



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

[REDACTED]  
Chad T.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2020000836

Prior Appeal No. 0120140434

Hearing No. 410-2017-00110X

Agency No. 1K-304-0002-13

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's September 19, 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.

**ISSUE PRESENTED**

The issue presented is whether the Administrative Judge properly issued a decision without a hearing finding that Complainant did not establish that the Agency subjected him to a hostile work environment based on his race, or in reprisal for prior protected EEO activity, when he reported nooses in his work area and management officials failed to take sufficient action.

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<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.

### BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an Electronic Technician at the Agency's Network Distribution Center in Atlanta, Georgia. Complainant stated that on September 6, and 9, 2011, he saw a hangman's noose in his work area. Report of Investigation (ROI) at 117. Complainant stated that on October 25, 2012, he saw a hangman's noose in his work area and notified a Manager Maintenance Operations (MMO) (White) and a Manager Maintenance (MM) (African American). Complainant stated that the noose hung for three days, and that he destroyed it. Complainant stated that when he saw a noose on November 14 and 15, 2012, he informed MMO. ROI at 96-7.

Complainant contacted an EEO Counselor on November 14, 2012, and filed a formal EEO complaint on March 1, 2013, alleging that the Agency subjected him to a hostile work environment based on his race (African-American) and in reprisal for prior protected EEO activity (Agency Case No. 1H-304-0021-09) when, on October 25, 2012 and November 14 and 15, 2012, a hangman's noose was hung in his work area, and when he notified management, they failed to take sufficient action.

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). On October 11, 2013, the Agency issued a final decision finding no discrimination. On October 30, 2013, the Commission's Atlanta District Office issued an Order Directing Agency to produce the complaint file. The Agency filed a motion to dismiss Complainant's hearing request as untimely, which the AJ granted. The Agency issued a final order adopting the AJ's dismissal and Complainant appealed the final order. The Commission vacated the final order, finding that the record was devoid of any evidence showing when Complainant filed his hearing request or when he received the Agency's notice of his right to request a hearing. The Commission remanded the complaint for a hearing. Chad T. v. U.S. Postal Serv., EEOC Appeal No. 0120140434 (Nov. 9, 2016).

On August 12, 2019, the Agency filed a Motion for Summary Judgment. The Agency stated that it did not dispute that Complainant believed that the ropes or cords in question were hangman's nooses, or even that a single incident involving the intentional placement of a hangman's noose may be severe enough on its own to constitute a hostile work environment. However, the Agency asserted that cases addressing noose allegations specifically have examined whether the object in question could reasonably be viewed as a hangman's noose based on the results of the employer's investigation.

The Agency stated that here, MM, a Maintenance Operation Support Manager (MOSM), and a Supervisor Maintenance Operations (SMO1), all three of whom are African-American, testified that the rope reported by Complainant was used by maintenance employees for pulling/hoisting/hauling equipment and was not a hangman's noose; and a Manager Distribution Operations (MDO), also African-American, testified that one of the alleged hangman's nooses was about two feet long and "the weight of a shoe string."

The Agency stated that MMO testified that “ropes with slip knots are used throughout the building and have been for 18 years. Ropes are used to hoist tools, equipment and parts to different levels.”

The Agency noted that the record contained an undated photo of the noose, and that it did not dispute that the rope in the picture was tied as a noose, which is merely “a loop with a running knot that binds closer the more it is drawn.” However, the Agency argued that witnesses do not refute management’s explanation that the rope was used for a legitimate maintenance purpose, and that there was simply no evidence in the record to support the claim that the rope in question either looked, or was intended to convey, the image of a hangman’s noose. The Agency also argued that there was no evidence to support that the alleged hangman’s nooses were hung in retaliation for Complainant’s prior protected activity.

The Agency asserted that nonetheless, the managers and supervisors took reasonable steps to investigate and address Complainant’s concerns. The Agency argued that Complainant’s disagreement with the managers’ conclusions that the ropes were not hangman’s nooses was insufficient to show that those conclusions were pretexts to hide an unlawful motive.

The AJ issued a decision without a hearing finding no discrimination. The AJ concluded that that he agreed with the Agency’s statement of facts and legal analysis, and he adopted the Agency’s Motion for Summary Judgment in its entirety. The Agency’s final action implemented the AJ’s decision.

Complainant filed the instant appeal but did not provide any arguments on appeal. The Agency opposed Complainant’s appeal.

### CONTENTIONS ON APPEAL

The Agency asserts that the AJ’s findings and conclusions without a hearing were appropriate because there were no genuine issues of material fact, even when the evidence is viewed in the light most favorable to Complainant. The Agency states that the AJ correctly found that the ropes neither looked like hangman’s nooses, nor were used for any purpose other than hauling or lifting equipment. The Agency requests that the Commission uphold its final order adopting the AJ’s decision without a hearing.

### STANDARD OF REVIEW

In rendering this appellate decision, we must scrutinize the AJ’s legal *and* factual conclusions, and the Agency’s final order adopting them, de novo. See 29 C.F.R. § 1614.405(a) (stating that a “decision on an appeal from an Agency’s final action shall be based on a de novo review . . .”); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (Aug. 5, 2015) (providing that an administrative judge’s determination to issue a decision without a hearing, and the decision itself, will both be reviewed de novo). This essentially means that we should look at this case with fresh eyes.

