



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Herb L.,¹
Complainant,

v.

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

Appeal No. 2024003432

Agency No. 4G-330-0087-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated March 14, 2024, dismissing his complaint of unlawful 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 reasons presented below, we reverse the Agency's final decision dismissing Complainant's complaint and remand this matter to the Agency for further processing in accordance with the Order below.

ISSUES PRESENTED

Whether the Agency properly dismissed Complainant's formal complaint pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim.

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 Carrier (City), 01-Q, at the Agency's facility in North Miami Beach, Florida.

On November 19, 2023, Complainant contacted the Agency's EEO office to allege harassment when on November 9, 2023, Manager Customer Service stated that anyone in the military fighting in these "little wars" going on now has not been in a real war, anyone that has not been to war is not a "real veteran", and anyone younger than her father should not be considered a real veteran. Complainant also alleged harassment when on June 22, 2023, Manager Customer Service "stated that Juneteenth is an unnecessary holiday and Black people should still be slaves." Complainant stated that "[a]s a veteran and an African American man this is very disturbing." (Complaint File, p. 28).

The EEO Counselor's report notes that Complainant alleged discrimination based on age regarding Manager Customer Services November 9, 2023 comments about veterans.

On February 27, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the basis of age when Manager Customer Service "stated that anybody fighting in these 'little wars' going on now and who are younger than her father is not worthy of being called a veteran and are not 'real' veterans" and "stated that Juneteenth was a mistake and black people should still be slaves." (Complaint File, p. 19).

The Agency framed the complaint as alleging "discrimination based on Age (DOB: August 26, 1972) when: On November 9, 2023, a manager made derogatory remarks concerning post Viet Nam War veterans." The Agency declined to address the statements about Juneteenth and slavery, stating that "[t]hese comments were addressed in EEO Complaint 4G-330-0297-23." The Agency then dismissed the complaint as framed pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim finding that the comments about veterans did not state a claim because Complainant did not suffer a harm or loss with respect to a term, condition, or privilege of employment, did not receive any adverse action, and was not sufficiently severe or pervasive to state a claim for hostile work environment/discriminatory harassment. Complainant filed the instant appeal.

CONTENTIONS ON APPEAL

Neither Complainant nor the Agency filed a brief or statement in connection with this appeal.

STANDARD OF REVIEW

The Agency's decision to dismiss a complaint is subject to de novo review by the Commission, which requires the Commission to examine the record without regard to the factual and legal determinations of the previous decision maker and issue its decision based on the Commission's own assessment of the record and its interpretation of the law. 29 C.F.R. § 1614.405(a). The Commission should construe the complaint in the light most favorable to the complainant and take the complaint's allegations as true. See Cobb v. Department of the Treasury, EEOC Request No. 05970077 (March 13, 1997). Thus, all reasonable inferences that may be drawn from the complaint's allegations must be made in favor of the complainant.

ANALYSIS

An agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that he has been discriminated against by that agency because of race, color, religion, sex, national origin, age, or disability. 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). The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that an agency shall dismiss a complaint that fails to state a claim.

We note at the outset that the Agency erred in declining to address Manager Customer Services statements about Juneteenth on the grounds that they were raised in Agency Case No. 4G-330-0297. Commission records show that EEO complaint was not filed by Complainant, but instead brought by another individual.² The Agency has not shown that these comments have been addressed in another EEO complaint filed by Complainant.

² Our decision in that case can be found at Christopher E. v. U.S. Postal Serv., EEOC Appeal No. 2024000955 (Apr. 9, 2024).

We therefore find the Agency mischaracterized Complainant's claims. A fair reading of the record reveals that Complainant alleged discriminatory hostile work environment/discriminatory harassment on the bases of age (YOB:1972) and race (African-American) when:

1. Manager Customer Service "stated that anybody fighting in these 'little wars' going on now and who are younger than her father is not worthy of being called a veteran and are not 'real' veterans"; and
2. Manager Customer Service "stated that Juneteenth was a mistake and black people should still be slaves."

