



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Thurman L.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service,
Agency.

Appeal No. 2021004392

Agency No. 1A-158-0002-21

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the final Agency decision (FAD) dated May 20, 2021, dismissing his 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Trailer Tractor Operator at Agency's Northern New Jersey Metro Processing and Distribution Center in Teterboro, New Jersey.

On May 5, 2021, Complainant filed a formal complaint alleging that Agency subjected him to discrimination on the bases of race (not specified), color (not specified), and in reprisal for prior protected EEO activity. Complainant, specifically, alleges that, on February 2, 2021, he was falsely accused of sexual harassment and subsequently terminated by the Transportation Manager (Manager). Complainant included a narrative with his formal complaint in which he provided a series of events that followed the alleged termination. For example, he noted that Human Resources (HR) informed him that he had resigned and that they had a resignation letter from him.

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.

He noted that the Agency conducted a background check on him and that the Postal Inspection Service was called. Complainant also asserted that he received a letter from the Chief Inspector on March 12, 2021, and was informed that he had 30 days to appeal.

The Agency rendered its FAD on May 20, 2021. In the FAD, the Agency provided a condensed account of the statements included in Complainant's formal complaint. The Agency stated that, although Complainant alleged that he had been terminated from his employment, the Agency could not find evidence of Complainant's termination, nor evidence of proposed termination. The Agency further asserted that the Agency has the duty to investigate claims of sexual harassment. The Agency found that there was no persuasive evidence that Complainant had experienced any adverse employment action or denied any entitlement in relation to a term, condition or privilege of employment as a result of the incidents raised in the complaint. The Agency dismissed the complaint due to failure to state a claim, pursuant to 29 C.F.R. § 1614.107(a)(1).

This appeal followed. On appeal, Complainant expanded on the narrative he provided as an attachment to his formal complaint.² He stated that the Manager threatened him with termination and that HR informed him that they had his resignation. The Agency provided the complaint file without comment.

ANALYSIS AND FINDINGS

With regard to dismissal due to 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.

Yet, 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. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994).

Moreover, a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the complainant cannot prove a set of facts in support of the claim which would entitle the complainant to relief. The trier of fact must consider all of the alleged harassing incidents and remarks and considering them together in the light most favorable to the complainant, determine whether they are sufficient to state a claim. Cobb v. Dep't of the Treasury, EEOC Request No. 05970077 (Mar. 13, 1997). The Commission stated, specifically, in Cobb, that:

² Complainant stated that additional events have occurred; however, he raised these new events in a separate grievance and EEO complaint, not on appeal.

[a] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the complainant can prove no set of facts in support of the claim which would entitle the complainant to relief. Thus, a claim of harassment based on the complainant's race, color, religion, sex, national origin, age, or disability, should not be dismissed for failure to state a claim where the complainant has made factual allegations which, when construed in the light most favorable to the complainant, i.e., when considered together and treated as true, are sufficient to state a claim . . .

The Agency stated that the events provided by Complainant in support his claim of harassment were not sufficient to state a claim. The Agency noted that it was not aware of any alleged termination action. Further, the Agency stated that the accusation of sexual harassment resulted in an investigation. In doing so, the Agency is determining that this fact alleged by Complainant in support of his claim is not true. This goes to the merits of the complaint and is irrelevant to the procedural issue of whether complainant has stated a justiciable claim under the regulations. See Ferrazzoli v. U.S. Postal Serv., EEOC Request No. 05910642 (Aug. 15, 1991). Therefore, we find that the Agency has acted prematurely in addressing the merits of this event without having first conducted a factual investigation.

Furthermore, Complainant asserted that a false resignation letter, reportedly signed by him, was provided to HR. Complainant claimed that he has been threatened with termination by the Manager. As a final matter, the formal complaint alleges that based on the culmination of these events, Complainant has been subjected to harassment. In light of the forgoing, a fair reading of the formal complaint reveals that Complainant alleged that the Agency subjected him to claims of harassment including constructive discharge and alleged discharge based upon his protected bases. We find that these events taken as a whole are sufficient to state a claim and that the Agency's dismissal of the matter was not appropriate.

CONCLUSION

Accordingly, we REVERSE the Agency's dismissal of Complainant's complaint and REMAND the complaint for further processing, in accordance with the Order below.

ORDER

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall acknowledge to 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 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 Final Agency Decision, 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 (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)

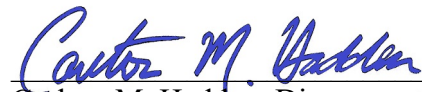
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this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

November 8, 2021
Date