



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

[REDACTED]
Dixie K.,¹
Complainant,

v.

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

Appeal No. 2024004281

Agency No. 1C-631-0019-24

DECISION

On July 13, 2024, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's June 12, 2024 final decision concerning an equal employment opportunity (EEO) complaint claiming 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 following reasons, the Commission AFFIRMS the Agency's final decision.

ISSUE PRESENTED

Whether the Agency properly issued a final decision finding no discrimination or harassment as alleged.

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 as a Full Time Mail Processing Clerk at the DVD Building, NJ P&DC in Kearny, New Jersey.

Complainant's supervisor was Supervisor Distribution Operations (hereafter Supervisor). Complainant's manager was Executive Plant Manager (hereafter Manager). Both Supervisor and Manager worked at the DVD P&DC in Kearny, New Jersey.

Complainant identified her sex as female and asserted that management officials were so aware because she was employed at the location. Complainant also testified that her claim of retaliation was based on Manager having an issue with her every time Manager sees her. Complainant contended that these actions have occurred since 2016 and that she was being harassed and bullied. Complainant indicated that the date of the prior protected activity was October 26, 2023, and that the management officials were informed that she filed an EEO complaint.

Complainant testified that Manager instructed Complainant's Supervisor to conduct a Pre-Disciplinary Interview (PDI) on November 2, 2023, for improper footwear, and accessories. Complainant asserted that she was aware of the office policy on appropriate footwear on the workroom floor which required either leather or suede shoes. However, Complainant disputed the Agency implementation of this policy, because she saw all types of shoes on various employees. Complainant asserted that the rules did not apply to everyone as management picks and chooses to whom the rules apply. Complainant contended that she explained to Supervisor that she was being harassed and bullied while on break and wash-up on October 26, 2023. Therefore, she asserted that she did not agree with this write up as it was issued while she was on break and washup.

Record evidence included the notes from the PDI dated November 2, 2023, wherein Complainant was provided an opportunity to explain why she was observed with improper footwear and a personal bag. The notes reflect that Complainant alleged that she had been harassed by Manager for years and did not feel comfortable. Complainant alleged that the disrespect that came from management was only geared to the Black community and no one else.

Also included was the Action Request Form submitted by Supervisor on November 3, 2023, requesting approval of a LOW to be issued to Complainant, with supporting documentation.

A Letter of Warning (LOW) dated November 7, 2023, charged Complainant with Failure to Follow Instructions. According to the LOW, Complainant was observed on October 28, 2023, with improper footwear and a personal bag. The letter noted that this was in violation of DVD Directives and a PDI was conducted on November 2, 2023. The LOW was issued by Supervisor and reflected that she found the complainant's answers in the PDI as unacceptable and her actions in direct violation of policy.

Grievance Documentation included a Step 2 Decision dated December 14, 2023, reflecting that the parties mutually agreed the LOW was issued for Just Cause and that the retention period would be three months pending no further corrective action.

Relevant policies included the Memorandum for All Employees - DVD P&DC, August 2015, regarding the appropriate footwear on the workroom floor. Additionally, Poster 900, USPS Shoe Policy, November 2021, was included and provided that employees were required to wear approved slip-resistant shoes at all times. Handbook EL-801, Supervisor's Safety Handbook, July 2020, also provided guidance on the appropriate footwear in Section 8-8 as did Handbook EL-814, Postal Employee's Guide to Safety, November 2013.

Also included was the Collective Bargaining Agreement between the American Postal Workers Union and the USPS, 2021-2024, which provides in Article 2 that there shall be no discrimination by the Employer or the Union against employees because of sex. Further, Article 3 states that the employer shall have the exclusive right to direct employees in the performance of official duties; to hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees; to maintain the efficiency of the operations entrusted to it; and to determine the methods, means, and personnel by which such operations are to be conducted.

Employee and Labor Relations Manual (ELM), issue 54, September 2023, which provides In Sections 665.13 and 665.15 that employees are expected to discharge their assigned duties conscientiously and effectively and must obey the Instructions of their supervisors. Further, Section 656.23 states that employees acting in an official capacity must not directly or indirectly authorize, permit, or participate in any action, event, or course of conduct that subjects any person to discrimination, or results in any person being discriminated against on the basis of sex or retaliation for engaging in EEO protected activity as provided by law.

On December 27, 2023, Complainant filed the instant formal EEO complaint alleging that the Agency discriminated against her based on sex and in reprisal for prior protected activity (harassment and bullying) when:

1. On November 2, 2023, Complainant was given a PDI; and
2. On November 7, 2023, Complainant was issued a LOW for an incident that occurred on October 26, 2023.

After an investigation, the Agency provided Complainant with a copy of the report of investigation and notice of the right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ) via email on April 8, 2024. The email message was not returned as undeliverable and is therefore presumed to have been delivered on that date. Following receipt of that report, Complainant had 30 days within which to request a hearing before an AJ or a final agency decision without a hearing. Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f).

Therefore, on June 12, 2024, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). Therein, the Agency found no discrimination or harassment. Management officials provided testimony that Complainant was only issued the LOW and failure to follow instructions during regular staff service talks and in accordance with written policies. Supervisor noted that Complainant was provided a reason for the issuance of the LOW but disagreed with the decision. Supervisor maintained that Complainant's sex and prior protected activity was not a factor in her decision to issue the LOW. Supervisor explained that she has disciplined others for the same or similar reason.

