



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

[REDACTED]
April T.,¹
Complainant,

v.

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

Appeal Nos. 2024003919 & 2024004995

Agency Nos. 1C-331-0291-24 & 1C-331-0380-24

DECISION

Complainant filed two appeals with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decisions dated May 23, 2024 and August 13, 2024, dismissing her complaints 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. Upon review, the Commission finds that Complainant's complaints were properly dismissed pursuant to 29 C.F.R. § 1614.107(a).

ISSUES PRESENTED

Whether the Agency's final decisions properly dismissed Complainant's formal complaints for failure to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1) and untimely filing of the formal complaint pursuant to 29 C.F.R. § 1614.107(a)(2), respectively.

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 Custodial Laborer at the Agency's Gainesville Processing & Distribution Center located in Gainesville, Florida. On May 9, 2024, Complainant filed a formal equal employment opportunity (EEO) complaint alleging that the Agency subjected her to hostile work environment harassment on the bases of race (African-American), color (Black) and reprisal for prior protected EEO activity (prior EEO complaints) when:

1. approximately March 25, 2024, a Supervisor of Distribution Operations ("Supervisor") yelled at Complainant regarding a route assignment sheet and used profanity, stating "[D]on't tell me how to do my fucking job. That's what's wrong with you people." Complainant also alleged Supervisor touched her arm during the incident. (Complaint 1). Complainant alleged that Supervisor treats African American women disparately.

On July 17, 2024, Complainant filed a formal EEO complaint alleging that the Agency subjected her to harassment based on race, color, and reprisal when:

2. on May 17, 2024, management charged Complainant as absent without official leave although she requested Family and Medical Leave Act usage and Leave Without Pay;
3. on May 23, 2024, Supervisor began yelling at Complainant in a different language during a discussion between the two of them and, on May 30, 2024, a Manager of Distribution Operations ("Manager") yelled at Complainant for requesting union time;
4. on June 4, 2024, Manager stood in front of Complainant's vehicle and stared at her while she sat in her car before her shift started;
5. on June 5, 2024, Complainant had to sit in a fact-finding investigation with Supervisor about calling in; and
6. on June 11, 2024, Complainant learned that Supervisor recorded her during a meeting on May 22, 2024. (Complaint 2).

On May 23, 2024, the Agency issued a final decision (FAD1) dismissing Complaint 1, for failure to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1). FAD1 stated that Complainant failed to allege actions that render her aggrieved, rise to the level of a hostile work environment, or are reasonably likely to deter Complainant or others from engaging in EEO activity. Complainant filed an appeal with this Commission, which was docketed as EEOC Appeal No. 2024003919.

On August 13, 2024, the Agency issued a final decision (FAD2) dismissing Complaint 2 pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely filing of the formal complaint. The Agency provided a Notice of Right to File a formal complaint (NORF) dated June 21, 2024, stating "you have 15 days from the date of receipt of this letter to file a timely formal complaint." The NORF added, "Your complaint could be subject to dismissal . . . if not filed within the 15 day time limit. Your complaint will be deemed timely if it is postmarked before expiration of the 15 day time limit." The Agency provided Product Tracking & Reporting records showing that the NORF was delivered to Complainant and her non-attorney Representative (who have the same address) on June 28, 2023 at 12:03 p.m. They were signed for by Complainant's representative at the destination address. Complainant's formal complaint is postmarked July 17, 2024, which is four days beyond the 15-day time limit. Complainant filed an appeal with this Commission, which was docketed as EEOC Appeal No. 2024004995.

CONTENTIONS ON APPEAL

Neither party submitted substantive comment on 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

Complaint 1

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. An agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that agency because of race, color, religion, sex, national origin, age, disabling condition, genetic information, or reprisal. 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 (April 21, 1994).

The Commission has held that where a complaint does not challenge an agency action or inaction regarding a specific term, condition, or privilege of employment, a claim of harassment may survive if it alleges conduct that is sufficiently severe or pervasive to alter the conditions of the complainant's employment. See Harris v. Forklift Systems, Inc., 510 U.S. 17, 23 (1993).

