



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Erick K.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2024004341

Agency No. 4V-185-0001-24

**DECISION**

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 25, 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 finding no discrimination.

**ISSUES PRESENTED**

Whether the Agency's final decision properly found no discrimination regarding Complainant's claim that he was placed on Emergency Placement status.

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<sup>1</sup> 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 for the Agency as a Vehicle Operations Maintenance Assistant (VOMA) in White Plains, New York.

On January 29, 2024, Complainant filed an EEO complaint alleging that the Agency discriminated against him based on race (African American). Report of Investigation (ROI) at 98.<sup>2</sup>

By letter dated February 29, 2024, the Agency accepted the formal complaint for investigation and determined that it was comprised of the following claim:

On October 19, 2023, Complainant was put on Emergency Placement in an Off-Duty Status. ROI at 153-155.

After an investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge. When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b), finding no discrimination.

The Agency found that Complainant established a prima facie case of reprisal.<sup>3</sup> ROI at 38. Specifically, the Agency found that Complainant engaged in opposition to discrimination regarding training opportunities, that the agency officials involved in the Emergency Placement were aware of the protected activity, that Complainant was subjected to an adverse action (Emergency Placement), and that the protected activity occurred a few days before the adverse action. Id.

The Agency found, however, that Complainant failed to establish a prima facie case of race discrimination. The Agency reasoned that Complainant failed to show that he was treated differently based on race regarding the Emergency Placement because White VOMAs were also put on Emergency Placement for the same reason as Complainant. ROI at 39.

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<sup>2</sup> Our citations to the report of investigation reference the page number of the pdf document before us on appeal.

<sup>3</sup> The Agency included the basis of reprisal (opposition to discrimination) in its final decision. ROI at 31. Complainant raised the basis of reprisal in his affidavit during the investigation. ROI at 176.

The Agency's final decision further found that the Agency articulated a legitimate, nondiscriminatory reason for putting Complainant on Emergency Placement.<sup>4</sup> ROI at 40. The Agency reasoned that on October 19, 2023, a workday, Complainant had been home during worktime with a postal vehicle. The Agency set forth that while October 19, 2023, was the first day this conduct was discovered, an investigation revealed that Complainant engaged in this conduct for many hours between April 2023-October 2023. ROI at 40.

The Agency's final decision further found that Complainant failed to establish, by a preponderance of the evidence, that the Agency's actions were pretext for race discrimination and/or retaliation. ROI at 41.

The instant appeal followed.

#### CONTENTIONS ON APPEAL

Complainant does not submit a statement or brief in support of his appeal. However, Complainant submits a copy of his affidavit contained in the report of investigation.

The Agency does not submit a statement or brief in opposition to Complainant's 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").

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<sup>4</sup> Complainant asserts he was subsequently issued a Notice of Removal. ROI at 176-177.

### ANALYSIS

A claim of disparate treatment is examined under the three-part analysis enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). For Complainant to prevail, he must first establish a prima facie case of discrimination by presenting facts that, 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 McDonnell Douglas, 411 U.S. at 802; Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978). The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. See Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the agency has met its burden, the complainant bears the ultimate responsibility to persuade the fact finder by a preponderance of the evidence that the agency acted on the basis of a prohibited reason. See St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

A complainant may establish a prima facie case of disparate treatment discrimination by demonstrating: 1) they are a member of a protected class; 2) they were subjected an adverse employment action concerning a term, condition, or privilege of employment; and 3) they were treated differently than similarly situated employees outside of their protected class, or there was some other evidentiary link between membership in the protected class and the adverse employment actions. See Nanette T. v. U.S. Postal Serv., EEOC Appeal No. 0120180164 (March 20, 2019); McCreary v. Dep't of Def., EEOC Appeal No. 0120070257 (April 14, 2008); Saenz v. Dep't of the Navy, EEOC Request No. 05950927 (Jan. 9, 1998).

Regarding the basis of reprisal, the Agency's final decision, as set forth above, found that Complainant set forth a prima facie case of reprisal. Thus, we will proceed to address below the Agency's articulated reason for Complainant being placed on Emergency Leave.

Regarding the basis of race, we find that the Agency's final decision properly found that Complainant did not establish a prima facie case of discrimination based on race. (Sept. 25, 2000). The record does not reflect that Complainant was treated differently than similarly situated employees outside of his protected class. Rather, the record reflects that two White VOMA employees were placed on Emergency Leave and issued a Notice of Removal for the same reason as Complainant. Report of Investigation (ROI) at 325, 329, 262, 277. Nevertheless, we will address below the Agency's legitimate, nondiscriminatory reasons for its actions.

The Agency articulated legitimate, nondiscriminatory reasons for Complainant being put on Emergency Placement. The record contains a copy of an October 20, 2023, memorandum addressed to Complainant from the Agency's Manager Vehicle Maintenance Facility (M1) placing him in an Emergency Placement Off-Duty Status. ROI at 285. Therein, M1 asserted that Complainant was put on Emergency Placement for "stealing of time and usage of postal vehicle for personal use." Id.

The record also contains an affidavit from M1. Therein, M1 asserted that, on the date in question, Complainant was parked at his home residence for hours. ROI at 255. M1 stated that Complainant was put on Emergency Placement for stealing time and having a postal vehicle at his residence. ROI at 258. M1 stated that Geo Tab showed Complainant at his residence on the date in question and for many hours prior to the date at issue. ROI at 253, 260.

The record also contains an affidavit from Manager Vehicle Operations (M2). Therein, M2 corroborated M1's statement that Complainant was put on Emergency Placement due to being at his residence instead of work and thus was stealing time. ROI at 269-270. M2 also reiterated M1's assertion that telematics information found that this was not the only date in which Complainant was at his residence rather than at work. ROI at 271.

The record also reflects that the Agency management placed two other White VMOAs on emergency placement and issued Notice of Removals for exhibiting the same conduct as Complainant. ROI at 262, 277, 325, 329.

Complainant failed to establish, by a preponderance of evidence, that the Agency's articulated reasons for its action was pretext for race discrimination and/or retaliation. We concur with the Agency's final decision that "[t]he record reflects that Complainant was treated the same as two other White VOMAs, substantially undercutting any inference that his race was the reason for the Emergency Placement. While the Emergency Placement came shortly after the protected activity, this does not, in and of itself, and in the absence of any supporting evidence, prove pretext." ROI at 41.

### CONCLUSION

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

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

February 13, 2025

Date