Finally, Supervisor indicated that Complainant filed a grievance on the matter which was settled at Step 2 for a three (3) month retention period. Manager explained that the day Complainant was approached on the workroom floor, she stated that she was aware of the rules but did not have the time to discuss the matter because she had to go on break. Manager noted that Supervisor then issued the disciplinary action. Manager denied bullying or harassing Complainant and denied that her sex and prior protected activity were factors in the issuance of the LOW.

The Agency found Complainant failed to establish the Agency's actions were pretextual between Complainant's protected status and the Agency's actions.

The Agency found the incidents that Complainant complains of are neither severe nor pervasive, either individually or collectively, when judged by a reasonable person's standards.

The Agency subsequently issued a final order that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

The instant appeal followed.

CONTENTIONS ON APPEAL

Neither party submitted a brief on appeal.

STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that EEOC "review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law").

ANALYSIS

Disparate Treatment

Applying the McDonnell Douglas burden-shifting standard defined in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), a complainant initially must establish a prima facie case of discrimination by presenting facts which, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. See St. Mary's Honor Center v. Hicks, 509 U.S. 502, 507 (1993); Texas Dep't of Community Affs. v. Burdine, 450 U.S. 248, 252-53 (1981); McDonnell Douglas, 411 U.S. at 802. The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. Burdine, 450 U.S. at 253.

Once the agency has met its burden, the complainant has the responsibility to demonstrate by a preponderance of the evidence that the agency's action was based on prohibited considerations of discrimination, that is, its articulated reason for its action was not its true reason but a sham or pretext for discrimination. See Hicks, 509 U.S. at 511; Burdine, 450 U.S. at 252-5 3; McDonnell Douglas, 411 U.S. at 804.

Complainant may establish a prima facie case of discrimination by providing evidence that: (1) she is a member of a protected class; (2) she suffered an adverse employment action; and (3) either that similarly situated individuals outside her protected class were treated differently, or other circumstances surrounding the adverse employment action give rise to an inference of discrimination. McDonnell Douglas, 411 U.S. at 802 n.13; Reeves v. Sanderson Plumbing, 530 U.S. 133, 142 (2000); Bodett v. CoxCom, Inc., 366 F.3d 736, 743-44 (9th Cir.2004) (internal quotation marks omitted).

We do not find that Complainant established a prima facie case with respect to her LOW. Regarding the basis of reprisal, the Agency acknowledges that Complainant pursued the informal complaint process in 2021. However, the relevant Agency officials identified in this complaint was unaware of Complainant's past pursuit of the EEO complaint process. Moreover, the temporal proximity between the prior EEO activity and the instant matter is insufficient to support an inference of reprisal.

Establishment of a prima facie case of sex discrimination also fails. As the Agency noted, Complainant did not establish that she was treated differently from similarly situated employees. Complainant merely indicated that the work atmosphere was a "free for all" and that if management did not like an employee, that employee was subjected to constant harassment. Complainant noted that some employees violate work rules but are condoned, if they are engaging in sexual relations with bosses. However, as the Agency again noted, it is not sufficient to compare oneself to a hypothetical or composite comparator.

In sum regarding a prima facie case analysis for both raised bases, Complainant did not identify any similarly situated individuals who were treated differently. Complainant's mere assertion that she was treated differently due to her sex or prior protected activity is not sufficient. Complainant asserted that her prior protected activity was a factor because she was not well liked by people in charge and that it was more personal than business.

However, as noted above, Supervisor and Manager both denied that Complainant's sex and prior protected activity were factors in their actions regarding this matter.

Finally, we note that assuming arguendo that Complainant established a prima facie case on either basis, the Agency properly determined that it articulated legitimate, nondiscriminatory reasons for its actions which were not pretextual, as delineated above.

Harassment

To establish a claim of hostile work environment or harassment, a complainant must establish she: (1) belongs to a statutorily protected class; (2) was subjected to harassment in the form of unwelcome verbal or physical conduct; (3) the harassment complained of was based on a statutorily protected class; (4) the harassment was sufficiently severe or pervasive to affect a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. Atwood v. DHS, EEOC Appeal No. 0120103578 (Jan. 13, 2012); James v. Dept. of Health & Human Services, EEOC Request No. 05940327, 4 (Sept. 20, 1994)(citing Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986). Further, the incidents must have been "sufficiently severe or pervasive to alter the conditions of [complainant's] employment and create an abusive working environment." Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993). The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the victim's circumstances. Enforcement Guidance on Harris v. Forklift Systems Inc., EEOC Notice No. 915.002 at 6 (Mar. 8, 1994).

Examining the events both individually and collectively, Complainant has not established a prima facie case for a hostile work environment based on sex and retaliation. Complainant has not demonstrated that, from the viewpoint of a reasonable person, the harassment was sufficiently severe or pervasive to affect a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment.

CONCLUSION

Based on a thorough review of the record, we AFFIRM the Agency's final order finding no discrimination or harassment.

STATEMENT OF RIGHTS - ON APPEALRECONSIDERATION (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 30, 2024

Date