated Postmaster retired on September 29, 2023. Thereafter, the investigator contacted the Postmaster at his personal email address and via mail trying to obtain his affidavit. Postmaster did not respond.

Person A stated on December 13, 2022, Complainant never asked him, and he never informed Complainant whether he should or should not conduct training that day. Person A stated on the day at issue, Complainant asked why they were trying to get him to pull carriers out of orientation knowing it was against company policies. Person A stated Complainant did not conduct the training. Person A stated although he did not know Complainant was not going to conduct the training, he agreed with Complainant's actions.

The record contains PS Form 50 for Person A showing he was a DSI for the Charleston Post Office. The PS Form 50 for Person B shows he was a Carrier Technician for the Charleston-St. Andrews Station.

The PS Form 50 shows Person C was a Mail Handler for the Columbia South Carolina Processing and Distribution Center. The PS Form 50 for Person D shows she was a Rural Carrier at the Myrtle Beach-Socastee Branch.

On July 20, 2023, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the basis of race/national origin (Latino/Hispanic)<sup>2</sup> when:

On April 4, 2023, Complainant became aware that he had been removed from the rotation to serve as Ad-Hoc Driving Instructor since December 13, 2022, and continuing.

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 but the AJ denied the hearing request. The AJ remanded the complaint to the Agency, and 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.

#### CONTENTIONS ON 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

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<sup>2</sup> Although Complainant designated his race as “Latino/Hispanic,” the Commission recognizes this term as an indication of national origin rather than race.

decision based on the Commission's own assessment of the record and its interpretation of the law").

### ANALYSIS

At the outset, we note Complainant does not challenge the AJ's dismissal of his hearing request. The Commission has the discretion to review only those issues specifically raised in an appeal. Equal Employment Opportunity Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110) at Chap. 9, § IV.A (Aug. 5, 2015). Accordingly, we will not address that matter in this decision.

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).

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/national origin is Latino/Hispanic and he claims that he was denied the opportunity to serve as Ad-Hoc DSI, we find Complainant established the first two elements of a prima facie case. However, we find Complainant failed to meet element 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. Specifically, we note Person A was not an Ad-Hoc DSI, like Complainant, but held a permanent DSI position. In addition, Safety Manager stated she was unaware of Person B or Person D refusing to follow instructions, as Complainant did. Moreover, we note the record does not suggest that Person A or Person C failed to follow instructions and Complainant does not identify a specific management instruction any of the comparatives allegedly refused to follow. Further, we note the Agency articulated legitimate, nondiscriminatory reasons for its actions.

The record reveals the Agency stopped using Complainant as an Ad-Hoc DSI based on his refusal to follow management instructions to complete training on December 13, 2022. The Agency states that even if Complainant was correct that the instructions given to him by the Postmaster were inconsistent with Agency policy, the record indicates that under its Employee and Relations Manual he was required to obey the instructions and immediately file a protest of the order. Instead, Complainant decided not to follow the instructions. Complainant failed to show that any similarly situated employee outside of his protected class was treated differently under similar circumstances. Upon review, 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

February 18, 2025

Date