



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

[REDACTED]
Glenna O.,¹
Complainant,

v.

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

Appeal No. 2024005014

Agency No. 4G-770-0195-24

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated July 29, 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 following reasons, we AFFIRM the Agency's final decision to dismiss Complainant's complaint.

ISSUE PRESENTED

The issue presented is whether the Agency properly dismissed Complainant's formal EEO complaint, pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Letter Carrier at the Agency's facility in Houston, Texas.

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 2, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to a hostile work environment and discrimination on the bases of race (African American) and sex (female) when:

1. On February 3, 2024, Complainant alleged management yelled at her regarding a grievance resolution they already agreed to sign;
2. On February 5, 2024, Complainant alleged management did not want to tell her who they assigned to take her mail out to the street;
3. On February 7, 2024, Complainant alleged management would not take the union forms;
4. On February 9, 2024, Complainant alleged she was given a street observation and required to return to the office;
5. On March 1, 2024, Complainant alleged during a Union and Labor Joint meeting she was called a "problem carrier" and after the meeting she alleged she was the only one asked to leave the building;
6. On April 3, 2024, Complainant alleged she was told she would be given a 3999 (Route Inspection) on her route. Complainant stated she told management that she did not feel comfortable with the management official conducting the 3999, but nothing was done; and
7. On April 9, 2024, and April 16, 2024, Complainant alleged her request for union time was not granted.

On July 29, 2024, the Agency dismissed the complaint. Regarding claims 1, 2, 4, 5, and 6, the Agency determined that Complainant did not provide any persuasive evidence that she was subjected to any adverse employment action or was denied any entitlement in relation to a term, condition, or privilege of employment because of the alleged incidents. In reaching this conclusion, the Agency noted that several claims involved management directing the performance of Complainant's duties, which management had a prerogative to do. Additionally, the Agency noted that the claims did not identify with any specificity what actions were taken against her, and how it was connected to a protected class.

Given the totality of the circumstances, the Agency concluded that the actions complained of, even if true, were neither sufficiently severe nor pervasive enough to create a discriminatory hostile or abusive working environment.

Regarding claims 1, 3, 5, and 7, the Agency found that the incidents concerned Complainant's dissatisfaction with management actions in her role as a union representative. As such, the Agency determined that these were collateral attacks and therefore not properly before the Commission.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant contends, without providing specifics, that she has been subjected to adverse actions that have led to a loss of work hours and associated income and benefits. Complainant also asserts that she can provide witnesses and comparators to prove her claims. Complainant does not provide the names of the alleged witnesses or comparators. Additionally, for the first time on appeal, Complainant is asserting that she was subject to reprisal.

The Agency did not respond.

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. Dep't of the Treas., 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

New Bases Raised for the First Time on Appeal

We note that for the first time on appeal, Complainant addresses a basis that was not raised in her informal counseling or formal complaint. Specifically, that Complainant raised retaliation for protected EEO activity.

Since this basis was raised for the first time on appeal, we will not consider it here. We note that absent a compelling reason, a complainant may not add a new basis on appeal. See Valdez v. US Postal Serv., EEOC Appeal No. 01A00196 (May 11, 2000) (citing Wodjak v. Dep't of the Treas., EEOC Appeal No. 01952240 (March 27, 1997)). See also Jeanie P. v. U.S. Postal Serv., EEOC Appeal No. 2019004085 (Jan. 16, 2020).

Failure to State a Claim

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 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, .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 the complainant cannot establish that they are aggrieved, the agency shall dismiss a complaint for failure to state a claim. 29 C.F.R. § 1614.107(a)(1).

Here, nothing in the record supports a claim that Complainant was "aggrieved" in claims 1, 2, 4, 5, and 6. Complainant fails to show any harm she suffered regarding a term, condition, or privilege of her employment. We have reviewed the appellate arguments advanced by Complainant and determine that the Agency properly dismissed these claims.

As for claims 1, 3, 5, and 7, we note that these claims involve allegations regarding Complainant's involvement in the union. The Commission has consistently held that a complainant should not use the EEO complaint process to raise a matter more appropriately brought pursuant to the collective bargaining agreement. The Commission has no jurisdiction over claims related to the terms of a collective bargaining agreement, enforcing the terms of a collective bargaining agreement, or relations with union representatives. See Herb P. v. Dep't of the Treas., EEOC Appeal No. 2020000916 (July 15, 2021); Lawrence L. v. U.S. Postal Serv., EEOC Appeal No. 0120160893 (Apr. 26, 2016); McDonald v. U.S. Postal Serv., EEOC Appeal No. 01A60555 (May 19, 2006).

The Commission has also held that an employee cannot use the EEO complaint process to lodge a collateral attack on another proceeding. Wills v. Dep't of Def., EEOC Request No. 05970596 (July 30, 1998).

A claim that can be characterized as a collateral attack, by definition, involves a challenge to another forum's proceeding. Fisher v. Dep't of Def., EEOC Appeal No. 05931059 (Jul. 15, 1994). "Another forum" typically refers to administrative processes that fall outside EEOC's statutory authority because they do not concern employment discrimination.

Given the nature of Complainant's allegations, we find the proper forum for Complainant to raise claims 1, 3, 5, and 7 would be within the negotiated grievance process. Therefore, we find the Agency properly found that these claims constitute a collateral attack on the proceedings of another forum and fail to state a cognizable EEO related claim.

CONCLUSION

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)

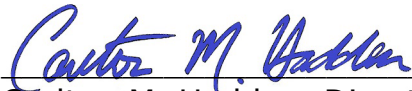
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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

February 18, 2025

Date