



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

[REDACTED]
Addie V,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Western Area),
Agency.

Appeal No. 2024004747

Agency No. 1F-741-0141-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated June 11, 2024, dismissing her 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. Upon review, the Commission finds that Complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim.

ISSUES PRESENTED

Whether the Agency properly procedurally dismissed Complainant's complaint.

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 Mail Handler at the Agency's Los Angeles Network Distribution Center (LANDC) in Bell Gardens, California.

On May 20, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to harassment discrimination based on race (African-American), sex (female), color (Black), and in reprisal for prior EEO-protected activity when:

On January 10, 2024, and other unspecified dates, Complainant received unwarranted letters of instructions via email and was given investigative interviews.

On June 11, 2024, the Agency issued the instant final decision. The Agency dismissed Complainant's complaint for failure to state a claim under 29 C.F.R. § 1614.107(a)(1). The Agency determined that Complainant was she was not aggrieved because she was not subjected to employment harm nor to a hostile work environment.

CONTENTIONS ON APPEAL

On appeal, Complainant contended that Agency management had continuously harassed her since 2017 when she became the first and only elected Black woman Branch President, as well as Vice President, for her union. In support of her appeal, Complainant includes a letter, dated April 7, 2023, wherein the Agency warned Complainant of corrective action up to removal for inappropriate conduct. Complainant also provides two letters from early 2024, regarding the proper channel for her communications on behalf of the union. Complainant further stated that, on unspecified dates, the management had reduced her union time. Additionally, Complainant accuses the Agency of sending its police and local police to escort her out of her workplace. Complainant maintains that the Agency has further harassed her while she was on official union time by sending her letters that included instructions, AWOL charges and threats of disciplinary interviews. According to Complainant, her discrimination allegations merit further investigation and a hearing.

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

We first note that Complainant cited the national collective bargaining agreement in her appeal. EEOC has no jurisdiction over enforcing the terms of a collective bargaining agreement or relations with union representatives. Herb P. v. Dep't of the Treasury, EEOC Appeal No. 2020000916 (July 15, 2021). Furthermore, allegations involving the denial of official union time are fundamentally related to issue of union rights, and not within the Commission's jurisdiction. Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120133160 (Jan. 24, 2014).

In Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993), the Supreme Court reaffirmed the holding of Meritor Savings Bank v. Vinson, 477 U.S. 57, 67 (1986), that harassment is actionable if it is sufficiently severe or pervasive to alter the conditions of the complainant's employment. Thus, not all claims of harassment are actionable. As noted by the Supreme Court in Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998): ". . . isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment." In this case, the record contains three pieces of correspondence from the Agency, dated between April 2023 and March 2024, the latest of which cancelled scheduled investigative interviews of Complainant and apologized to her for threatening discipline. We find that these letters amounted to isolated incidents that did not rise to the level of severe or pervasive necessary to state a viable claim harassment claim.

Retaliation claims are not restricted to those which affect a term or condition of employment. Rather, a complainant is protected from any agency actions that are reasonably likely to deter protected activity. Maclin v. U.S. Postal Serv., EEOC Appeal No. 0120070788 (Mar. 29, 2007); see also EEOC

Compliance Manual, No. 915.003, Section 8 "Retaliation" at 8-15 (May 20, 1998). The Agency actions complained of constitute disagreements between upper management and Complainant as a union representative. Such interactions are not the type that are reasonably likely to deter Complainant or others from engaging in protected activity.

Finally, on appeal, Complainant alleges that, on an unspecified date, the Agency had police make her leave the workplace. This Commission has held that it is not appropriate raise new claims for the first time on appeal. Hubbard v. Dep't of Homeland Sec., EEOC Appeal No. 01A40449 (Apr. 22, 2004). Accordingly, this decision only addressed the claim that was the subject of the formal complaint.

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 30, 2024
Date