



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

[REDACTED]  
Nadene M.,<sup>1</sup>  
Petitioner,

v.

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

Petition No. 2025000909

MSPB No. CH-0752-22-0311-I-1

**DECISION**

Petitioner filed a petition with the Equal Employment Opportunity Commission (EEOC or Commission) seeking review of a Final Order issued by the Merit Systems Protection Board (MSPB or Board) concerning her claim of 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, the Commission CONCURS with the MSPB's finding of no discrimination.

**ISSUE PRESENTED**

Whether the MSPB was correct in finding that Petitioner did not establish that the Agency discriminated against her on the bases of race, national origin, sex, religion, color, or in reprisal for prior protected equal employment opportunity (EEO) activity when it removed her from federal service.

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<sup>1</sup> This case has been randomly assigned a pseudonym which will replace Petitioner'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 petition, Petitioner worked on a detail as an Attendance Control Officer at the Agency's Busse Processing and Distribution Center (Busse) in Elk Grove Village, Illinois.

Around November 2021, during "peak season," Busse was assigned a Service Team consisting of several supervisors. The Service Team was tasked with improving Busse's reportedly low operational performance, which had been the subject of several external complaints. One of the Service Team members was appointed to a Senior Manager of Distribution Operations (SMDO) position, which made him the manager for Busse's operations employees. Petitioner's role did not have any operational responsibilities.

Petitioner (and several other employees) apparently disliked the presence of the Service Team, whose members were from out-of-state. During Petitioner's first interaction with SMDO, she called him a liar and berated him on the workroom floor, even though SMDO asked her to stop. On the night of December 9, 2021, after SMDO's new position at Busse had been announced, Petitioner repeatedly yelled at SMDO. According to SMDO, Petitioner was within inches of him during the incident. He asked her to stop and indicated that his grade level was above hers, to which she replied that she did not care about levels and continued to yell at him. The next day, SMDO issued Petitioner a Letter of Warning about the incident.

Over the next few months, Petitioner continued to exhibit hostility toward SMDO and the rest of the Service Team. On January 5, 2022, Petitioner disrupted a workroom floor meeting (even though her duties did not require her to be on the floor). According to several of the Service Team members, Petitioner repeatedly interrupted the meeting, stated "I am Busse," and criticized the Service Team for harassing the staff and claiming that they did not know what they were doing. She also referred to the Service Team as "clowns."

Later that day, four members of the Service Team went to Petitioner's office to deliver what was referred to as a "Memo of [N]otice" regarding the incident on the workroom floor. Initial Appeal File (IAF), Tab No. 7 at 131. In response, Petitioner yelled at the Service Team to "Get the hell out of my office!" and "Get your mother-fucking asses out of my office!" Id. at 30. Petitioner then crumpled the Memo of Notice and threw it in the trash.

Petitioner then threatened to lock several of the Service Team members in the office. One of them, Acting MDO (AMDO), blocked the door to prevent Petitioner from doing so. Petitioner then alleged that AMDO assaulted her during the altercation. Elk Grove Village Police came to Busse to investigate the assault allegation, though the police did not substantiate it. The next day, on January 6, 2022, the Postal Inspection Service arrived to investigate the incident. Petitioner told two Postal Inspectors that AMDO elbowed her in the midsection or chest, but she could not recall exactly where or whether it caused pain or bruising.

On January 11, 2022, Petitioner pointed a cannister of pepper spray at SMDO and AMDO and loudly told a colleague to stay close because Petitioner may need to pepper spray someone. The next day, Petitioner drove a motorized cart past SMDO and the rest of the Service Team. According to several of the Service Team members, Petitioner had her finger on the button of the pepper spray while she was driving by. Petitioner apparently slowed down while she passed them and said, smiling, "Hi [first name]" to Supervisor of Distribution Operations (SDO).

After this incident, on January 13, 2022, the Postal Inspection Service was called to place Petitioner in Emergency Off-Duty Status. The Postal Inspectors questioned Petitioner, who initially denied possessing pepper spray. The Postal Inspectors then asked her to empty her pockets, but after Petitioner did so, the Postal Inspectors noticed a bulge in her sweater pocket and asked her to empty it. Only at that point did Petitioner reveal the pepper spray, which she denied was actually a weapon and was just a means of defending herself.

