



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Charlie O.,¹
Complainant,

v.

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

Appeal No. 2024004119

Agency No. 1F-441-0183-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated May 28, 2024, dismissing a formal 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. Upon review, the Commission finds that Complainant's complaint was improperly dismissed pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim.

ISSUES PRESENTED

Whether the Agency's final decision properly dismissed Complainant's formal complaint on the grounds of failure to state a claim, pursuant to 29 C.F.R. § 1614.107(a)(1).

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

During the period at issue, Complainant worked as a Supervisor Distribution Operations at the Agency's Cleveland Processing and Distribution Center in Cleveland, Ohio.

On March 27, 2024, Complainant initiated EEO counselor contact. Informal efforts at resolution were not successful. On May 8, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination based on race (Caucasian), sex (male), color (white), age (year of birth 1976), and in reprisal for prior protected EEO activity when:

1. On March 13, 2024, one of Complainant's employees yelled "Fag" in Complainant's direction, and upper management did not inform Complainant what was done after he reported the incident; and
2. On or around March 16, 2024, one of Complainant's employees said she would not speak to him because he is a White male.

On May 28, 2024, the Agency issued a final decision dismissing the complaint pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim. The Agency stated that Complainant failed to relate a loss of a term, condition, or privilege of employment. The Agency further stated that Title VII was not to be used as a "vehicle for vindicating the petty slurs suffered by the hypersensitive." Zabkowicz v. West Bend Co., 589 F.Supp. 780, 784, 35 EPD Paragraph 34, 766 (E.D. Wis. 1984); see also Staton v. Department of Navy, EEOC Appeal No. 01903774 (February 11, 1991).

In his formal complaint, Complainant stated that he approached two employees, on March 13, 2024 at 1:05 a.m., who were in the RCS Unit, to inform them that they should not be there, unless they were retrieving mail for their machines.² He also stated that when he walked past one of the employee's machines, the employee (Employee1) yelled out loud "Fag." Complainant stated that he kept walking and did not acknowledge her, but that he reported the situation to the Manager Distribution Operations (MDO). Complainant cited to the Agency's Zero Tolerance Policy and stated that the employee should have been put out of the building and placed on Emergency Placement.

² The record is silent on what "RCS" stands for.

Complainant stated that he met with the MDO at 5:00 a.m., and the MDO advised that she would be meeting with the Lead Manager, against whom Complainant stated he has an ongoing EEO complaint, and that the MDO and Lead Manager would handle the issue. To Complainant's knowledge, no action was taken against the employee.

Complainant stated that he notified Employee1 that her lunch and breaks were to be taken off the workroom floor. She immediately told Complainant not to speak to her, Complainant responded that he was her supervisor, and she is in his unit, and she told him, "[D]on't talk to me because your [*sic*] White and a male." Complainant stated that he instructed her to return to her work unit and she told him to "quit speak[ing] to me and don't approach me your [*sic*] White and your [*sic*] a male." Complainant stated that he called the MDO, and that the MDO could hear what the employee was yelling at him through the telephone. Complainant stated that the MDO asked if that was Employee1.

Complainant also stated that he followed up about Employee 1, and MDO and Lead Manager never responded.

CONTENTIONS ON APPEAL

The instant appeal followed. On appeal, Complainant does not submit any statements or briefs in support of his 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

As a threshold matter, we find that the Agency failed to properly frame Complainant's complaint.

The categorization of Complainant's complaint as being two claims, when he articulated a third claim that he followed up about Employee 1, who was involved in the incidents in claims 1 and 2, after Complainant reported those incidents to MDO, and MDO and Lead Manager never responded. Additionally, Complainant's first claim was more accurately considered as , on March 13, 2024, one of Complainant's employees yelled "Fag" in his direction, and upper management did not respond to Complainant's inquiries about the situation.

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 he or she has 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 he is aggrieved, the agency shall dismiss a complaint for failure to state a claim. 29 C.F.R. § 1614.107(a)(1).

While the Agency, in its decision, referred to what occurred as an isolated incident involving "petty slurs suffered by the hypersensitive," the Commission has previously observed that that the word "fag" has been historically used in the United States as highly offensive, insulting, and degrading sex-based epithets against gay men. See Couch v. Dep't of Energy, EEOC Appeal No. 0120131136 (Aug. 13, 2013). Additionally, the word "fag" is an offensive, insulting, and degrading sex-based epithet historically used when a person is displaying the belief that a male is not as masculine or as manly as the person is. See, e.g., Nichols v. Azteca Rest. Enters., Inc., 256 F.3d 864, 870, 875 (9th Cir. 2001) (concluding that verbal abuse, including the use of the epithet "faggot," occurred because of sex).

Complainant has stated a claim that he was subjected to a hostile work environment based on sex and sexual orientation. See Foster B. v. Dep't of Health and Human SVCS. (Indian Health Service), EEOC Appeal No. 2019005682 (Apr. 12, 2021). Complainant articulates not one incident, but two, along with what Complainant describes as MDO and Lead Manager's indifference to this treatment. Therefore, we find that Complainant has alleged an injury or harm to a term, condition, or privilege of employment for which there is a remedy. See Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (April 21, 1994).

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is REVERSED. The complaint is hereby REMANDED to the Agency for further processing in accordance with this decision and the ORDER below.

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)

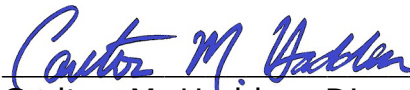
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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

November 19, 2024

Date