



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

[REDACTED]
Harry E.,¹
Complainant,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service
(Northeast Area),
Agency.

Appeal No. 2020000585

Agency No. 4B-040-0027-19

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated August 27, 2019, 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

BACKGROUND

During the period at issue, Complainant worked as a Postmaster, EAS-21 at the Agency's Laconia Post Office, in New Hampshire.

On July 30, 2019, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of sex (male), disability (hypertension), age (52), and in reprisal for prior protected EEO activity when:

1. on May 21, 2019, the Alton Post Office (where Complainant's wife is employed) was scheduled for an Initial Management Inquiry Process (IMIP);

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.

2. on July 10, 2019, Complainant was given an Investigative Interview; and
3. from July 11 through July 29, 2019, and continuing, Complainant still receives emails from the former Post Office Operations Manager (POOM) even though she is no longer his manager.

On August 27, 2019, the Agency issued a final decision dismissing the complaint, pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim. Specifically, the Agency's final decision contained a footnote in which it explained that Complainant's claims concerned Agency actions against his wife, who was the postmaster at the Alton Post Office. The Agency further stated that Complainant's claims were improper because he had characterized the discrimination he had been subjected to as based upon his status as a whistleblower and beyond EEOC's jurisdiction. Finally, the Agency asserted that Complainant did not suffer a present employment harm.

The instant appeal followed. On appeal, Complainant argues that the Agency had retaliated against him for EEO-protected activities. Complainant reiterates matters from his narrative supporting the formal complaint. Specifically, Complainant stated that, in June 2018, while detailed at the Epsom Post Office, he had advised letter carriers to file a complaint alleging harassment by their supervisor, who later became the POOM at issue. Complainant further stated that in December 2018, he had filed an EEO complaint naming the POOM as a manager who had discriminated against him based on his physical condition. Complainant specified that he has been subjected to reprisal even after he withdrew the December 2018 EEO complaint. Complainant's appeal also raised new discrimination claims regarding Agency decisions denying him higher-level details.

ANALYSIS AND FINDINGS

An agency cannot dismiss for failure to state a claim unless it appears beyond doubt that no set of facts would support a claim which would entitle the employee to relief. Agencies must accept a complaint from an aggrieved employee who states a discrimination claim on an EEO-protected bases including retaliation, disability, age or gender. 29 C.F.R. §§ 1614.103, 1614.106(a). Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994).

The Agency improperly dismissed the instant formal complaint for failure to state a claim, pursuant to 29 C.F.R. § 1614.107(a)(1). Based upon a fair reading of the formal complaint narrative as well as appellate submissions, here, Complainant sufficiently stated a complaint of discriminatory harassment. Complainant has described Agency adverse actions from June 2018 through January 2019, which could be construed as disparate treatment or a hostile work environment. Cobb v. Dep't of the Treasury, EEOC Request No. 05970077 (Mar. 13, 1997).²

² The Agency has argued that Complainant has not alleged he engaged in prior activity protected by the anti-discrimination statutes. We recognize that whistleblower activities are generally outside EEOC jurisdiction. Trent M. v. Dep't of Justice, EEOC Appeal No. 0120142277 (Oct. 1,

Moreover, Complainant sufficiently articulates a third-party reprisal claim against the Agency, regarding the matter raised in Claim 1. Specifically, Complainant argues that the Agency conducted an inappropriate investigation at the post office where his spouse was also a postmaster based on Complainant's EEO-protected activities.

EEOC's Compliance Manual, §8-11.C.3 (May 20, 1998), expressly prohibits retaliation against another employee who is closely related to Complainant or associated with Complainant to the extent that the Agency's action against the relation or associate would discourage a person from pursuing their EEO rights. As an example, the Compliance Manual advises it is illegal for an employer to retaliate against an employee because a spouse, who is also an employee, filed an EEO charge. It advises that either spouse could bring retaliation claims. Carry R. v. Dep't of State, EEOC Appeal No. 0120133366 (Apr. 22, 2016) *citing* Thompson v. N. American Stainless, LP, 562 U.S. 170 (2011). Based on the foregoing, we find that the Agency improperly dismissed the first claim.

Finally, Complainant has raised, for the first time on appeal, matters relating to denial of opportunities to "higher-level details," and a letter of warning on July 29, 2018. We advise Complainant if he wishes to pursue such additional claims, then he must initiate contact with an Agency EEO counselor.

CONCLUSION

The Agency's final decision dismissing the instant formal complaint is **REVERSED**. The formal complaint is **REMANDED** to the Agency for further processing in accordance with the **ORDER** below.

ORDER (E1016)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request. A copy of the Agency's letter of acknowledgment to Complainant and a copy of the notice that transmits the investigative file and notice of rights must be sent to the Compliance Officer as referenced below.

2015). Indeed, Complainant wrote the word "whistle" next to reprisal on his formal EEO complaint form. However, upon review of the entire record, we determined that a fair reading of the record reflects that Complainant alleges reprisal based on prior EEO complaint activity.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to Complainant and his representative.

If the Agency does not comply with the Commission's order, Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if Complainant or the Agency submits a written request containing arguments or evidence which 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 to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in which to submit a brief or statement in opposition. 29 C.F.R. § 1614.405; EEO Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Ch. 9 § VII.B (Aug. 5, 2015).

All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party. Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. 29 C.F.R. § 1614.604(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

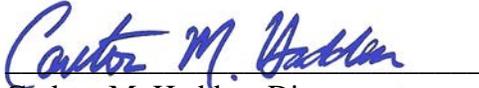
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. 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 his or her 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. **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:

A handwritten signature in blue ink, reading "Carlton M. Hadden", is written over a horizontal line.

Carlton M. Hadden, Director
Office of Federal Operations

February 26, 2020

Date