



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

[REDACTED]  
Dominica H.<sup>1</sup>  
Complainant,

v.

Jeffrey A. Rosen,  
Acting Attorney General,  
Department of Justice  
(Federal Bureau of Prisons),  
Agency.

Appeal No. 2020000448

Hearing No. 461-2018-00100X

Agency No. BOP-2016-0656

**DECISION**

On September 23, 2019, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's August 29, 2019, final order concerning her equal employment opportunity (EEO) complaint alleging 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 following reasons, the Commission AFFIRMS the Agency's final order.

**ISSUE PRESENTED**

The issue presented is whether the EEOC Administrative Judge (AJ) correctly found that Complainant failed to prove that the Agency subjected her to discrimination on the basis of sex.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Correctional Officer at the Agency's Federal Correctional Complex (FCC) in Pollock, Louisiana.

---

<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 10, 2016, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the basis of sex (female) when:

1. on April 15, 2016, Complainant's first-line supervisor, the Lieutenant (S1, male), removed Complainant from her bid post for not allegedly going against policy; and
2. from May 11, 2016 - August 4, 2016, Complainant was subjected to disparate treatment and harassment when she was assumedly disrespected and not taken seriously as a female Officer, denied an overtime slip and overtime pay for time worked, not allowed to attend the re-entry program, and purposely not given essential items necessary to complete her daily duties.<sup>2</sup>

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of her right to request a hearing before an Equal Employment Opportunity Commission AJ. Complainant timely requested a hearing. On May 20, 2019, the Agency filed a motion for a decision without a hearing; and Complainant responded to the Agency's motion.

The AJ found that further development of the record was unlikely to lead to a finding of discrimination; and that preponderant evidence failed to show that Complainant was subjected to discrimination. The AJ determined that the parties were afforded an opportunity to conduct discovery and did so. The AJ stated that Complainant's response to the Agency's motion failed to provide a single, legitimate, genuine issue of material fact that would preclude summary judgment, characterizing Complainant's responses as pointing out a grammatical error in the Agency's motion and submitting additional documents asserting unsubstantiated claims and allegations that allegedly occurred on August 11, 2013, and March 11, 2017, both outside of the time frame of the claims asserted in the instant complaint. The AJ stated that Complainant was given multiple opportunities to amend her claims prior to submission of the response but failed to timely do so. Over Complainant's objections, the AJ granted the Agency's motion for a decision without a hearing and issued a decision July 19, 2019.

Following are the facts as stated in the ROI and the AJ's decision:

Regarding Claim 1, Complainant stated that she discovered a piece of mail from an inmate that contained "sovereign citizen materials" which is considered contraband. Complainant stated that she confiscated the mail, completed a confiscation form and an incident report, assembled the mail in a bag, and placed it in S1's office. Complainant alleged that she later learned that S1 escorted the inmate to the mail room to mail the items out.

---

<sup>2</sup> The Agency noted that, on March 19, 2019, the Initial Status Conference (ISC) was held during which Complainant's claim identified as Claim 6 (but not stated in the record) was withdrawn by Complainant. The Agency also noted that additional claims were dismissed as untimely and not investigated. Complainant did not contest the dismissal. As such, we have renumbered the claims at issue as Claims 1 and 2 for clarification.

Complainant stated that the same piece of mail landed back on her desk, explaining that the inmate was trying to extort money from a police department. Complainant stated that the mail was returned with a response from the police department. Complainant decided to address the matter with another Lieutenant (LT1) instead of S1. Complainant stated her feeling that S1 was not following protocol on "sovereign citizen mail." Complainant asserted that as soon as S1 overheard Complainant discussing the inmate's mail, S1 yelled at Complainant from his office that she was not to put letters in the evidence bag. Complainant stated that she did not respond because she was talking to LT1 about the matter. Complainant added that S1 then yelled, "Do you hear what I am telling you?" Complainant stated that she intended not to answer S1, but LT1 instructed her to respond. Complainant asserted that she told S1 that what he was suggesting went against policy and that she indicated to S1 that she did not hear him.