On February 17, 2022, management conducted an investigative interview of Petitioner. During the investigative interview, Petitioner appeared evasive when asked about the prior incidents. She claimed that she never threatened AMDO and SMDO with pepper spray, that she did not know having pepper spray was wrong, and that when she drove by the Service Team and said "Hi [SDO's first name]," she was holding her asthma pump and not pepper spray. Petitioner also told SMDO that she felt the Service Team was using "mob tactics." IAF, Tab No. 7 at 34.

On March 28, 2022, SMDO proposed Petitioner's removal based on two charges: unacceptable conduct and lack of candor. The deciding official (DO), Senior Plant Manager, met with Petitioner and her union representative. During the meeting, Petitioner called herself a "big fish" at Busse. IAF, Tab No. 7 at 23.

She also admitted to telling one of her colleagues that she almost pulled out her pepper spray when she thought the colleague, who was coming into her office, was initially SMDO and the Service Team, thus indicating her intention to threaten them with pepper spray. DO also asked Petitioner if she had supporting witness statements to present, but Petitioner did not provide any. After considering various aggravating and mitigating factors, DO upheld Petitioner's removal. He reasoned that Petitioner's version of events did not fully address the charges and was not supported by the Postal Inspectors' investigation or the observations of witnesses.

Petitioner appealed her removal to the MSPB. An MSPB Administrative Judge (AJ) held a four-day hearing and thereafter issued an Initial Decision affirming Petitioner's removal.

The MSPB AJ found that, based on the above incidents, the Agency proved both of its charges. For unacceptable conduct, the MSPB AJ found that the testimony of SMDO was credible regarding Petitioner's behavior. The MSPB AJ also found credible AMDO and SDO's testimony about their experiences with Petitioner, such as AMDO blocking the door to prevent Petitioner from locking them in and Petitioner saying "Hi" to SDO while holding a can of pepper spray (even though Petitioner had never spoken to SDO before). The MSPB AJ also found two other supervisors on the Service Team had presented credible testimony at the hearing that corroborated the various incidents as described in the Notice of Proposed Removal and Letter of Decision.

As for Petitioner's testimony and that of her own witnesses, the MSPB AJ found it unpersuasive. One witness testified that he felt the Service Team was hostile and that there was antagonism between the Service Team and the Busse employees, but the MSPB AJ found that, even if this were true, it did not explain or justify Petitioner's behavior. Another of Petitioner's witnesses claimed the Service Team walked around in a bullying manner, but the MSPB AJ found that the witness offered no credible details for that opinion and that her testimony was primarily conclusory and of little evidentiary weight. The MSPB AJ further found that this witness exhibited bias against the Service Team and viewed them as adversaries. The MSPB AJ also determined that the testimony of two more of Petitioner's witnesses were outweighed by credible eyewitness testimony and that their testimony merely repeated Petitioner's allegations.

Regarding Petitioner's own testimony, the MSPB AJ found that it often contradicted the record and was "notably uncertain." Initial Decision at 12. The MSPB AJ also found that Petitioner exhibited bias against the Service Team by admitting to berating SMDO as someone who was from out of town. The MSPB AJ also concluded that some of the key facts were unrebutted and that any disputed facts were amply supported by the Agency's witnesses and contemporaneous documentation, which he felt were much more persuasive than Petitioner's evidence long after the fact.

For the lack of candor charge, the MSPB AJ found the Agency proved that Petitioner had lied or was evasive. The MSPB AJ credited AMDO's testimony about the incident where Petitioner threatened to lock members of the Service Team in her office and that AMDO tried to block the door to prevent it. The MSPB AJ also found that Petitioner failed to offer credible testimony about her assault allegation and instead "spoke vaguely in terms of what she *told* her colleagues." Initial Decision at 14. The MSPB AJ also found she was "vague and inconsistent" about how AMDO had allegedly assaulted her. *Id.* The MSPB AJ further credited the testimony of the Postal Inspectors who interviewed Petitioner about her assault allegation and about the pepper spray incident, in which Petitioner initially denied possessing pepper spray and then refused to place it on the table until she was asked three times. The MSPB AJ further credited SMDO's testimony about Petitioner's evasive answers during the investigative interview on February 17, 2022, when Petitioner insisted she had her asthma pump in her hand and not pepper spray when she drove by the Service Team.

