



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Keri C.,¹
Complainant,

v.

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

Appeal No. 2024005038

Hearing No. 460-2024-00092X

Agency No. 4G-770-0260-23

DECISION

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403, from the Agency's September 5, 2024, final order concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of 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.

At the time of events giving rise to this complaint, Complainant worked as a Sales, Services/Distribution Associate (Clerk), at the Agency's Danbury, Texas Post Office. Her immediate supervisor was S1, the Postmaster of the Danbury Post Office. On August 7, 2023, Complainant filed an EEO complaint alleging that the Agency discriminated against her and subjected her to a hostile work environment on the basis of age (61) when:

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.

- 1) Beginning in March 2023 through May 8, 2023, she was constantly harassed by her coworkers and subjected to a hostile work environment. She alleged she was told by C1, a coworker in her 50s, that she was unwelcomed because she was taking work hours away from C2, another coworker in her 50s, and, on one occasion, C1 gave management false information about what Complainant had stated regarding the work schedule. Complainant also alleged that she reported the harassment and hostile work environment to management and management took no action;
- 2) Beginning in March 2023 through May 8, 2023, S1 belittled and yelled at her and told her on numerous occasions that she was not going to make it;
- 3) On or about April 11, 2023, she was given an unsatisfactory 30-day evaluation: and,
- 4) On May 8, 2023, due to the harassment and a hostile work environment, she felt forced to resign from her position.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing. The AJ assigned to the case, after determining that the complaint did not warrant a hearing and over Complainant's objections, granted the Agency's motion for summary judgment and issued a decision without a hearing on August 23, 2024.

With respect to claim 1, Complainant stated that C1 told her C2 was not happy her work hours were getting cut when Complainant asked why C2 was hostile towards her. C1 indicated that she and C2 had worked out a schedule for sharing work. These comments, according to Complainant, were made from March 20, 2023, to March 26, 2023. On April 22, 2023, Complainant stated that C1 asked her why she always came in early and, other than that, did not speak with her. On May 4, 2023, C1 stated that Complainant should have used all the parcel lockers before placing packages on the shelf. Although Complainant told her that the shelves were filled, C1 stated that they were not. S1 stated that Complainant never told her that she was being harassed by C1.

On April 21, 2023, Complainant stated that C2 yelled at her for using tubs from one pile and not another, but S1 told her that she could use tubs from anywhere and that placards did not have to be facing each other.

S1 stated that Complainant did not report this incident to her and that she observed C2 trying to be helpful and assisting Complainant in learning the functions of the job. She recalled Complainant, on her second day, stating that she thought C2 might try to "sabotage" her. S1 stated that she told Complainant that no one was there to sabotage anyone. S1 noted that the Danbury Post Office was a small office, and that the employees worked in close proximity, and that she has not heard C2 raise her voice in five years of working together. C2, S1 stated, was responsible for teaching Complainant and therefore, she would correct Complainant on occasion.

Regarding claim 2, Complainant stated that beginning in March 2023, through May 8, 2023, S1 belittled and yelled at her and told her on numerous occasions that she was not going to make it. She stated that this took place on April 11, April 12, April 13, April 20, April 21, April 24, April 25, May 2, May 4, and May 5, 2023. Complainant stated that on April 21, 2023, S1 told her that she did not know how to multi-task because she did not move a cart into the vestibule. Complainant stated that S1, on April 24, 2023, tested her on flats and letters and told her the job was not for her. On April 25, 2023, S1 left the safe door open but wrote Complainant up for leaving it open. On April 28, 2023, Complainant stated that she and S1 had a conversation where S1 acknowledged that Complainant loved the job, but that she had 33 years of experience, and C1 and C2 each had 11 years of experience, and that Complainant could not be compared to them. Complainant stated that, from April 11, 2023, to May 6, 2023, nobody was friendly in the office and no words were spoken to her except criticism. On May 5, 2023, S1, she stated, again told her that "this job is not for you." Complainant felt that S1 was trying to protect C2's hours.

S1 denied that she continually told Complainant that she was not going to make it. S1 indicated that, on several occasions, she had to tell Complainant not to run in the office for safety reasons. S1 stated that she had to be firm with Complainant that she was not allowed to work off the clock. Regarding Complainant's claim that she yelled at her for placing mail in the wrong tub, S1 maintained that Complainant had been trained on the proper place for the Central Forwarding System mail. One day, Complainant mixed up the mail. She felt that it made no sense and explained to Complainant that she had done it incorrectly and showed her how to properly separate the mail. Complainant, she stated, did not like being corrected. S1 admitted that she may have been frustrated regarding Complainant's processing of the mail because Complainant was struggling not only here but in other areas.