Complainant stated that S1 told her to follow orders and that she responded by telling S1 that she did not have to do what he ordered. Complainant also alleged that S1 accused her of searching an inmate's cell, which she denied. Complainant asserted that following the incident, and S1's allegation, S1's supervisor (S2) asked that Complainant be investigated.

Complainant indicated that she had been removed from her post pending the investigation and that she had not been able to return to her original post following the investigation. Complainant also contended that she was assigned to work in the Inmate Communications Services, in a different office, but not at her post. Complainant stated that she spoke to S2 about her concerns but indicated that S2 did not like to deal with problems. Complainant also asserted that S1 and S2 failed to get permission from the Warden to remove Complainant from her position. Complainant stated that she did not speak to the Warden about this incident because she felt the Warden did not want to hear about her problems. Complainant believed that S1 treated her in the alleged manner because S1 had a problem with females.

S1 recalled Complainant taking an inmate's property, explaining that the incident occurred before he came into the department. S1 stated that when he arrived, he had to deal with that inmate who filed a complaint against Complainant because Complainant confiscated the inmate's property. S1 stated that the incident dealt with an inmate who considered himself a "Sovereign Citizen," indicating that a Sovereign Citizen is someone who believes they should not have to pay taxes, abide by the rules, laws, and the government as a whole. S1 stated that he forwarded the incident to the Agency's intelligence agency and that they made the determination that the inmate was allowed to have his property returned.

S1 also recalled Complainant speaking to LT1 about the incident, stating that he told Complainant that it was illegal to hold an inmate's sovereign citizen mail; and that he explained to Complainant that he was trying to remedy the situation to avoid Complainant receiving a complaint from that inmate. S1 denied yelling at Complainant, recalling that he was extremely calm and even asked Complainant why she was yelling. S1 stated that he reported the interaction with Complainant to S2 because Complainant told S1 that she was not going to follow his instruction. S1 affirmed awareness that S2 removed Complainant from her post, stating that Complainant did not speak to him regarding her removal.

LT1 provided supporting testimony, denying Complainant's allegation that S1 yelled at her. LT1 asserted that he did not remember anything about going against policy, adding that holding onto an inmate's mail was against policy. LT1 stated that the policy with questionable mail was to scan it and then return it to the inmate.

The record includes Program Statement 5800.16, the Mail Management Manual which reflects the Agency's procedures for processing inmate mail; and provides that the direction of supervisors must be followed, except in the event of a hostage situation.

Regarding Claim 2, Complainant stated that she was on the re-entry committee as a collateral duty, explaining that the re-entry committee assisted inmates that were re-entering into society. Complainant stated that she was scheduled to help with a re-entry function. She alleged that S1 called the coordinator for the re-entry committee and told the coordinator that Complainant was on special assignment and would not be able to attend the function. Complainant contended that S1 lied to the re-entry committee just to harass Complainant, stating that she ended up attending the function. Complainant stated her belief that S1 "downgraded" her, indicating that S1 disrespected and did not take Complainant seriously as a female by lying to the re-entry committee coordinator to attempt to prevent Complainant from attending the function.

Complainant stated that she was denied an overtime slip and overtime pay for time worked, on May 19, 2016, on a medical trip. Complainant stated that a second Lieutenant (LT2) refused to give her an overtime slip. Complainant explained that the Lieutenants had the overtime hours on their computer; and that they should print the slip out and give it to the employee so the slip could be signed and turned in to Time and Attendance. Complainant indicated that employees could not get paid if they did not get a slip from the Lieutenant.

Complainant stated that she spoke to LT2 regarding the unpaid overtime; and that, at first, he told Complainant that she would get the overtime slip by the end of the week. Complainant alleged that she had yet to be paid for the overtime, later asserting that she did not receive the pay until one year after it was due. Complainant contended that she was subjected to discrimination in this incident because her male counterpart was paid overtime.

