



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

[REDACTED]
Cletus W.,¹
Complainant,

v.

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

Appeal No. 2024004355

Hearing No. 532-2024-00013X

Agency No. 4J-450-0084-23

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 13, 2024, final order 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. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission AFFIRMS the Agency's final order.

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.

ISSUES PRESENTED

Whether the EEOC Administrative Judge (AJ) properly issued a decision without a hearing finding no discrimination pertaining to Complainant's complaint.

BACKGROUND

During the period at issue, Complainant worked for the Agency as a City Carrier in Columbus, Ohio.

On June 21, 2023, Complainant filed a formal complaint alleging that the Agency discriminated against him based on sex (male), race (Caucasian), age (53), and in reprisal for prior protected EEO activity.²

By letter dated July 10, 2023, the Agency accepted Complainant's complaint for investigation and determined that it was comprised of the following claim:

On April 7, 2023, [Complainant was] placed on Emergency Placement. Report of Investigation (ROI) at 47.³

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 (AJ). Complainant timely requested a hearing.

On May 15, 2024, the AJ issued a Notice of Proposed Summary Judgment (AJ's Notice). Therein, the AJ set forth that assuming arguendo that Complainant established a prima facie case of race, sex, age discrimination and/or retaliation, the Agency articulated a legitimate, nondiscriminatory reason for putting Complainant on Emergency Placement. Specifically, the AJ set forth that the Agency asserted that Complainant engaged in Improper Conduct. Finally, the AJ found that Complainant failed to establish that the Agency's articulated reason was pretext for discrimination and/or retaliation. The AJ provided an opportunity for the parties to respond to the Notice.

² Complainant raised reprisal as a basis of his complaint during the investigation. Notice of Proposed Summary Judgment n.1.

³ Our citations to the report of investigation reference the page number located on the bottom center of the page.

Both parties submitted a response. Complainant's response asserted that he established a prima facie case of discrimination and/or retaliation without further elaboration.⁴

On June 5, 2024, the AJ issued a decision in favor of the Agency. The AJ based her decision for the reasons set forth in the AJ's Notice.

On June 13, 2024, the Agency issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected him to discrimination and/or retaliation as alleged.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant reiterates that he was subjected to discrimination. Complainant asserts that he did not point his finger in his supervisor's face, during the incident in question, but only raised it up in protest. Complainant states his actions were not so egregious to warrant Emergency Placement. Finally, Complainant asserts that in December 2022, a male African American supervisor yelled in the workplace and a female employee responded back by yelling "It's you[r] job!" Complainant asserts that these two individuals were not put on Emergency Placement.

In response, the Agency requests that we affirm the Agency's final action implementing the AJ's decision without a hearing finding no discrimination. The Agency asserts that no genuine issue of material fact or credibility exists. The Agency asserts that while Complainant, on appeal, attempts to establish a prima facie case of discrimination by alleging a female employee was not placed on Emergency Placement regarding an alleged incident in December 2022, the Agency states that the female employee is not similarly situated to Complainant regarding the April 2023 incident, which resulted in Complainant being put on Emergency Placement. Agency Brief at 3. The Agency further set forth regarding the basis of reprisal, that the record does not reflect that Complainant engaged in prior protected EEO activity. Agency Brief at 3, n 2.

⁴ The record reflects that while Complainant's response was untimely, the AJ still considered the response. AJ's Decision at 1.

STANDARD OF REVIEW

In rendering this appellate decision we must scrutinize the AJ's legal *and* factual conclusions, and the Agency's final order adopting them, de novo. See 29 C.F.R. § 1614.405(a) (stating that a "decision on an appeal from an Agency's final action shall be based on a de novo review . . ."); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (Aug. 5, 2015) (providing that an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed de novo). This essentially means that we should look at this case with fresh eyes. In other words, we are free to accept (if accurate) or reject (if erroneous) the AJ's, and Agency's, factual conclusions and legal analysis – including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. See id. at Chapter 9, § VI.A. (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

We first determine whether the AJ appropriately issued the decision without a hearing. The Commission's regulations allow an AJ to issue a decision without a hearing upon finding that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). EEOC's decision without a hearing regulation follows the summary judgment procedure from federal court. Fed. R. Civ. P. 56. The U.S. Supreme Court held summary judgment is appropriate where a judge determines no genuine issue of material fact exists under the legal and evidentiary standards. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a summary judgment motion, the judge is to determine whether there are genuine issues for trial, as opposed to weighing the evidence. Id. at 249. At the summary judgment stage, the judge must believe the non-moving party's evidence and must draw justifiable inferences in the non-moving party's favor. Id. at 255. A "genuine issue of fact" is one that a reasonable judge could find in favor for the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital

Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A “material” fact has the potential to affect the outcome of a case.