Where, as here, a complainant has asserted that she was subjected to unlawful retaliation for her prior protected activity, the Commission has stated that adverse actions need not qualify as "ultimate employment actions" or materially affect the terms and conditions of employment to constitute retaliation. See Burlington Northern and Santa Fe Railway Co. v. White, 548 U.S. 53 (2006) (finding that the anti-retaliation provision protects individuals from a retaliatory action that a reasonable person would have found "materially adverse," which in the retaliation context means that the action might have deterred a reasonable person from opposing discrimination or participating in the EEOC charge process); see also Lindsey v. U.S. Postal Service, EEOC Request No. 05980410 (November 4, 1999) (citing EEOC Compliance Manual, No. 915.003 (May 20, 1998)). The statutory retaliation clauses prohibit any adverse treatment that is based upon a retaliatory motive and is reasonably likely to deter the charging party or others from engaging in protected activity. Id.

We find that the Agency properly dismissed Complaint 1 for failure to state a claim. As an initial matter, the alleged incidents did not involve any adverse action against Complainant. See Backo v. United States Postal Service, EEOC Request No. 05960227 (June 10, 1996) (finding that the Commission has repeatedly found that remarks unaccompanied by "concrete action" fail to

state a harassment claim under Title VII). Furthermore, the Commission finds that Complainant's allegations, even if true, do not rise to the level of being sufficiently severe or pervasive to assert a claim of hostile work environment discrimination. See, e.g., Banks v. Dep't of Health and Human Services, EEOC Request No. 05940481 (February 16, 1995) (finding that a supervisor allegedly throwing a file onto a complainant's desk and loudly berating her in front of other employees did not state a harassment claim); Omer P. v. Dep't of the Army, EEO Appeal No. 2019002814 (July 25, 2019) (finding allegations that a supervisor undermined Complainant's authority insufficient to state a claim when the supervisor held secret meetings without complainant, promised to reinstate the complainant's subordinate without the complainant's permission, and used derogatory language when describing complainant's supervisory role).

Complainant alleged that Supervisor yelled at her and stated, "[D]on't tell me how to do my fucking job. That's what's wrong with you people." Further, Complainant alleged Supervisor touched her arm during the incident.

There is no evidence that these specific incidents affected a term, condition, or privilege of employment for which there is a remedy; were so severe or pervasive as to alter the conditions of Complainant's employment; or were reasonably likely to deter EEO activity. Accordingly, we find Complainant's complaint was properly dismissed for failure to state a claim and deemed technically insufficient to proceed in the administrative process. Notwithstanding, we discourage the use of phrases like "you people" as it can imply a distinction between the speaker and the person being addressed.

Complaint 2

EEOC Regulation 29 C.F.R. § 1614.106(b) requires the filing of a complaint with an appropriate Agency official within 15 calendar days after the date of receipt of the notice of the right to file the formal EEO complaint. The Agency shall dismiss a complaint that fails to comply with the 15-day time limit contained in 29 C.F.R. § 1614.107(a)(2) unless the Agency extends the time limits in accordance with 29 C.F.R. § 1614.604(f).

The Agency determined that Complainant and her non-attorney representative received the NORF at their address of record on June 28, 2024.

The Agency stated that its notice indicated that Complainant had to file a formal complaint within fifteen (15) days of its receipt, but that Complainant did not file her formal complaint until July 17, 2024, which was beyond the limitation period.

Where, as here, there is an issue of timeliness, the Agency always bears the burden of obtaining sufficient information to support a reasoned determination as to timeliness. Guy v. Dep't of Energy, EEOC Request No. 05930703 (January 4, 1994)(quoting Williams v. Dep't of Defense, EEOC Request No. 05920506 (August 25, 1992)). In Ericson v. Dep't of the Army, EEOC Request No. 05920623 (January 14, 1993), EEOC stated that "[t]he Agency has the burden of proving evidence and/or proof to support its final decisions." See Gens v. Dep't of Def., EEOC Request No. 05910837 (Jan. 31, 1992).

The Agency provided documentation showing, on June 28, 2024, the NORF was delivered to Complainant's representative at their shared address of record, and an envelope postmark showing that Complainant filed her formal complaint on July 17, 2024. As a result, we find that the Agency properly dismissed Complaint 2 for untimely filing.

CONCLUSION

Accordingly, we AFFIRM the Agency's final decisions, FAD1 and FAD2, dismissing Complainant's complaints.

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)

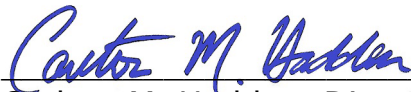
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision.

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

November 14, 2024

Date