



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

[REDACTED]
Jeremy H.,¹
Complainant,

v.

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

Appeal No. 2024003232

Hearing No. 430-2024-00132X

Agency No. 4B-270-0301-23

DECISION

Complainant appeals to the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final order dated March 26, 2024, finding no discrimination regarding his 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 Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

At the time of events giving rise to this complaint, Complainant worked as a P-06/A, Postal Support Employee (PSE) Mail Processing Clerk at the Agency's Pinehurst Post Office in Pinehurst, North Carolina.

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 October 4, 2023, Complainant filed a formal complaint alleging discrimination based on race (Black), color (black), national origin (unspecified), sex (male), disability (30% disabled veteran), and in reprisal for prior EEO activity when on June 16, 2023, he was terminated during his probationary period.

The Agency investigated the complaint. 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 EEOC Administrative Judge (AJ). 29 C.F.R. § 1614.108(f). Complainant requested a hearing. The AJ issued a Notice of Intent to Issue a Decision Without a Hearing in Favor of the Agency. The Agency responded the notice. Complainant did not file a response. On March 19, 2024, the AJ issued a decision without holding a hearing, finding no discrimination.

The AJ found that Complainant failed to establish he was treated differently than similarly situated employees outside of his protected classes under similar circumstances. Further, the AJ stated that Complainant had no prior EEO activity, and the Postmaster and Complainant's supervisor were not aware of Complainant's disability. The AJ thus found Complainant failed to establish a prima face case of discrimination as alleged. Further, the AJ found that the Agency articulated legitimate, nondiscriminatory reasons for terminating Complainant's employment in that he was terminated due to his poor attendance and unsatisfactory performance. The Agency's final order implemented the AJ's decision. Complainant appeals from the Agency's final order.

The Commission's regulations allow an AJ to grant summary judgment when he or she finds that there is no genuine issue of material fact. 29 C.F.R. §1614.109(g). An issue of fact is "genuine" if the evidence is such that a reasonable fact finder could find in favor of the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A fact is "material" if it has the potential to affect the outcome of the case. In rendering this appellate decision, we must scrutinize the AJ's legal and factual conclusions, and the Agency's final order adopting them, *de novo*. See 29 C.F.R. § 1614.405(a) (stating that a "decision on an appeal from an Agency's final action shall be based on a *de novo* review..."); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), Chap. 9 § VI.B. (Aug. 5, 2015) (providing that an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed *de novo*).

Here, Complainant began working as a PSE Mail Processing Clerk at the Agency on April 8, 2023, subject to a 90-day probationary period. Complainant claimed that he was terminated for having a firearm on postal property in his gym bag on June 16, 2023. The record indicates that on June 28, 2023, Complainant's supervisor proposed Complainant be terminated during his probationary period for his failure to maintain attendance by not reporting to work as scheduled, including being Absent Without Leave (AWOL), on numerous occasions from May 3, 2023, to June 14, 2023. Complainant's Requests for or Notification of Absence reveals that Complainant was late for work and/or charged with AWOL on April 16 and 19, 2023, May 3, 4, 15, 17, 18, 21, 22, and 30, 2023, and June 2, 6, 7, 13, and 14, 2023.

The record reveals that on April 18, 2023, Complainant received his 30-day performance evaluation with three unsatisfactory ratings for his work quantity, work quality, and dependability and three satisfactory ratings for his work relations, work methods, and personal conduct. On May 29, 2023, Complainant received his 60-day performance evaluation with three unsatisfactory ratings for work quality, dependability, and work relations and three satisfactory ratings for his work quantity, work methods, and personal conduct. On July 5, 2023, Complainant was issued a Notice of Termination During Probation due to his failure to meet the requirements of his position, i.e., unsatisfactory work performance as set forth in his performance evaluations.

Upon careful review of the AJ's decision and the evidence of record, we conclude that the AJ correctly determined that the preponderance of the evidence did not establish that Complainant was discriminated against by the Agency as alleged. Complainant was terminated during his probationary period due to his performance deficiencies.

Accordingly, we AFFIRM the Agency's final order implementing the AJ's decision finding no discrimination.

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 13, 2025
Date