In the instant matter, we find that the AJ properly issued a decision without a hearing because there is no genuine issue of material fact in dispute.

A claim of disparate treatment is examined under the three-part analysis first 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 discrimination by demonstrating: 1) membership in a protected group; 2) that complainant was adversely affected by management’s personnel decision or action; and 3) that complainant was treated less favorably than similarly situated individuals outside of complainant’s protected groups. See e.g., Ricardo K. v. Dep’t of Veterans Affairs, EEOC Decision No. 2019004809, (Dec. 10, 2020) (complainant failed to establish a prima facie case of discrimination because complainant has not provided any evidence or facts that give rise to an inference of unlawful discrimination based on complainant's protected classes). Alternatively, a complainant may establish a prima facie case by establishing the first two elements above and that there is some other evidentiary link between membership in the protected class and the adverse employment action. Complainant v. Dep’t of Navy, EEOC Decision No. 0120113118, (Aug. 14, 2014) (prima facie case includes comparator element or it “must present other evidence that supports an inference that the agency was motivated by unlawful discrimination.”) (citing Alonzo v. U.S. Postal Serv., EEOC Appeal No. 0720070032 (Feb. 4, 2008)).

Complainant failed to establish a prima facie case of race, sex, and/or age discrimination. Complainant asserts that an African American supervisor was not put on Emergency Placement after raising his voice in a separate

incident. However, we concur with the AJ that the supervisor is not similarly situated to Complainant, a city letter carrier. While Complainant asserted that a female employee was not placed on emergency placement after yelling during an alleged incident in December 2022, we concur with the Agency's assertion, on appeal, that the female was not similarly situated to Complainant because she was not involved in the April 2023 incident and the record is devoid of evidence that she used similar language to her supervisor (in the alleged December 2022 incident) as Complainant acknowledged he did in the April 2023 incident.⁵ Moreover, the record further reflects that during this alleged December 2022 incident, Complainant asserted he also yelled "shut up" and that no one was put on Emergency Placement regarding the December 2022 incident. AJ's Notice at 4, n. 3; ROI at 75. In addition, the record is devoid of other evidence creating an inference of discrimination between his protected classes and being put on Emergency Placement.

Complainant failed to establish a prima facie case of reprisal. The record is devoid of evidence that Complainant engaged in prior protected EEO activity. While Complainant alleged that he wrote statements against a manager,⁶ we concur with the AJ that "Complainant's written statements about [a named manager's] behavior were not alleged to have been provided in the context of protected EEO activity." AJ's Notice at 5.

While we find that Complainant failed to establish a prima facie case of race, sex, age discrimination and/or retaliation, we further find that the Agency articulated a legitimate, nondiscriminatory reason for putting Complainant on Emergency Placement. The record contains a memorandum dated April 7, 2023, to Complainant from a supervisor (S1).⁷ Therein, S1 set forth that Complainant was put on Emergency Placement due to improper conduct based on a verbal altercation with S1. ROI at 229. The record also contains an affidavit from S1. Therein, S1 stated that during the incident in question Complainant was loud and pointed his finger in S1's face. ROI at 103. We concur with the AJ's Notice that:

⁵ Complainant acknowledges that during the April 2023 incident, he referred to his supervisor as an "A-hole." ROI at 73

⁶ In his affidavit, Complainant asserted that he wrote a statement against a manager for referring to an employee as "dumb box of rocks." ROI at 75.

⁷ S1 describes his race as "mixed-black/white." ROI at 99.

Complainant admits to telling [S1] to 'shut up,' to calling him an 'a-hole,' and to being on the other side of his desk and having his finger up.⁸ He was put on emergency placement for improper conduct. So, whether he yelled 'shut up' or said it in a reserved manner, Complainant's conduct was inappropriate. AJ's Notice at 5.

Finally, we find that Complainant failed to establish that the Agency's articulated reason was pretext for discrimination and/or retaliation.

CONCLUSION

Based on a thorough review of the record, we AFFIRM the Agency's final action implementing the AJ's decision without a hearing finding no discrimination and/or retaliation.

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).

⁸ In his affidavit, Complainant acknowledged that he had his finger up, referred to S1 as being an "A-hole" and then told S1, without yelling, "Shut up." ROI at 73.

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 19, 2025

Date