In other words, we are free to accept (if accurate) or reject (if erroneous) the AJ's, and the Agency's, factual conclusions and legal analysis – including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. See id. at Chap. 9, § VI.A. (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

#### *Decision Without a Hearing*

We must determine whether it was appropriate for the AJ to have issued a decision without a hearing on this record. 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.

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). Issuing a decision without holding a hearing is not appropriate for a case that can only be resolved by weighing conflicting evidence. If the non-moving party “has not had the opportunity to discover information that is essential to his opposition,” then a decision without a hearing is inappropriate. Anderson, 477 U.S. at 250. The AJ must enable the non-moving party to engage in sufficient discovery to respond to a motion for a decision without a hearing. After receiving an opposition to a motion for a decision without a hearing, an AJ may order discovery as necessary. 29 C.F.R. § 1614.109(g)(2).

After a careful review of the record, we find that the AJ erred when he concluded that there was no genuine issue of material fact in this case. In finding no discrimination, the AJ relied upon the Agency’s statement of facts and legal analysis, and he adopted the Agency’s Motion for Summary Judgment in its entirety.

However, we find that the AJ did not view the evidence in the light most favorable to Complainant, and that the record contains conflicting information that raises genuine disputes of material facts, a need for further development of the record, and a need for credibility determinations.

We find that there is a genuine dispute about the description of the ropes alleged to be nooses and their use. The record contains conflicting statements regarding the ropes. For example, MDO stated that in 2011, Complainant showed him what appeared to be a noose, but that it was a string about two feet long. SMO1 stated that in 2011, Complainant pointed out something he called a noose, but that it did not appear to be a noose. ROI at 243, 277. However, a Mail Handler (MH) stated that at some time between September and November 2011, he saw a rope that was “about 6 feet long and appeared to [him] to be a noose.” ROI at 288. In addition, while management officials stated that the ropes were used for tying tarps or lifting equipment, another Supervisor Maintenance Operations (SMO2) stated that he saw the noose twice, and whether it was “used for rigging or intimidation I cannot say.” ROI at 264.

We note that the record contains photos of a rope with a loop tied at the bottom end, and that the Agency did not dispute that the rope in the picture was tied as a noose. Based on the other items in the photos, it appears that the rope is not a string and is longer than two feet, and that it is hung far from the ground. ROI at 322-24. However, the record does not reveal who provided the photos, or when the photos were taken. MMO stated that he took pictures of the rope on October 25, 2012, and MOSM stated that she took photos on September 9, 2011, yet it is unclear if the provided photos came from MMO, MOSM, or another individual. ROI at 152, 210. The record contains no evidence regarding who was responsible for the alleged nooses, and we find that additional information is needed to determine the nature of the alleged nooses and the reasons they were hung in Complainant’s work area.

We also find that the record contains conflicting information about whether an investigation was conducted into Complainant’s reports about finding nooses in his workspace. MM stated that MOSM and SMO1 investigated the issue and found that the rope was not a noose. ROI at 183. However, neither corroborated that they investigated Complainant’s complaint and MOSM stated that she forwarded pictures to MM for further investigation. ROI at 210. In addition, a Manager Network Distribution Center stated that an investigation was not conducted, and SMO2 stated that when he notified MMO of the noose, MMO “did not want to deal with the employee’s concerns and told [SMO2] to cut it down.” ROI at 231, 268. Complainant stated that there was a threat assessment. However, there is no additional information regarding any threat assessment. ROI at 97. As such, we find that additional information is necessary to determine the Agency’s actions in response to Complainant’s reports of the nooses.

We also find that there is a need for credibility determinations for MM and MMO. The courts have been clear that summary judgment is not to be used as a “trial by affidavit.” Redmand v. Warrenner, 516 F.2d 766, 768 (1st Cir. 1975). The Commission has noted that when a party submits an affidavit and credibility is at issue, “there is a need for strident cross-examination and summary judgment on such evidence is improper.” Pedersen v. Dep’t of Justice, EEOC Request

No. 05940339 (Feb. 24, 1995). MM stated that he was only aware of the noose reported on October 25, 2012, and that he was not aware of other dates, but evidence shows that he was informed that Complainant reported a noose on September 15, 2011. ROI at 192, 194. MMO stated that Complainant was the “only person who associates work ropes with slip knots with a hangman’s noose.” ROI at 163. However, as noted above, MH stated that he also saw a rope that “appeared to [him] to be a noose.” ROI at 288. Further, SMO1 stated that MMO and MM handled things in a “tough way” and that their “tough actions” gave him “the impression that racism was involved,” and SMO2 stated that MMO and MM were “Hostile!!” toward Complainant. ROI at 278, 266.

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 EEO MD-110 at 7-1; 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 an assessment as to the credibility of the management officials and there is a need for further development of the record regarding the alleged nooses and the Agency’s actions in response to Complainant’s reports of the nooses. Therefore, judgment as a matter of law for the Agency should not have been granted as to Complainant’s allegation of a hostile work environment when he reported nooses in his work area and management officials failed to take sufficient action. Accordingly, we VACATE the Agency’s final order adopting the AJ’s decision without a hearing and REMAND the matter for a hearing.

### CONCLUSION

Therefore, after a careful review of the record, including the Agency’s response, and arguments and evidence not specifically discussed in this decision, the Commission VACATES the Agency’s final action and REMANDS the matter to the Agency in accordance with this decision and the Order below.

### ORDER

The Agency is directed to submit a copy of the complaint file to the EEOC Hearings Unit within thirty (30) 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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

June 17, 2021  
Date