



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]

Zola R.,<sup>1</sup>  
Complainant,

v.

Louis DeJoy,  
Postmaster General,  
United States Postal Service  
(Field Areas and Regions),  
Agency.

Appeal No. 2022001802

Agency No. 1C-931-0051-22

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision, dated January 12, 2022, dismissing her 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 Mail Processing Clerk at the Agency's Charlotte Processing and Distribution Center in Charlotte, North Carolina.

On November 16, 2021, Complainant initiated equal employment opportunity (EEO) contact alleging that the Agency subjected her to unlawful retaliation for prior protected EEO activity (Pre-complaint No. 1C-931-0044-21) when, on June 30, 2021, management sent Complainant home and put her on Emergency Placement. Thereafter, on December 27, 2021, Complainant filed a formal EEO complaint alleging that the Agency subjected her to hostile work environment harassment on the bases of sex and reprisal when:

1. on May 14, 2021, a supervisor (S1) threatened Complainant with violence by male relatives;

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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.

2. on June 21, 2021, S1 interfered with Complainant performing her duties by standing in her way preventing her from contacting an Electronic Technician to fix her machine and standing over her while she worked; and,
3. on June 30, 2021, management sent Complainant home and put her on Emergency Placement.

In its January 12, 2022 final decision, the Agency dismissed incidents (1) and (2) for stating the same claim that was pending before or had been decided by the Agency, and incident (3) for untimely EEO contact. For claims (1) and (2), the Agency reasoned that Complainant alleged the same incidents in a pre-complaint, identified as Agency No. 1C-931-0044-21, for which the Agency issued a Notice of Right to File a Formal Complaint (NORF) on July 29, 2021. However, according to the Agency, Complainant failed to file a formal complaint in the matter, so those allegations were abandoned.

Complainant filed the instant appeal. On appeal, Complainant contends, on June 29, 2021, she initiated EEO contact alleging that S1 threatened her and management stood in her way preventing her from doing her work. She added, the next day, she was put on an Emergency Placement and was escorted out of the building. Complainant stated that she spoke with a union steward about her grievance and EEO complaint. Complainant stated that she believed incident (3) was part of her initial EEO pre-complaint, but no one ever contacted her. Complainant stated that she was advised that the time delay was normal until she contacted legal counsel, who advised her to file another complaint. Appellant stated that she never received a NORF for Agency No. 1C-931-0044-21. Complainant added that incident (3) was part of her timely hostile work environment claim and is based on reprisal.

### ANALYSIS AND FINDINGS

Here, the Agency dismissed incidents (1) and (2), pursuant to 29 C.F.R. § 1614.107(a)(1), stating the incidents stated the same claim as a prior EEO pre-complaint identified as Agency No. 1C-931-0044-21. The Agency stated that it sent Complainant a NORF for 1C-931-0044-21, but Complainant never responded, hence abandoning the claims. Complainant denies receiving any information about 1C-931-0044-21, believed it was being processed, and thought that claim (3) could be added as a harassment claim.

EEOC Regulation 29 C.F.R. § 1614.107(a)(1) provides for the dismissal of a complaint that states the same claim that is pending before or has been decided by the Agency or Commission. We find the Agency improperly dismissed (1) and (2) as it failed to provide a copy of pre-complaint Agency No. 1C-931-0044-21 and related materials to show that it is identical to the instant complaint or to establish that the NORF was mailed to Complainant. It is the burden of the Agency to have evidence or proof in support of its final decision. See Marshall v. Dep't of the Navy, EEOC Request No. 05910685 (September 6, 1991). Here, the Agency has not met that burden.

Regarding claim (3), Complainant initiated EEO contact on November 16, 2021, alleging that the Agency put her on an Emergency Placement on June 30, 2021. The record establishes that she raised the matter outside of the regulatory time frame of 45 days. However, claim (3) is also part of an alleged pattern of harassment and should be considered as part of the evidence in support of Complainant's broader claim of ongoing harassment. See National Railroad Passenger Corp. v. Morgan, 536 U.S. 101 (2002).<sup>2</sup>

Moreover, we find that the three allegations together, at the least, state a viable claim of retaliatory hostile work environment harassment. Under Commission policy, a complainant is protected from any retaliatory actions which are reasonably likely to deter complainant or others from engaging in protected activity. Maclin v. United States Postal Service, EEOC Appeal No. 0120070788 (March 29, 2007).

### CONCLUSION

After careful review of the record, we REVERSE the Agency's dismissal of a hostile work environment harassment claim based on incidents described in allegations (1), (2), and (3).

### ORDER (E0618)

The Agency is ordered to process the remanded hostile work environment harassment claim in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall acknowledge to the 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 the 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 FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

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<sup>2</sup> Claim 3, however, is not separately actionable as a separate claim because it was not raised within the 45-day limitation period. Therefore, separate relief as an independent discrete claim is not available. Id.

### 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

July 18, 2022

Date