Complainant asserted that she was purposely not given essential items to complete her job, stating that when she was removed from her post in the Special Investigative Services (SIS) Office, she was placed in an office with no telephone or working printer. Complainant stated that she could not perform the duties of her job without a printer, adding that she would have to stop someone else's work and use their printer. Complainant indicated that she requested 12 times for a telephone to be put in the office, asserting that the requests were denied. Complainant stated that a printer finally showed up in the office about four months after her placement there; and that the printer ended up being "stolen" three times and replaced three times.

Complainant contended that S1 and S2 subjected her to discrimination based on her sex in Claim 2, asserting that S1 openly discriminated against female staff and that S2 helped him discriminate against her. Complainant stated her belief that S2 did not investigate the interaction between Complainant and S1.

S1 stated that he did not recall ever barring Complainant from attending an event with the re-entry committee, stating that Complainant participated in several events with the re-entry committee. S1 also denied Complainant's allegation that she was treated poorly as a female Officer, asserting that he was Complainant's performance evaluation rater for quite a while and she was rated as "Outstanding" under his supervision.

S1 recalled Complainant's allegation that she was removed from her post and placed in an office with no telephone and no working printer. He stated that Complainant refused to work in that office space so she stated she did not have a phone or a computer. S1 stated that he actually submitted work orders and talked to Facilities to have whatever Complainant needed to be put in the office. He asserted that Complainant only needed to submit a memo but she refused to do that. S1 stated that he completed the memo on Complainant's behalf and got the items put in the office. S1 stated that Complainant did not work for very long without having a phone and computer because she went on leave during that time, adding that Complainant had another place that she could work out of, but Complainant stated she needed an office to which she had the only key. S1 stated that Complainant was a phone monitor so she could listen to phones in any office and she did not need a place to which she possessed the only key.

S1 denied that Complainant was subjected to discrimination based on her sex, asserting that Complainant's allegations were false and that Complainant's removal from her post was based on her actions. S1 reiterated that he did not make the decision to remove Complainant, asserting that S2 made that final decision. LT1 added that it did not sound reasonable that it would take Complainant several email requests to get a telephone, stating that anyone could look around and disconnect the phone out of an office and take it if needed.

LT2 recalled an incident regarding overtime, explaining that Complainant came to him for an overtime slip on May 18, 2016. LT2 stated that Complainant emailed him on the same day requesting her overtime because she never received it. LT2 stated that, on May 19, 2016, Complainant emailed him again about the overtime; and that he advised Complainant to see the Administrative LT (ALT) because, at that time, LT2 was only able to go back 24 hours. LT2 stated that he continued to receive numerous emails regarding the overtime, contending that Complainant harassed him about the overtime even after he gave her a directive to go to the ALT to settle the issue. LT2 stated that Complainant told him that she was not going to go through multiple people to get the overtime. LT2 recalled speaking to his supervisor to have a talk with Complainant to stop harassing him with the emails. LT2 contended that Complainant was never denied her overtime. LT2 asserted that Complainant was not subjected to discrimination in the overtime issue, stating that Complainant refused to follow his directive.

The ROI includes Exhibit 28, two timesheets – a regular one for 80 hours and a corrected one for 86 hours. The time sheets cover the period May 15 – May 28; and the corrected time sheet reflected that Complainant received six extra hours of pay for May 17, 2016. Complainant also worked overtime on January 26, February 2, February 15, March 14, April 25, June 1, July 2, July 16, August 2, September 1, September 9, October 8, October 11, and December 2, 2016. For each of those dates on which Complainant worked overtime, she received overtime payments for the work performed. Complainant did not report any errors in the processing of the overtime payments for any of those dates.

