



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

[REDACTED]
Thomas P.,¹
Complainant,

v.

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

Appeal No. 2020000670

Hearing No. 480-2017-00502X

Agency No. 1F-904-0007-17

DECISION

Complainant timely 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 September 5, 2019 final order concerning his 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 VACATES the Agency's final order and REMANDS the complaint for further processing.

BACKGROUND

At the time of events giving rise to this complaint, Complainant was employed by the Agency as a Maintenance Engineering Specialist, EAS-19, at the Agency's Los Angeles Network Distribution Center in Bell, California. On December 9, 2016, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (Asian), national origin (Filipino), and in reprisal for prior protected EEO activity when, on or about September 30, 2016, Complainant was not selected for the position of Manager, Maintenance Operations Support, after not receiving an interview.

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.

At the conclusion of the investigation, Complainant was provided a copy of the investigative file and requested a hearing before an EEOC Administrative Judge (AJ). The AJ assigned to the matter issued a Notice of Proposed Summary Judgement on August 16, 2019, and requested the parties submit their responses to the AJ via email by September 3, 2019. The Agency filed a response agreeing with the AJ's Notice. On September 4, 2019, the AJ issued a summary judgment decision finding no discrimination, noting Complainant failed to file a response to the Notice.

In the decision, the AJ found that the Agency articulated legitimate, nondiscriminatory reasons for its actions; namely that Complainant's application packet for the Manager, Maintenance Operations Support position was considered incomplete because he failed to address all Knowledge, Skills, and Abilities (KSAs) qualification requirements for the position. The AJ relied on explanations by the Selecting Official who was also Complainant's immediate supervisor (S1) at the time. S1 did not interview the applicants who did not respond to all KSAs, or otherwise had incomplete applications. The three applicants who were interviewed were chosen for interviews because they responded to all 11 qualification requirements by completing their KSAs. The AJ noted that while Complainant believed he had superior qualifications warranting his selection, there was no genuine issue of material fact demonstrating he submitted a completed application. The AJ found that Complainant failed to show that the Agency's proffered reasons were a pretext for discrimination or reprisal. As a result, the AJ found that Complainant was not subjected to discrimination or reprisal as alleged.

The Agency's final order fully implemented the AJ's decision. The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant submits evidence showing he attempted to email his responses to discovery and the Notice of Proposed Summary Judgment to the AJ. Complainant argues among other things, that the Selectee for the position did not answer all of the KSAs. Complainant contends that his qualifications were plainly superior than the Selectee's. Accordingly, Complainant requests that the Commission reverse the Agency's final order.

ANALYSIS AND FINDINGS

The Commission's regulations allow an AJ to issue a decision without a hearing when he or she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). This regulation is patterned after the summary judgment procedure set forth in Rule 56 of the Federal Rules of Civil Procedure. The U.S. Supreme Court has held that summary judgment is appropriate where a court determines that, given the substantive legal and evidentiary standards that apply to the case, there exists no genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a motion for summary judgment, a court's function is not to weigh the evidence but rather to determine whether there are genuine issues for trial. Id. at 249. The evidence of the non-moving party must be believed at the summary judgment stage and all justifiable inferences must be drawn in the non-moving party's favor. Id. at 255.

An issue of fact is “genuine” if the evidence is such that a reasonable fact finder could find in favor of 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 fact is “material” if it has the potential to affect the outcome of the case.

As a preliminary matter, we note that Complainant submitted evidence of his email filings to the AJ. While it appears he attempted to respond to the AJ’s Notice of Proposed Summary Judgment, the record reveals that he misspelled the AJ’s email address which likely resulted in her not receiving it prior to issuing her summary judgment decision.

Nonetheless, we have carefully reviewed the record and find that it was inadequately developed. Further, the AJ improperly 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 inappropriate. In finding no discrimination, the AJ relied on the representations by S1 who stated that his reason for not selecting Complainant for an interview was because he failed to address all of the KSAs, therefore his application was incomplete. However, in a supplementary affidavit, S1 stated that he previously erred when stating there were 11 KSAs when there had been 12 KSAs. S1 had made an extra column on his matrix for the 11 KSA, but not for the 12th KSA because he had run out of room and “[the three applicants] had the highest rating[s], I gave these three employees an interview.” A review of the evidence shows there were 12 KSAs and that two of the three applicants interviewed (including Selectee) may have failed to answer KSA No. 12. By management’s own statements those applications were also incomplete and should not have advanced in the selection process. The Commission further notes that S1 reached out to the Supervisor Information Systems to verify whether he was following procedure for rating applications. The only two applicants that S1 specifically asked about were Complainant and Complaint’s co-worker (CW1), who was also Filipino and had previously filed EEO complaints. The AJ essentially made a credibility determination in favor of the Agency, and against Complainant, when she ignored this evidence in the record in favor of S1’s statements.

We note that the hearing process is intended to be an extension of the investigative process, designed to ensure that the parties have “a fair and reasonable opportunity to explain and supplement the record and, in appropriate instances, to examine and cross-examine witnesses.” See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), 7-1 (Aug. 5, 2015); see also 29 C.F.R. § 1614.109(e). “Truncation of this process, while material facts are still in dispute and the credibility of witnesses is still ripe for challenge, improperly deprives Complainant of a full and fair investigation of her claims.” Bang v. U.S. Postal Serv., EEOC Appeal No. 01961575 (Mar.26, 1998). See also Peavley v. U.S. Postal Serv., EEOC Request No. 05950628 (Oct. 31, 1996); Chronister v. U.S. Postal Serv., EEOC Request No. 05940578 (Apr. 25, 1995). In summary, there are simply too many unresolved issues which require resolution through a hearing, including an assessment as to the credibility of the various witnesses. Therefore, summary judgment in favor of the Agency should not have been granted.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, the Commission VACATES the Agency's final order and REMANDS the matter to the Agency for further processing in accordance with this decision and the Order below.

ORDER

The Agency shall submit to the EEOC Hearings Unit of the EEOC's Los Angeles District Office a renewed request for a hearing on behalf of Complainant, as well as a copy of the complaint file and this appellate decision, within fifteen (15) calendar days of the date this decision becomes final. The Agency shall provide written notification to the Compliance Officer at the address set forth below that the complaint file has been transmitted to the Hearings Unit. Thereafter, the Administrative Judge shall hold a hearing and issue a decision on the complaint in accordance with 29 C.F.R. § 1614.109 and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

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 (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).

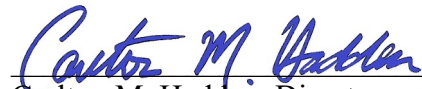
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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:



Carlton M. Hadden, Director
Office of Federal Operations

April 12, 2021
Date