Petitioner's affirmative defenses included allegations that the Agency discriminated against her based on race (Black), national origin (not specified), sex (female), religion (not specified), color (not specified), and in reprisal for prior protected EEO activity when she was removed from her position. The MSPB AJ found that Petitioner failed to establish that she was subjected to discrimination or retaliation. The MSPB AJ first reasoned that Petitioner's allegations of discrimination and retaliation "were barely mentioned" at the hearing. He also found that DO credibly testified that he was unaware of Petitioner's prior EEO activity. While the MSPB AJ found that Petitioner had initiated an informal EEO claim against SMDO, AMDO, and another Service Team member, the MSPB AJ concluded that Petitioner did not pursue that claim and that there was no credible evidence of suspicious timing or management statements indicating discriminatory/retaliatory animus. The MSPB AJ also found that there were no similarly situated employees outside of Petitioner's protected bases who were treated more favorably because no one else engaged in similar misconduct.

The MSPB AJ concluded that there was no evidence that the Agency's reasons for its actions were pretextual, as the Agency provided overwhelming and corroborated evidence of its response to Petitioner's escalating behavior against the Service Team. The MSPB AJ determined that Petitioner's antagonism toward the Service Team was due to her perception that they were "not Busse," rather than due to discrimination on the part of the Service Team.

Petitioner sought review of the MSPB AJ's Initial Decision by the full Board. On August 9, 2024, the Board issued a Final Order affirming the Initial Decision and concluding that the MSPB AJ's findings were well-reasoned and supported by the record. Petitioner then filed the instant petition.

#### CONTENTIONS IN PETITION

Neither party submitted a statement or brief in connection with this petition.

#### STANDARD OF REVIEW

EEOC Regulations provide that the Commission has jurisdiction over mixed case appeals on which the MSPB has issued a decision that makes determinations on allegations of discrimination. 29 C.F.R. § 1614.303 et seq. The Commission must determine whether the decision of the MSPB with respect to the allegation of discrimination constitutes a correct interpretation of any applicable law, rule, regulation or policy directive, and is supported by the evidence in the record as a whole. 29 C.F.R. § 1614.305(c).

#### ANALYSIS

To prevail in a disparate treatment claim, Petitioner must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Petitioner must initially establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination. Shapiro v. Soc. Sec. Admin., EEOC Request No. 05960403 (Dec. 6, 1996) (citing McDonnell Douglas); see Homer B. v. Dep't of Interior, EEOC Appeal No. 2019005980 (Dec. 21, 2020).

To establish a *prima facie* case of disparate treatment based on race, national origin, sex, religion, or color, Petitioner must show that: (1) she is a member of a protected class; (2) she was subjected to an adverse employment action concerning a term, condition, or privilege of employment; and (3) she was treated differently than similarly situated employees outside her protected class, or there was some other evidentiary link between membership in the protected class and the adverse employment action. See Nannette T. v. U.S. Postal Serv., EEOC Appeal No. 0120180164 (Mar. 20, 2019); McCreary v. Dep't of Def., EEOC Appeal No. 0120070257 (Apr. 14, 2008), request for recons. denied, EEOC Request No. 0520080545 (June 20, 2008).

For a reprisal claim, Petitioner may establish a *prima facie* case by showing that: (1) she engaged in protected activity; (2) the Agency was aware of the protected activity; (3) subsequently, she was subjected to adverse treatment by the Agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000); see Carr v. U.S. Postal Serv., EEOC Appeal No. 0120065298 (June 26, 2007); O'Neal v. Ferguson Constr. Co., 237 F.3d 1248, 1252 (10th Cir. 2001); Hochstadt v. Worcester Found. for Experimental Biology, 425 F. Supp. 318, 324 (D. Mass.), aff'd, 545 F.2d 222 (1st Cir. 1976).

