



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

[REDACTED]  
Hipolito P,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2024005239

Agency No. 1F-441-0248-24

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated September 10, 2024, dismissing his 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 presented below, we AFFIRM the Agency's final decision dismissing Complainant's complaint.

**ISSUE PRESENTED**

Whether the Agency properly dismissed Complainant's formal complaint pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim.

**BACKGROUND**

During the relevant time, Complainant worked as a Laborer Custodian at the Agency's Detroit Network Distribution Center in Allen Park, Michigan.

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<sup>1</sup> 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 August 24, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the basis of reprisal (prior protected EEO activity) when, on May 8, 21, 2024, a supervisor informed Complainant that Complainant could not clock in five minutes early, that Complainant had to clock in at his scheduled reporting time, and Complainant felt singled out.

The Agency dismissed claim the complaint pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim, finding that Complainant was not aggrieved within the meaning of the regulations, nor had he shown that the alleged actions were sufficiently severe or pervasive enough to create a discriminatory hostile or abusive working environment. The Agency noted that directing employees in the performance of their duties and enduring the efficiency of the operation entrusted to them was a matter clearly in the realm of managerial prerogative and authority. The Agency further determined that Complainant did not cite a scenario that would deter a reasonable person from engaging in protected activity.

The instant appeal followed.

#### CONTENTIONS ON APPEAL

On appeal, Complainant argues that he was the only one singled out regarding the procedure for clocking in. Additionally, he states that he asked the EEO investigator to add the Maintenance Manager to the informal process during a phone call, which the EEO investigator forgot to do.<sup>2</sup>

The Agency did not file a brief or statement in connection with the instant matter.

#### 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).

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<sup>2</sup> In the EEO Counselor's Report, the EEO counselor notes that Complainant listed the Maintenance Manager in his formal complaint but that he was not interviewed because Complainant did not list the Maintenance Manager during the informal process.

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 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 he or she has been discriminated against by that agency because of race, color, religion, sex, national origin, age or disabling condition. 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 (April 21, 1994).

Where a complaint 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. Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993). However, it is well-settled that, unless the conduct is very severe, a single incident or a group of isolated incidents will not be regarded as creating a discriminatory work environment. See James v. Dep't of Health and Human Serv., EEOC Request No. 05940327 (Sept. 20, 1994); Walker v. Ford Motor Comp., 684 F.2d 1355 (11th Cir. 1982).

The Commission's guidance provides that an employee states a claim of retaliation or reprisal when an Agency takes a materially adverse action against him for engaging in protected EEO activity, such as participating in an EEO claim or opposing a discriminatory practice in the workplace. The Commission considers reprisal claims broadly. See Carroll v. Dep't of the Army, EEOC Request No. 05970939 (April 4, 2000). The alleged retaliatory actions need not impact a term, condition, or privilege of employment. See Burlington Northern and Santa Fe Railway Co. v. White, 548 U.S. 53 (2006). For retaliation, a complainant need only show that a materially adverse action "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." Id. 548 U.S. at 68.

Complainants are protected from any discrimination that is reasonably likely to deter protected EEO activity. See EEOC Enforcement Guidance on Retaliation and Related Issues, No. 915.004 (August 25, 2016); see also Carroll, supra. The Commission's guidance states if the conduct would be sufficiently material to deter protected activity in the given context, even if it were insufficiently severe or pervasive to create a hostile work environment, there would be actionable retaliation. Id.

Here, Complainant has not alleged an agency action or inaction regarding a specific term, condition or privilege of employment. Complainant claimed that he was subjected to reprisal and harassment when a supervisor told him he could not clock in five minutes early, and that Complainant had to clock in at his scheduled reporting time. In his formal complaint, Complainant stated that at a meeting on May 22, 2024, management gave a talk to employees stating everybody needed to clock in correctly.

To the extent that Complainant alleges he was subjected to harassment, the Commission disagrees. Even if proven to be true and viewed in a light most favorable to Complainant, the conduct at issue does not indicate that Complainant was subjected to harassment. The isolated action alleged which Complainant may have construed as abusive and offensive, without more, was simply insufficiently severe or pervasive to state a valid claim. Furthermore, regarding the alleged basis of reprisal, we find Complainant's allegations are not sufficiently material to deter protected activity. Therefore, we find that this complaint fails to state a claim upon which relief can be granted pursuant to 29 C.F.R. § 1614.107(a)(1), and the complaint was properly dismissed.

#### 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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

February 20, 2025  
Date