Not all claims of harassment are actionable. In Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993), the Supreme Court reaffirmed the holding of Meritor Savings Bank v. Vinson, 477 U.S. 57, 67 (1986), that harassment is actionable if it is sufficiently severe or pervasive to alter the conditions of the complainant's employment. The Commission has repeatedly held that veteran preference or status is not a protected basis for filing an EEO complaint and therefore such complaints are not within the purview of EEOC Regulations. See Jasper S. v. Dep't of Veterans Affairs, EEOC Appeal No. 2021005027 (July 17, 2023) (citing Devereux v. U.S. Postal Serv., EEOC Request No. 05960869 (Apr. 24, 1997)).

Therefore, while Claim 1 regarding negative comments about veterans may have been hurtful and offensive, it does not state a claim for discrimination or harassment under EEOC Regulations. It is not sufficiently severe or pervasive to alter the conditions of Complainant's employment.

However, the Commission has held that, if sufficiently severe, a single incident involving offensive comments about a federal employee's protected bases may in fact state a claim or support a finding of discrimination under EEO law, even in the absence of a traditional adverse employment action such as a non-selection or discipline. Brooks v. Dep't of the Navy, EEOC Request No. 05950484 (Jun. 25, 1996). Notably, the incident may be sufficiently severe even when no slurs or epithets were used. See Gamboa v. U.S. Postal Serv., EEOC Request No. 05890633 (Aug. 31, 1989) (single incident where complainant's supervisor ordered her to change locations in a meeting room instead of allowing her to lip-read, thus embarrassing her for her hearing impairment, was sufficiently severe to constitute a claim under the Rehabilitation Act for disability discrimination); Yabuki v. Dep't of the Army, EEOC Request No. 05920778 (June 4, 1993) (single incident where supervisor remarked disparagingly that Japanese people would own the

country and declared that it was 'because of [complainant],' was sufficiently severe to constitute race and national origin discrimination).

The Commission has also considered the context in which the comment was made and whether the language used has historically discriminatory roots. See Brooks v. Dep't of the Navy, EEOC Request No. 05950484 (Jun. 25, 1996) (noting that "highly-charged" epithets like the n-word "dredge up the entire history of racial discrimination in this country"); Core v. U.S. Postal Serv., EEOC Appeal No. 01960887 (Sept. 8, 1998) (noting that the statement 'I wish I were a slave-driver,' as directed towards two Black women, "was clearly intended to reference and conjure up a dark time in our nation's history when Black people were enslaved and did not enjoy the legal status and protections of Caucasian individuals."); Lashawna C. v. Dep't of Labor, EEOC Appeal No. 0720160020 (Feb. 10, 2017) (where a Jewish complainant's supervisor sent her an email referring to himself as working "like a Hebrew slave," the comment "made light of the long and painful history of Jewish persecution and genocide" and "the fact that [the supervisor] may have intended his comment to be a joke or a cliché does not soften the offense any more here than it would if he had uttered an equally offensive racial slur.").

Regarding the events in Claim 2, Complainant asserted that this was "disturbing" to him and that Manager Customer Service made the workplace "very uncomfortable and it interferes with our ability to do our work. Too much to tolerate on a daily basis." The comments made by Manager Customer Service, if true, suggested to Complainant that he (an African-American) should be enslaved. Given that this alleged comment also disparaged Juneteenth, a national holiday commemorating the end of slavery in the United States, the alleged comment clearly would have dredged up this country's history of slavery and racial discrimination. See Gradnigo v. U.S. Postal Serv., EEOC Appeal No. 01A60869 (Apr. 5, 2006) ("the particular joke at issue which derisively referenced a celebration of the end of slavery [Juneteenth], is particularly offensive and tends to "dredge up the entire history of racial discrimination in this country.") (citing Brooks). Thus, we find Claim 2 sufficiently alleges discriminatory harassment/hostile work environment and states a valid claim.

CONCLUSION

Accordingly, we REVERSE the Agency's final decision dismissing the Complainant's complaint and REMAND the complaint to the Agency for further processing pursuant to the following Order.

ORDER (E0224)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, or a copy of the final agency decision ("FAD") if Complainant does not request a hearing.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408.

A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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).

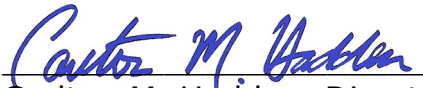
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0124)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. 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. **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

January 28, 2025
Date