



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

[REDACTED]
Eleanore M.,¹
Complainant,

v.

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

Appeal No. 2024004929
Agency No. 4B-070-0234-22

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated August 22, 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. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons we AFFIRM the Agency's dismissal.

ISSUE PRESENTED

Whether the Agency properly dismissed Complainant's complaint for failure to state a claim.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier at the Parsippany Post Office in Parsippany, New Jersey.

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.

On July 28, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of race (Black), color (black), age (Y.O.B. 1976), and in reprisal for prior protected EEO activity when on June 7, 2024, Acting Supervisor yelled at Complainant and criticized her work in front of peers.

On August 22, 2024, the Agency issued a final decision on Complainant's complaint. The Agency dismissed the complaint for failure to state a claim. Subsequently, Complainant filed the instant appeal.

CONTENTIONS ON APPEAL

Complainant notes on August 26, 2024, a new 204B started in the office and began harassing her the first day the new supervisor started. Complainant claims that Acting Supervisor spoke to the new 204B about Complainant and that is why the new supervisor started harassing her. Complainant states the conduct she experienced was uninviting and unwelcome. Complainant claims the harassment she experienced caused her stress and anxiety.

The Agency did not file a statement in response to Complainant's 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 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. The Commission should construe the complaint in the light most favorable to the complainant and take the complaint's allegations as true. Thus, all reasonable inferences that may be drawn from the complaint's allegations must be made in favor of the complainant.

ANALYSIS

Under the regulations set forth at 29 C.F.R. Part 1614, an agency shall accept a complaint from an aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that agency because of race, color, religion, sex, national origin, age, disabling condition, genetic information, or reprisal. 29 C.F.R. §§ 1614.103, 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). If a complainant cannot establish that he is aggrieved, the agency shall dismiss a complaint for failure to state a claim. 29 C.F.R. § 1614.107(a)(1).

The Commission has held that where, as here, a complaint does not challenge an agency action or inaction regarding a specific term, condition, or privilege of employment, the claim of harassment may survive if it alleges conduct that is sufficiently severe or pervasive to alter the conditions of the complainant's employment. See Harris v. Forklift Systems, Inc., 510 U.S. 17, 23 (1993). In assessing whether Complainant has set forth an actionable claim of harassment, the conduct at issue must be viewed in the context of the totality of the circumstances, considering, inter alia, the nature and frequency of offensive encounters and the span of time over which the encounters occurred. See 29 C.F.R. § 1604.11(b); Cobb v. Department of the Treasury, EEOC Request No. 05970077 (Mar. 13, 1997).

At the outset, we note Complainant does not challenge the definition of her complaint as contained in the Agency's final decision. Upon review, we find the single incident on June 7, 2024, occurring as identified by Complainant, does not rise to the level of severe or pervasive to alter the conditions of her employment. Further, we find the incident is not reasonably likely to deter Complainant or others from engaging in protected activity. The Commission finds that the complaint fails to state a claim under EEOC regulations because Complainant failed to show that she suffered harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy.

We note on appeal Complainant identified actions by a different supervisor that occurred after the Agency issued its decision in this complaint. Complainant is advised if she wants to pursue an EEO complaint on those additional actions, if she has not already done so, she should raise them with an EEO Counselor.

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

November 25, 2024

Date