Regarding claim 3, on April 11, 2023, Complainant was given an unsatisfactory 30-day evaluation. The evaluation stated that her work quantity, work quality, and dependability were unsatisfactory. S1 stated that Complainant was unable to complete tasks without supervision in a timely manner, and that she had to be retrained almost daily on most tasks. According to S1, she explained each requirement in the evaluation to Complainant and gave her as much time as she needed to read each requirement. She suggested that Complainant needed to focus on completing her work in a timely manner.

S1 did not think that Complainant's 30-day rating was unusual. She stated that, during her 25 years in management, it was unusual to see new employees receive satisfactory ratings across the board because they are still learning the process. She noted that this was why the Agency had 30-, 60-, and 80-day evaluations. S1 stated that she told Complainant that, in the small office where they worked, clerks had to be able to open and close the unit by themselves as there would be times when they would be alone and that, as of evaluation, she did not feel Complainant was anywhere near being able to open or close. S1 indicated that her comments did not mean Complainant could not get to where she needed to be.

Complainant maintained that C2 also did not complete tasks in a timely manner, but she was not given an unsatisfactory evaluation. S1 indicated that C2 was training Complainant; therefore, it was expected that she would take longer to complete her tasks. C2, according to S1, had no issues timely completing her tasks when she not training another employee.

S1 mentioned that C3, who was in his 30s, was an employee who had a similar work performance as Complainant and was also given an unsatisfactory 30-day evaluation. C3 was a Rural Carrier Associate who serviced a regular route at the Danbury Post Office.

With regard to claim 4, on May 8, 2023, Complainant submitted a resignation indicating that she was resigning because her supervisor was abusive. S1 stated that she was caught by surprise when Complainant resigned, and that Complainant had not indicated to her that she was thinking about it. S1 stated that Complainant could have stayed and improved like most other employees.

The AJ found that the Agency's actions were not sufficiently severe or pervasive so as to constitute a hostile work environment.

The AJ found that the actions complained of were ordinary office interactions. The AJ found that Complainant failed to prove she was subjected to discrimination.

The Agency subsequently issued a final order fully implementing the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged. The instant appeal followed.

The Commission's regulations allow an AJ to grant summary judgment when he or she finds that there is no genuine issue of material fact. 29 C.F.R. §1614.109(g). An issue of fact is "genuine" if the evidence is such that a reasonable fact finder could find in favor of 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 fact is "material" if it has the potential to affect the outcome of the case. 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. (as revised, August 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).

In order to successfully oppose a decision by summary judgment, a complainant must identify, with specificity, facts in dispute either within the record or by producing further supporting evidence and must further establish that such facts are material under applicable law. Such a dispute would indicate that a hearing is necessary to produce evidence to support a finding that the agency was motivated by discriminatory animus. Here, however, Complainant has failed to establish such a dispute. Like the AJ found, even if we construed any inferences raised by the undisputed facts in favor of Complainant, a reasonable factfinder could not find in Complainant's favor.

Upon careful review of the AJ's decision and the evidence of record, as well as the parties' arguments on appeal, we conclude that the AJ correctly determined that the preponderance of the evidence did not establish that Complainant was discriminated against by the Agency as alleged. Complainant asks that we speculate that age discrimination motivated S1's actions merely because she believed the actions to have been unfair, wrong, and in violation of the Agency's procedures.

The Commission has long held that pretext analysis is not concerned with whether the actions were unfair or erroneous but whether the actions were motivated by discriminatory animus. Gregg B. v. Dep't of the Army, EEOC Appeal No. 0120151783 (Jun. 7, 2017); Andrews v U.S. Postal Serv., EEOC Petition No. 03980017 (May 28, 1988). Here, the record contains no such evidence of discriminatory animus.

The Commission recognizes that ordinary managerial and supervisory duties include assuring compliance with agency policy and procedures, monitoring subordinates, scheduling the workload, scrutinizing and evaluating performance, providing job-related advice and counsel, acting in the face of performance shortcomings, and otherwise managing the workplace. Erika H. v. Dep't of Transportation, EEOC Appeal No. 0120151781 (Jun. 16, 2017). Employees will not always agree with supervisory communications and actions, but absent discriminatory motives, these disagreements do not violate EEO law.

After a review of the record in its entirety, including consideration of all statements submitted on appeal, it is the decision of the Equal Employment Opportunity Commission to AFFIRM the Agency's final order, because the AJ's issuance of a decision without a hearing was appropriate and a preponderance of the record evidence does not establish that discrimination occurred.

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 26, 2025

Date