



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

[REDACTED]
Marry T,¹
Complainant,

v.

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

Appeal No. 2024004154

Agency No. 4G-290-0107-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated June 26, 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. For the reasons discussed below, we affirm the Agency's final decision.

ISSUES PRESENTED

Whether the Agency's decision properly dismissed the instant complaint for failure to state a claim pursuant to EEOC Regulation 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 relevant time, Complainant worked for the Agency as a Postmaster in Lexington, Kentucky. On May 31, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on race, national origin, and in reprisal for prior protected EEO activity when:

from April 22, 2024 to April 23, 2024, a Headquarters Human Resources Team was brought into Complainant's office unannounced to conduct an investigation of her hiring retention.

In the instant final decision, the Agency dismissed the formal complaint for failure to state a claim. The Agency found that Complainant failed to demonstrate that she suffered a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy.

CONTENTIONS ON APPEAL

On appeal, Complainant argues that the Agency's decision to bring in a team to investigate her retention was in reprisal for her complaints about the Agency's Human Resources Manager and his allegedly intentionally delaying hiring for Complainant's office.

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

The Agency dismissed the claim pursuant to pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim, finding that Complainant was not aggrieved with respect to her allegation.

The regulation 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, or disability. 29 C.F.R. §§ 1614.103, 1614.106(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).

Here, Complainant alleged that a team from the Agency's headquarters was sent to investigate the retention of employees under Complainant's supervision in reprisal for complaints she made about an Agency employee.

The Commission finds that the complaint fails to state a claim under the EEOC regulations because Complainant failed to show that she suffered harm or loss with respect 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). The Commission's guidance provides that an employee states a claim of retaliation or reprisal when an Agency takes a materially adverse action against him for engaging in protected EEO activity, such as participating in an EEO claim or opposing a discriminatory practice in the workplace. The Commission considers reprisal claims broadly. See Carroll v. Dep't of the Army, EEOC Request No. 05970939 (April 4, 2000). The alleged retaliatory actions need not impact a term, condition, or privilege of employment. See Burlington Northern and Santa Fe Railway Co. v. White, 548 U.S. 53 (2006). For retaliation, a complainant need only show that a materially adverse action "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." Id. 548 U.S. at 68. Complainants are protected from any discrimination that is reasonably likely to deter protected EEO activity. See EEOC Enforcement Guidance on Retaliation and Related Issues, No. 915.004 (August 25, 2016); see also Carroll, supra.

The Commission's guidance states if the conduct would be sufficiently material to deter protected activity in the given context, even if it were insufficiently severe or pervasive to create a hostile work environment, there would be actionable retaliation. Id. Complainant did not demonstrate that the Agency's actions rendered her aggrieved. While she may have been frustrated by the Agency's unannounced investigation, she did not show that she suffered any harm or loss with respect to her employment or that the Agency's actions were likely to deter an employee from engaging in protected EEO activity.

Therefore, we find that this complaint fails to state a claim and the complaint was properly dismissed.

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint 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:



Carlton M. Hadden, Director
Office of Federal Operations

December 18, 2024

Date