



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Amie H.,¹
Complainant,

v.

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

Appeal No. 2020000350

Hearing No. 520-2019-00205X

Agency No. 4B-070-0155-18

DECISION

On August 22, 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 July 23, 2019, final decision 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 decision.

ISSUE PRESENTED

The issue presented is whether the Agency properly determined that Complainant failed to establish that the Agency subjected her to discrimination based on race (African-American), sex (female), and in reprisal for protected activity.

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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Sales Service Associate at the Agency's Elizabeth Post Office facility in Elizabeth, NJ.

Complainant stated that on April 2, 2018, she informed the Postmaster, both verbally and in writing, that a Carrier Supervisor called her a "pussy." Complainant added that she initiated EEO contact on May 8, 2018 because the Postmaster failed to address the matter.

On August 4, 2018, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (African-American), sex (female), and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 when: on May 11, 2018, she was sent home for not wearing her postal identification employee badge.²

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 Administrative Judge (AJ). Complainant requested a hearing, but the AJ denied the hearing request on the grounds that Complainant failed to appear at the Pre-Hearing Conference or respond to the written order to show cause why her request for a hearing should not be dismissed. The AJ remanded the complaint to the Agency, and the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The Agency concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

In the final Agency decision (FAD), the Agency determined that Complainant failed to establish a prima facie case of retaliation because the responsible management officials were unaware of Complainant's protected activity at the time of the incident in question. Specifically, the responsible management officials were not aware of Complainant's EEO activity until contacted regarding the instant matter and the Postmaster was not interviewed until May 23, 2018, nearly two weeks after the incident in question.

As for disparate treatment based on race and sex, the Agency found that Complainant failed to identify similarly situated employees who were treated more favorably. The Agency further determined that management officials articulated a legitimate, nondiscriminatory explanation for their actions.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that she was unaware that she would receive the notice for the Pre-Hearing Conference via email because all prior correspondence had taken place through certified or priority mailing.

² On appeal, Complainant does not challenge an August 23, 2018 partial dismissal or an October 26, 2018 amendment dismissal issued by the Agency regarding two other claims. Therefore, we have not addressed these issues in our decision.

Complainant denies that she cursed at the Postmaster and asserts that he was upset because she did not respond to him. The Agency did not provide arguments on 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 AND FINDINGS

Notice of Pre-Hearing Conference

As an initial matter, we address Complainant’s concerns with the processing of her complaint. Specifically, Complainant asserts that she was unaware that she would receive the Notice of Pre-Hearing Conference (Notice) via email. As the AJ noted when dismissing Complainant’s request for a hearing following Complainant’s failure to appear at the pre-hearing conference and to respond to the subsequent show cause order, the email address to which the Notice was sent is the email address provided by Complainant on her EEO complaint and request for a hearing. On appeal, Complainant does not assert that she did not receive the emails regarding the Notice or show cause order. Rather, she states that she did not know that email would be the method of delivery and has not presented the argument that the matter should be remanded for a hearing.

The Commission's regulations afford broad authority to AJs for the conduct of hearings, including the authority to sanction a party for failure without good cause shown to fully comply with an order. See 29 C.F.R. § 1614.109 et seq.; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110), Chapter 7, § III(D) (rev. Aug. 5, 2015). Where a party fails to respond to an order of an AJ, the AJ may as appropriate take action against the non-complying party pursuant to 29 C.F.R. § 1614.109(f)(3); i.e., an AJ may: 1) draw an adverse inference that the requested information would have reflected unfavorable on the non-complying party; (2) consider the requested information to be established in favor of the opposing party; 3) exclude other evidence offered by the non-complying party; 4) issue a decision fully or partially in favor of the opposing party; or 5) take other action deemed appropriate.

The facts herein, coupled with the broad authority the Commission grants to its AJs as to how hearings are conducted, support a finding that the AJ did not abuse her discretion when she dismissed Complainant's hearing request.

We note that Complainant provided the AJ with her mailing address as well as her email address. Complainant did not indicate that she would not be checking her emails or that she preferred to receive documents by regular mail. As such, we discern no basis to disturb the AJ's decision cancelling the hearing.

Disparate Treatment

To prevail in a disparate treatment claim such as this, Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Complainant must initially establish a prima facie case by demonstrating that he or she was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Co. v. Waters, 438 U.S. 567, 576 (1978). Proof of a prima facie case will vary depending on the facts of the particular case. McDonnell Douglas, 411 U.S. at 804 n. 14. 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). To ultimately prevail, Complainant must prove, by a preponderance of the evidence, that the Agency's explanation is pretextual. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 120 S.Ct. 2097 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993).

Complainant can establish a prima facie case of reprisal 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). Specifically, in a reprisal claim, and in accordance with the burdens set forth in McDonnell Douglas, Hochstadt v. Worcester Foundation for Experimental Biology, 425 F. Supp. 318, 324 (D. Mass.), *aff'd*, 545 F.2d 222 (1st Cir. 1976), and Coffman v. Dep't of Veteran Affairs, EEOC Request No. 05960473 (Nov. 20, 1997), a complainant may establish a prima facie case of reprisal by showing that: (1) he or she engaged in a protected activity; (2) the agency was aware of the protected activity; (3) subsequently, he or 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).

We shall assume, *arguendo*, that Complainant established a prima facie case of discrimination and reprisal with regard to her claims. However, we find that the Agency articulated legitimate, nondiscriminatory reasons for its actions. Specifically, the Postmaster affirmed that he sent Complainant home because of her behavior, not because of the badge issue. ROI, at 81. S1 stressed that Complainant screamed at him and used vulgarity within five feet of the retail unit. *Id.* Multiple witnesses corroborated the Postmaster's testimony, asserting that Complainant demonstrated loud, belligerent, rude behavior. *Id.* at 88, 95, 105.

Complainant now bears the burden of establishing that the Agency's stated reasons are merely a pretext for discrimination. Shapiro v. Soc. Sec. Admin., EEOC Request No. 05960403 (Dec. 6, 1996). 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. 248, 256 (1981).

The Commission finds no persuasive evidence that Complainant's protected classes were a factor in any of the Agency's actions. The Commission finds that Complainant failed to demonstrate that she was sent home for any reason other than her response to the Postmaster's request to see her badge.

At all times, the ultimate burden remains with Complainant to demonstrate by a preponderance of the evidence that the Agency's reasons were not the real reasons and that discriminatory or retaliatory animus was a factor in its actions. Complainant failed to carry this burden. As a result, the Commission finds that Complainant has not established that he was subjected to discrimination as alleged.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's final decision finding no discrimination.

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)

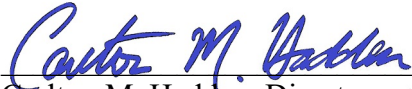
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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

May 19, 2021

Date