Proof of a *prima facie* case will vary depending on the facts of the particular case. McDonnell Douglas, 411 U.S. at 802 n.13; Saenz v. Dep't of the Navy, EEOC Request No. 05950927 (Jan. 9, 1998). The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Tex. Dep't of Cmty. Affs. v. Burdine, 450 U.S. 248, 253 (1981).

Once the Agency has met its burden, Petitioner bears the ultimate responsibility to persuade the fact finder by a preponderance of the evidence that the Agency's explanation was pretextual. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 143 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 507 (1993). Petitioner can do this by showing that the proffered explanations were unworthy of credence or that a discriminatory reason more likely motivated the Agency. Burdine, 450 U.S. at 256. A showing that the employer's articulated reasons were not credible permits, but does not compel, a finding of discrimination. Hicks, 509 U.S. at 511.

We find that Petitioner failed to establish a *prima facie* case of discrimination based on race, national origin, sex, religion, or color because she has not shown an evidentiary link between these bases and her removal.

Petitioner also has not specified similarly situated individuals outside of her protected bases who were treated more favorably. Other than her own bare assertions and speculation, Petitioner has not shown any connection between the actions of management and Petitioner's race, national origin, sex, religion, or color.<sup>2</sup>

We find that Petitioner can establish a *prima facie* case of reprisal. She filed an informal EEO complaint against several members of the Service Team, so at least some of management was aware of her prior EEO activity, she was subsequently removed from her position, and her protected EEO activity occurred before her proposed removal. We therefore find that, at least for purposes of a *prima facie* case of reprisal, Petitioner has met her burden.

Next, we find that the Agency articulated legitimate, nondiscriminatory reasons for its actions as stated in the Notice of Proposed Removal and the Letter of Decision upholding the removal. In these documents, the Agency claimed that Petitioner disrupted a workroom floor meeting and called the Service Team clowns, yelled expletives at the Service Team when they delivered her Memo of Notice later that day, pointed pepper spray at SMDO and AMDO, and the next day drove past the Service Team brandishing the pepper spray at them. The Agency further claimed that Petitioner then lied about the alleged assault by AMDO and lacked candor about the other incidents during her interview with the Postal Inspectors when she was put on Emergency Placement and during her investigative interview.

We find that Petitioner failed to prove by preponderant evidence that the Agency's explanation is pretext for discrimination based on race, national origin, sex, religion, color, or reprisal. Other than Petitioner's bare assertions and speculation before the MSPB, there is no evidence in the record to indicate that any of the Agency's actions were motivated by discrimination or retaliation. We also note that Petitioner admitted to some of the alleged conduct, such as interrupting the floor meeting, calling the Service Team clowns, upbraiding SMDO, and carrying pepper spray. Petitioner has failed to persuasively establish that the Agency's reasons are unworthy of belief or that any of her protected bases motivated the Agency's actions.

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<sup>2</sup> We also note that the record fails to specify Petitioner's membership for several of the alleged bases of discrimination, even though she was asked to precisely identify her affirmative defenses before the MSPB AJ. See IAF, Tab No. 21 at 4-8.

We also note that the MSPB AJ found the Agency's witnesses more credible than Petitioner or her witnesses. We give deference to such credibility findings made by an MSPB AJ. Petitioner v. Dep't of the Air Force, EEOC Petition No. 0320090063 (June 20, 2009).

### CONCLUSION

Based upon a thorough review of the record, it is the decision of the Commission to CONCUR with the final decision of the MSPB finding no discrimination. The Commission finds that the MSPB's decision constitutes a correct interpretation of the laws, rules, regulations, and policies governing this matter and is supported by the evidence in the record as a whole.

### PETITIONER'S RIGHT TO FILE A CIVIL ACTION (W0124)

This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court, based on the decision of the Merit Systems Protection Board, **within thirty (30) calendar days** of 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.

### 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 10, 2025

Date