



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

[REDACTED]
Floyd C.,¹
Complainant,

v.

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

Appeal No. 2022004431

Agency No. 4B-070-0172-22

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated July 5, 2022, dismissing his complaint alleging 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

During the period at issue, Complainant worked as a Postmaster at the Agency's facility in East Orange, New Jersey.

On June 11, 2022, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination in reprisal for prior protected EEO activity. On July 5, 2022, the Agency issued a final decision. The Agency determined that Complainant's complaint was comprised of the following claims:

1. From July 13, 2021, to May 11, 2022, [Complainant was] not permitted to return to work.
2. On May 10, 2022, [Complainant] had a meeting with management that

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] thought was a mediation.

3. On June 22, 2022, [he was] instructed to report to [his] duty office, then instructed to report for a district meeting, and instructed to give [his] manager an action plan on improving scanning in [his] office.

The Agency dismissed claim (1) for stating the same claim in a prior complaint. The Agency reasoned that Complainant alleged the same matter in a prior EEO case, Agency Case No. 4B-070-0314-21. The Agency set forth that Complainant signed a withdrawal form for Agency Case No. 4B-070-0314-21.

The Agency dismissed claims (2)-(3) for failure to state a claim. The Agency reasoned that Complainant did not allege a harm or loss with respect to a term, condition, or privilege of his employment. The Agency further found that the alleged incidents were not sufficiently severe or pervasive to set forth an actionable claim of harassment.

The instant appeal followed.

ANALYSIS AND FINDINGS

Claim (1)

While the Agency dismissed claim (1) for alleging the same claim as in a prior complaint, the record is devoid of evidence that Complainant actually filed a *formal* EEO complaint in her prior EEO case, Agency Case 4B-070-0314-21. We find, however, that this matter is more properly analyzed as to whether Complainant abandoned claim (1). The record reflects that Complainant raised the issue of not being permitted to return to work in July 2021 in her prior EEO case identified as Agency Case No. 4B-070-0314-21. The record for Agency Case No. 4B-070-0314-21 contains a form electronically signed by Complainant on November 3, 2021 indicating that he was withdrawing the matter. The Commission has held that “a complainant who receives counseling on an allegation but does not go forward with a formal complaint on the allegation is deemed to have abandoned it and consequently cannot raise it in another complaint.” Small v. U.S. Postal Serv., EEOC Request No. 05980289 (July 16, 1999). Thus, we find that Complainant abandoned this claim for the period from July 2021-up to the date of his withdrawal, November 3, 2021. Complainant cannot resurrect the previously abandoned matter.

Nevertheless, we do not find that Complainant abandoned the matter of the Agency not permitting him to return to work *subsequent* to the signing of the withdrawal form on November 3, 2021. Specifically, Complainant alleges that the Agency continued not to allow him to return to work after signing the Withdrawal form for his prior EEO case. Thus, we reverse the Agency’s dismissal and remand this claim for the time period from November 4, 2021 (the date after signing the Withdrawal form) until Complainant was permitted to return to work.

Claims (2) - (3)

The Agency properly dismissed claims (2)-(3) for failure to state a claim. The alleged incidents are not reasonably likely to deter Complainant or others from engaging in protected EEO activity. In addition, the alleged incidents, even if proven true and considered together, are not sufficiently severe or pervasive to set forth an actionable claim of harassment in violation of Title VII.

Accordingly, for the reasons set forth herein, we AFFIRM the Agency's dismissal of claims (2)-(3) and the portion of claim (1) for the time period from July 2021-November 3, 2021 (the date Complainant signed the withdrawal form for Agency Case No. 4B-070-0314-21).

However, we REVERSE the Agency's dismissal of claim (1) for the time period from November 4, 2021 (the date after signing the withdrawal form) up until the date Complainant was permitted to return to work and we REMAND this matter to the Agency for further processing in accordance with the ORDER below.

ORDER (E0618)

The Agency is ordered to process the remanded claims (portion of claim (1) from November 4, 2021) until Complainant returned to work) 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.

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 (T0610)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. 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 on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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

October 19, 2022

Date