



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

[REDACTED]  
Clement D.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2024004326

Agency No. 1C-231-0068-24

DECISION

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

ISSUE PRESENTED

Whether the Agency's final decision properly found that Complainant did not establish that the Agency discriminated him based on sex when it removed him from federal service.

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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.

### BACKGROUND

During the period at issue, Complainant worked as a Lead Clerk at the Agency's Southern Maryland Washington Network Distribution Center in Capitol Heights, Maryland.

On October 6, 2023, Complainant requested pre-complaint processing. Informal efforts at resolution were not successful.

On January 22, 2024, Complainant filed a formal EEO complaint alleging that the Agency subjected him to discrimination on the basis of sex when:

1. On March 7, 2023, he was issued a Notice of Removal (NOR).<sup>2</sup>

Initially, the complaint included one additional claim (being put on emergency placement on February 5, 2023). However, on February 12, 2024, this allegation was dismissed as being untimely filed with an EEO Counselor, in an Agency partial dismissal. We note, however that this dismissed matter related to the incident which ultimately resulted in Complainant's termination, identified as claim 1, and will therefore be construed together with the analysis of the accepted claim.

After an investigation into claim 1, Complainant was provided a copy of the report of the investigation and with a notice of the right to request a hearing before an EEOC Administrative Judge or a final decision within thirty days of receipt of the correspondence via email on April 12, 2024.

As Complainant failed to request either a hearing or a final agency decision without a hearing, the Agency issued a final decision, based on the evidence gathered during the investigation, in accordance with 29 C.F.R. § 1614.110(b). In its June 10, 2024 final decision, the Agency found no discrimination.

The Agency determined that there was nothing that showed by a preponderance of the evidence that the legitimate explanation given by the agency were pretext for discrimination. Complainant therefore has not shown that the explanation of the agency for its action was simply a pretext for discrimination.

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<sup>2</sup> A separate claim was previously dismissed by the Agency for untimely EEO Counselor contact.

The instant appeal followed.

### CONTENTIONS ON APPEAL

On appeal, Complainant argues that he has established a prima facie case of disparate treatment based on sex, namely: (1) he is male, and sex is a protected class; (2) his work performance was satisfactory, and the Agency has made no claims to the contrary; (3) he suffered two adverse employment actions, namely suspension without pay and termination of his employment; (4) Complainant was disciplined differently than his Supervisor, a female employee, similarly situated outside of his protected class. As its rebuttal, the Agency asserted that its decision was based on Complainant's violation of the Zero Tolerance policy and his history of similar behavior.

The Agency provides no response to Complainant's appeal.

### STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that EEOC "review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law").

### ANALYSIS

A claim of disparate treatment is examined under the three-part analysis first enunciated in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973). For a complainant to prevail, he or she must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. See McDonnell Douglas, 411 U.S. at 802; Furnco Construction Corp. Waters, 438 U.S. 567 (1978).

The burden then shifts to the agency to articulate a legitimate, non-discriminatory reason for its actions. See Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the agency has met its burden, the complainant bears the ultimate responsibility to persuade the fact finder by a prohibited reason. See St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

The established order of analysis in discrimination cases, in which the first step normally consists of determining the existence of a prima facie case, need not be followed in all cases. Where, as here, the agency has articulated a legitimate, nondiscriminatory reason for the personnel action at issue, the factual inquiry can proceed directly to the third step of the McDonnell Douglas analysis, the ultimate issue of whether complainant has shown by a preponderance of the evidence that the agency's actions were motivated by discrimination. See U.S. Postal Service Board of Governors v. Aikens, 460 U.S. 711, 713-714 (1983); Hernandez v. Department of Transportation, EEOC Request 05900159 (June 28, 1990); Peterson v. Department of Health and Human Services, EEOC Request No. 05900467 (June 28, 1990); Washington v. Department of the Navy, EEOC Petition No. 03900056 (May 31, 1990).

We first address a prima facie analysis. A complainant may establish a prima facie case of disparate treatment by showing that he (1) belongs to a protected class; (2) was subjected to an adverse employment action; and (3) was treated differently in this regard than similarly situated individuals who were not members of the protected group.

Here, Complainant provided un rebutted evidence that he is male; and that he was subjected to an adverse action when terminated from Agency employment after being first put on emergency placement.

However, while Complainant asserts that a female employee involved in the interaction which led to his discharge was treated more favorably, we reject the assertion. Nothing in the record reflects that the female employee threatened Complainant, used profanity, or grabbed a telephone from him. Moreover, Complainant presents no other evidence that would afford a sufficient basis from which to draw a discriminatory inference.

Moreover, assuming arguendo that Complainant established a prima facie case, we find that the Agency's management witnesses articulated legitimate, non-discriminatory reasons for the disputed actions which we will summarize in brief below.

The record shows that prior to this matter, Complainant had been issued a notice of removal for engaging in a physical altercation with a fellow employee, which was eventually reduced to a 14-day suspension. Less than 8 months from earlier removal, Complainant committed the same infraction. Complainant was given a second chance under the Agency zero tolerance policy, which he has again violated. In the instant case, the record shows that Complainant acted in a belligerent and threatening manner toward acting Manager (female employee) ("Manager") in the control room. Further, Supervisor (male employee) ("Supervisor") testified as to the Complainant's use of profanity, verbal attack on Manager, attempts to take a telephone out of her hand, and also trying to unplug the phone that she was on while speaking with her Distribution Operations Manager (male employee). Supervisor also mentioned Complainant's use of profanity discussing Manager's husband and family. These events occurred while Manager was in her chair against the wall.

Complainant bears the burden of establishing that the Agency's stated reasons are merely a pretext for discrimination. Complainant can do this directly by showing that the Agency's proffered explanation is unworthy of credence. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. at 256.

Here, Complainant failed to prove, by a preponderance of the evidence, that these proffered reasons were a pretext designed to mask discriminatory motivations based on his sex. While Complainant named Manager who he claimed was treated more favorably when she was not disciplined following their interaction, we find no evidence in the record to establish that she engaged in activity warranting a Notice of Removal or discipline. Moreover, Complainant's allegations were not supported by the totality of the record, and he failed to present any plausible evidence that would have demonstrated that management's reasons for its action were factually baseless or not its actual motivation. Accordingly, we do not find her similarly situated to Complainant and, therefore, do not establish discrimination.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, we AFFIRM the Agency's final order.

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

March 11, 2025

Date