The AJ stated that there was no dispute that Complainant did not initially receive a 6-hour overtime payment for work that she performed on May 17, 2016. The AJ stated that the administrative error, which led to the non-payment, however, was later corrected by the Agency. Most importantly, the AJ asserted, Complainant worked overtime on at least 14 other occasions from January through December 2016, without experiencing issues with the processing of her overtime payments. The AJ found that a one-time administrative processing error, out of 15 occurrences of overtime payments, was insufficient to state a claim of discrimination. Finally, with respect to the non-payment and Complainant's other claims, the AJ stated that Complainant failed to identify a comment, joke, gesture or epithet related to her protected category. Thus, the AJ asserted, there was no nexus between Complainant's sex and the Agency's actions.

The AJ concluded that the record was completely devoid of evidence establishing discriminatory conduct or animus on the Agency's part as alleged in Claims 1 and 2. As a result, the AJ found that Complainant's discrimination claims failed. The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged. The instant appeal followed.

### CONTENTIONS ON APPEAL

In her Appeal Brief, Complainant reiterates her gender discrimination allegations, asserting that the AJ relied solely on Agency's testimony and that the evidence on which the AJ's ruling was based was inaccurate. Complainant requests that the Commission overturn the FAD in this matter and make a determination in her favor by awarding her with monetary compensation and any other benefits that the Commission deems necessary to make Complainant whole.<sup>3</sup>

---

<sup>3</sup> We note that Complainant also alleged on appeal that she is now experiencing reprisal and that she was denied promotions. Complainant also raised new allegations of harassment including that an officer disrespected her on the radio; that she has been harassed in her current office location; and that following Complainant's complaints of dress code violations by inmates to a Lieutenant, cleaning supplies were removed from Complainant's work space. However, it appears that this claim is being raised for the first time on appeal and the Commission has held that it is not appropriate for a complainant to raise new claims for the first time on appeal. See Hubbard v. Dep't of Homeland Sec., EEOC Appeal No. 01A40449 (Apr. 22, 2004). As such, we will not consider Complainant's new allegations.

In its Appeal Brief, the Agency indicates that the AJ's decision was based on preponderant evidence that was corroborated by the record. The Agency requests that the Commission deny Complainant's Appeal and affirm the AJ's decision finding no discrimination.

#### STANDARD OF REVIEW

We determine whether the AJ appropriately issued the decision without a hearing. The Commission's regulations allow an AJ to issue a decision without a hearing upon finding that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). EEOC's decision without a hearing regulation follows the summary judgment procedure from federal court. Fed. R. Civ. P. 56. The U.S. Supreme Court held summary judgment is appropriate where a judge determines no genuine issue of material fact exists under the legal and evidentiary standards. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a summary judgment motion, the judge is to determine whether there are genuine issues for trial, as opposed to weighing the evidence. Id. at 249. At the summary judgment stage, the judge must believe the non-moving party's evidence and must draw justifiable inferences in the non-moving party's favor. Id. at 255. A "genuine issue of fact" is one that a reasonable judge could find in favor for the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A "material" fact has the potential to affect the outcome of a case.

#### ANALYSIS AND FINDINGS

##### *AJ's Issuance of a Decision Without a Hearing*

An AJ may issue a decision without a hearing only after determining that the record has been adequately developed. See Petty v. Dep't of Def., EEOC Appeal No. 01A24206 (July 11, 2003). We carefully reviewed the record and find that it is adequately developed. To successfully oppose a decision without a hearing, Complainant must identify material facts of record that are in dispute or present further material evidence establishing facts in dispute. Here, Complainant indicated that the record was inadequately developed; and that the AJ erroneously relied solely on Agency testimony, implying that the AJ's ruling was based on inaccurate evidence. Complainant also indicated that the investigative process was flawed, stating that her witnesses were never interviewed, and that supporting documentation that Complainant submitted for her allegations was not reviewed.

In support of her appeal contentions, Complainant identified a male coworker (C1), asserting that he was provided a telephone within two days of starting work in a new office; and that he was never interviewed by the investigator. However, neither the ROI nor the Agency's motion for summary judgment as adopted by the AJ's decision indicated that Complainant had identified C1 as a witness or comparator. Rather, the available evidence indicates that only two witnesses were not interviewed: S2, who had retired and whose last known contact the Agency indicated was unknown, and a warden who did not provide testimony because he was not a warden at the Agency at the time of the alleged incidents. Also, there is no evidence that Complainant requested that C1 be deposed during the hearing.

