



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Josephine S.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Southern Area),
Agency.

Appeal No. 2020005496

Agency No. 4G-760-0061-20

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated August 13, 2020, 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.

BACKGROUND

During the relevant time, Complainant worked as a Rural Carrier at the Agency's Post Office in Euless, Texas.

On July 24, 2020, Complainant filed the instant formal complaint. Complainant claimed that the Agency subjected her to discrimination on the bases of race, sex, disability, and in reprisal for prior EEO activity. On August 13, 2020, the Agency issued the instant final decision. The Agency found that the formal complaint was comprised of the following claim:

on April 6, 2020, April 21, 2020, and ongoing, Complainant's requests to return to work after completing the Fitness-For-Duty Examination have not been granted and she has remained on Administrative Leave.

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.

The Agency dismissed the formal complaint for failure to state a claim, pursuant to 29 C.F.R. § 1614.107(a)(1), finding Complainant was not aggrieved.

Further, the Agency dismissed the formal complaint on the alternative grounds of stating the same claims that were raised in two prior EEO complaints, pursuant to 29 C.F.R. § 1614.107(a)(1). Specifically, the Agency found that the instant complaint raises the same matter as that previously raised in Agency Nos. 4G-760-0047-19 and 4G-760-0019-20.

The instant appeal followed.

ANALYSIS AND FINDINGS

Same claims

EEOC Regulation 29 C.F.R. § 1614.107(a)(1) provides for the dismissal of a formal complaint that states the same claims that is pending before or has been decided by the Commission or the Agency. To be dismissed as the “same claim,” the present formal complaint and prior complaints must have involved identical matters. It has long been established that “identical” does not mean “similar.” The Commission has consistently held that in order for a complaint to be dismissed as identical, the elements of the complaint must be identical to the elements of the prior complaint in time, place, incident, and parties. See Jackson v. Department of the Air Force, EEOC Appeal No. 01955890 (April 5, 1996), rev’d on other grounds, EEOC Request No. 05960524 (April 24, 1997).

The Agency dismissed the formal complaint, determining that it raised the same matter that was raised in prior formal complaints (Agency Nos. 4G-760-0047-19 and 4G-760-0019-20). We disagree. On October 30, 2019, in Agency No. 4G-760-0047-19, the Agency accepted Complainant’s claim that she was subjected to discriminatory and/or sexual harassment on the bases of race, sex and in reprisal for prior EEO activity when:

1. in January 2019 and ongoing, she was subjected to sexual harassment when her Postmaster made sexual advances toward her, including emotional and physical abuse, and when she reported it to her District Manager, no action was taken;
2. on dates to be specified, the Postmaster threatened to write her up;
3. on July 18, 2018 and December 2018, she was denied vacation time;
4. on dates to be specified, the Postmaster denied her overtime hours;
5. on January 14, 2019, she was forced to case 2 routes;
6. on February 1, 2019, she was yelled at and threatened by her supervisor;
7. on June 26, 2019, the Postmaster instructed a clerk to hide first class mail in her Undeliverable Bulk Business Mail;
8. on July 9, 2019, the Postmaster hid her vehicle keys in order to force her to talk to him so he could sexually harass her;
9. on July 23, 2019, the Postmaster stalked her when followed her in his SUV when she left the Post Office in her personal car;

10. on August 16, 2019, when she went out to load her vehicle she saw the Postmaster touching her truck, and you believe he scratched her vehicle in order to blame her for the damage;
11. on September 3, 2019, her work ID and a note she had left on her work area were not where she left them and she believe that the Postmaster took them;
12. on unspecified dates, someone tampered with the mail on her route;
13. since December 3, 2013, and continuing, she had not been paid properly for deliveries that were added to her route;
14. on September 17, 2019 and other dates, the Postmaster sent various supervisors out to her route to observe her and otherwise harass her;
15. on October 3, 2019, she found a letter on her case which accused her of leaving the door of her vehicle unlocked on October 2, 2019, and which stated that the letter was an Investigative Interview;
16. on October 7, 2019, management carried out to her route, told her to go back to the office because she was being sent home, but when she returned to the office she was instructed to go back out and finish her route; and
17. on October 15, 2019, management was waiting for her in the parking lot, followed into the building, instructed her to report to the office, and notified her that she was being placed on Administrative Leave.

On January 14, 2020, in Agency Case No. 4G-760-0019-20, the Agency accepted Complainant's claim that she was subjected to harassment beginning in November 2019, on the bases of disability and in reprisal for prior EEO activity, when:

1. on November 9, 2019, management reduced her work hours/pay; and
2. on December 10, 2019, she was sent for a medical assessment and subsequently placed in a non-pay status.

However, in the instant complaint, the EEO Counselor's Report notes that Complainant identified the date of alleged discriminatory dates as April 6 and 20, 2020 and ongoing. As such, we find that Complainant has not alleged the same claims as her two prior EEO complaints because, while similar, the new allegations do not involve the same time period or incidents as the two prior formal complaints.

Failure to state a claim

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. Department of the Air Force, EEOC Request No. 05931049 (April 21, 1994).

The Agency improperly dismissed the complaint for failure to state a claim. In its dismissal decision, the Agency asserts that Complainant is not “aggrieved” because she was on paid administrative leave when not permitted to return to work. However, we have previously found that a complainant is aggrieved even when placed on a paid administrative leave when that leave is of a lengthy indefinite nature such as the circumstances at issue here. See Watt v. Dep't of the Navy, EEOC Appeal No. 0120082308 (June 26, 2008) (reversing dismissal of claim where placement on paid administrative leave was for an indefinite time period). We further note that one of the bases for Complainant's claim is reprisal and that, for retaliation claims, adverse actions need not qualify as “ultimate employment actions” or materially affect the terms and conditions of employment to state a claim. In accordance with Commission policy, reprisal claims are considered with a “broad view of coverage” so that a complainant is protected from any actions that a reasonable employee would find materially adverse and are reasonably likely to deter protected activity. Burlington Northern & Santa Fe Railroad. Co. v. White, 548 U. S. 53, 126 S. Ct. 2405 (2006). See also EEOC Enforcement Guidance on Retaliation and Related Issues, No. 915.004 (August 25, 2016); Carroll v. Department of the Army, EEOC Request No. 05970939 (April 4, 2000). Complainant's present claim falls within these parameters and, as such, states a viable claim.

CONCLUSION

We REVERSE the Agency's final decision dismissing Complainant's formal complaint, defined herein as a harassment claim, and we REMAND this matter to the Agency for further processing in accordance with the ORDER below.

ORDER (E0618)

The Agency is ordered to process the remanded claim in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall acknowledge to the 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 the 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.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, a copy of complainant's request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

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. See 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 the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The 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. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the 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 the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 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 the 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. 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). 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. See 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). See 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. See 29 C.F.R. § 1614.604(c).

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

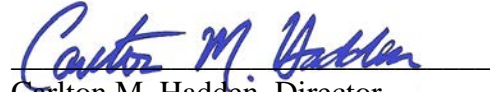
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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

December 10, 2020

Date