



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Helen R.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service,
Agency.

Appeal No. 2024004886

Agency No. 1C-931-0136-24

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 25, 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. For the reasons below, the Commission AFFIRMS the Agency's final decision dismissing the Complainant's complaint.

ISSUES PRESENTED

Whether the Agency properly dismissed Complainant's complaint of discrimination based on race (Black), color (light skin), religion (unspecified), sex (LGBT), and retaliation (prior EEO activity) for failure to state a claim.

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

At the time of events giving rise to this complaint, Complainant worked as a Regular Mail Handler at the Agency's Processing and Distribution Center facility in Raleigh, North Carolina.

Complainant alleges that on March 22, 2024, while loading the dumper, she pressed the button for the mail to fall onto the belt when a 30-pound pallet fell out of the dumper and hit her in the face causing her lip to bleed. Complainant asserts Manager failed to put the safety bar in the dumper, which caused the pallet to fall out. Complainant asserts when she told Manager what happened and told him she needed assistance, he said, "I'll get to you when I can" and continued to work the mail.

On July 5, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of race (Black), sex (LGBT), religion (not specified), color (light skin), and in reprisal for prior protected EEO activity when on March 22, 2024, Complainant was hit in the chin with a pallet.²

On July 25, 2024, the Agency issued a final decision dismissing the complaint pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim. The Agency determined that Complainant was not aggrieved. Complainant filed the instant appeal.

CONTENTIONS ON APPEAL

Neither party made contentions on appeal.

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

² The final Agency decision addressed an additional claim that was raised during informal counseling but was not included in the formal complaint. The Commission has long held that where a Complainant raises a matter at counseling but later does not include it in the formal complaint, he/she cannot resurrect it later during processing or file another complaint concerning the abandoned claim. Thus, any claims not expressed in the formal complaint are not addressed herein. See Lavonne E. v. Dep't of Veterans Affairs, EEOC Appeal No. 2024001716 (Aug. 20, 2024).

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 Complainant's EEO complaint for failure to state a claim. The regulation set forth 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 they have 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).

Terms, conditions, or privileges of employment include, inter alia, promotion, demotion, discipline, reasonable accommodation, appraisals, awards, training, benefits, assignments, overtime, leave, tours of duty, etc. Cobb v. Dep't of the Treasury, EEOC Request No. 05970077 (March 13, 1997).

The Commission has a policy of considering reprisal claims with a broad view of coverage. See Carroll v. Dep't of the Army, EEOC Request No. 05970939 (Apr. 4, 2000). Under Commission policy, claimed retaliatory actions which can be challenged are not restricted to those which affect a term or condition of employment. Rather, a complainant is protected from any discrimination that is reasonably likely to deter protected activity. Maclin v. U.S. Postal Serv., EEOC Appeal No. 0120070788 (Mar. 29, 2007); see also EEOC Compliance Manual Section 8, "Retaliation," No. 915.003 (May 20, 1998), at 8-15.

Complainant seems to be alleging that the Agency's assistance for her injury was deficient. We find that Complainant failed to state a claim for discrimination or retaliation as the Agency action – or inaction – described does not show a harm or loss of a term, condition, or privilege of employment. Thus, we find that the Agency properly dismissed Complainant's complaint of discrimination.

CONCLUSION

The Agency's final decision dismissing the 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

November 26, 2024
Date