After a careful review, we find that the record in the instant complaint was adequately developed for purposes of summary judgment. We also find that Complainant's contentions indicating that the AJ relied on inaccurate evidence and failed to review supporting documentation is unsustainable because Complainant was afforded an opportunity to raise these contentions in her response to the Agency's summary judgment motion and at the initial conference but failed to do so. Ultimately, the AJ correctly determined that there are no genuine issues of material fact or credibility that merited a hearing. Therefore, the AJ's issuance of a decision without a hearing was appropriate.

### *Claims 1 and 2*

The Commission has adopted the burden-shifting framework for analyzing claims of discrimination outlined in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). For Complainant to prevail, she must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination. She must demonstrate that a prohibited consideration was a factor in the adverse employment action. McDonnell Douglas, 411 U.S. at 802; Furnco Constr. Corp. v. Waters, 438 U.S. 567, 576 (1978).

When a complainant has established a prima facie case, the burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). The burden on the agency to articulate a legitimate, nondiscriminatory reason for its actions is one of production of evidence; it is not a burden of persuasion, which always rests with the complainant. See Salvatore K. v. Dep't of Def., EEOC Appeal No. 0120180780 (Apr. 30, 2019). As the Commission has repeatedly stated, an agency meets its burden of production when it provides a specific, clear, and individualized explanation for the treatment accorded the complainant. See Shayna P. v. Dep't of Homeland Sec., EEOC Appeal No. 0120141506 (June 2, 2017). If the Agency is successful, the burden is on Complainant to demonstrate by a preponderance of the evidence that the Agency's reason(s) for its action was a pretext for discrimination. At all times, it is Complainant's obligation to show by a preponderance of the evidence that the Agency acted on the basis of a prohibited reason. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 509 (1993); U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 715-16 (1983).

Assuming, arguendo, that Complainant had established a prima facie case, the Agency has articulated legitimate, nondiscriminatory reasons for the alleged actions. Regarding Claim 1, S1 explained, and LT1 affirmed, that Complainant's removal to a different office from where she could perform her same monitoring and mail processing duties was due to Complainant's own actions in holding an inmate's mail against Agency policy and supervisory orders as reflected in the Mail Management Manual.

Regarding the allegations raised in Claim 2, LT2 explained that Complainant was given instructions on how to have an administrative error corrected so that she could receive her overtime payment made but Complainant refused to follow those instructions.

Complainant's time sheets also show that she did in fact timely receive the payment at issue, not one year later as Complainant indicated; and that Complainant received all other overtime payments as no additional administrative errors occurred. Management also explained that Complainant was not disrespected or treated poorly; that she was allowed to, and did attend the re-entry program; and that Complainant was provided with resources to perform her duties. Management also indicated that Complainant could have taken the equipment she needed from any office without prior approval.

We note that Complainant did not refute management's explanations or the record evidence regarding Claims 1 or 2. Upon review, we find that Complainant has not shown that the Agency's reasons were pretext for discrimination. Therefore, Complainant's disparate treatment allegations fail.

Likewise, we find that, under the standards set forth in Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993), Complainant's claim of a hostile work environment must fail. See Enforcement Guidance on Harris v. Forklift Systems, Inc., EEOC Notice No. 915.002 (Mar. 8, 1994). A finding of a hostile work environment is precluded by our determination that Complainant failed to establish that any of the actions taken in Claims 1 and 2 by the Agency were motivated by discriminatory animus. See Oakley v. U.S. Postal Serv., EEOC Appeal No. 01982923 (Sept. 21, 2000). Because Complainant does not prevail, her request for relief is denied.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the AJ's decision and the Agency's final order adopting it.

### STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0920)

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 his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at

<https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit his or her 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 his or her 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(c).

#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)


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 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. 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

January 14, 2021  
Date