



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Karen C.,¹
Complainant,

v.

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

Appeal No. 2024005219

Agency No. 4G-330-0291-24

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated September 3, 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 Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, we AFFIRM the Agency's decision to dismiss the complaint.

ISSUE PRESENTED

The issue presented is whether the Agency properly dismissed Complainant's complaint pursuant to 29 C.F.R. § 1614.107(a)(1) 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 City Letter Carrier, 01Q, at the Riviera Beach Post Office in Riviera Beach, Florida.

On August 5, 2024, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of sex (LGBT),² disability (mental), and in reprisal for prior protected EEO activity when:

1. On March 28, 2024, a co-worker yelled obscenities at her and management did nothing; and
2. On April 1, 2024, Complainant believed a co-worker took her phone from her case and management did not help her locate it.

In her formal complaint and accompanying documents, Complainant alleged that on March 28, 2024, her co-worker got in her face while on the outside dock and yelled, "Why the fuck didn't you return to your route like I fucking told you to?" Complainant alleged that the co-worker continued to verbally harass her while she unloaded the mail from her postal vehicle and that after she reported the alleged harassment to the Customer Service Supervisor on April 1, 2024, the Customer Service Supervisor told her that she would address it. However, Complainant believed that the Customer Service Supervisor failed to do so because the Customer Service Supervisor was best friends with Complainant's co-worker. Furthermore, Complainant alleged that her co-worker stole her cell phone on April 1, 2024, and that the Customer Service Supervisor did not offer any assistance to locate it. According to Complainant, she was forced to call the police for assistance. Another employee later found Complainant's cell phone in a mail tray.

In its September 3, 2024, final decision, the Agency dismissed the formal complaint pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim.

² In Bostock v. Clayton County, 590 U.S. ____, 140 S. Ct. 1731 (2020), the U.S. Supreme Court held that Title VII prohibits employment discrimination on the basis of sexual orientation or transgender status. See also Baldwin v. Dep't of Transp., EEOC Appeal No. 0120133080 (July 15, 2015) (an allegation of discrimination based on sexual orientation states a claim of sex discrimination under Title VII because sexual orientation is inherently a sex-based consideration).

First, the Agency found that there was no evidence that Complainant was subjected to any adverse employment action or denied any entitlement in relation to a term, condition, or privilege of employment as a result of the alleged incidents. Second, management's actions were not severe or pervasive enough to create a hostile work environment. Finally, the Agency found that the alleged incidents would not deter a reasonable person from engaging in protected activity. The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that the Agency erred in dismissing the complaint because it did not thoroughly review all relevant evidence. The Agency makes no arguments 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 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

An agency shall accept a complaint from any 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 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). 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.

In Harris v. Forklift Systems, 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. The Court explained that an "objectively hostile or abusive work environment [is created when] a reasonable person would find [it] hostile or abusive" and the complainant subjectively perceives it as such. Harris, supra at 21-22. Thus, not all claims of harassment are actionable. Where a complainant does not challenge an agency action or inaction regarding a specific term, condition, or privilege of employment, a claim of harassment is actionable only if, allegedly, the harassment to which the complainant has been subjected was sufficiently severe or pervasive to alter the conditions of the complainant's employment.

Complainant, in her formal complaint, maintains that she was discriminated against when management did nothing after her co-worker yelled obscenities at her. Further, management did not assist Complainant in locating her phone when she believed a co-worker stole it. Her co-worker later found the phone in a mail tray. We agree with the Agency that the probative record fails to establish that Complainant alleged a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy, or a viable harassment claim. Indeed, Complainant failed to clearly articulate how she was harmed by management's actions.

To the extent that Complainant alleges reprisal, we note that the Commission has a policy of considering reprisal claims with a broad view of coverage. See Johnson v. U.S. Postal Serv., EEOC Appeal No. 0120093169 (June 27, 2014). However, even drawing all reasonable inferences in Complainant's favor, we find that the alleged incidents would not be reasonably likely to deter Complainant or others from engaging in protected EEO activity. Based on the foregoing, we therefore find that the Agency's dismissal of the complaint for failure to state a claim was proper.

CONCLUSION

Accordingly, we AFFIRM the Agency's final decision dismissing Complainant's complaint.

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