



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Delphia F.,¹
Complainant,

v.

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

Appeal No. 2021004356

Agency No. 1B-072-0064-20

DECISION

On July 20, 2021, Complainant 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 June 21, 2021, final decision concerning her 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. and the Pregnancy Discrimination Act (PDA), 42 U.S.C. § 2000e(k) (1978).

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an M4-04 Mail Handler Assistant at the Agency's Greater Newark Processing and Distribution Center (P&DC) in Kearney, New Jersey. Report of Investigation (ROI) at 125, 127. Complainant, who is female, was pregnant, with an estimated due date of December 29, 2020. ROI at 131.

According to Complainant, with the exception of one machine that was difficult to operate while pregnant, she was able to work in all other areas at the P&DC during her pregnancy. ROI at 48, 51. Complainant stated that she informed management that she was having difficulty operating that machine and asked to work the overnight shift to avoid accumulating absences and late

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.

arrivals. ROI at 48. Complainant averred that the Supervisor Distribution Operations (Supervisor-1) told her that she needed to submit a request for light duty. ROI at 49.

On August 24, 2020, Complainant submitted a request for a temporary light duty assignment from August 24 through December 29, 2020, and attached documentation of her pregnancy-related medical restrictions. ROI at 122-23, 130-31. Complainant's physician indicated Complainant could not kneel, bend, twist, push/pull, or reach above the shoulder. ROI at 123, 131. Complainant provided additional medical documentation dated September 11, 2020, and her physician indicated that Complainant could perform up to 10 hours of continuous kneeling, bending, twisting, pulling/pushing, and reaching above the shoulder, with the following handwritten note: "may not lift 20 lbs or more above the shoulders." ROI at 59-60.

Complainant averred that it was her understanding that her request for light duty was denied because she was not allowed to work at the P&DC after August 24, 2020. ROI at 50. Complainant alleged that Supervisor-1 told her that he had no work for her and, when she asked Supervisor-1 to put this in writing, he responded that she could have "termination paperwork" or submit her resignation if she wanted something in writing. ROI at 55. Complainant characterized Supervisor-1's statement as harassing and unprofessional. ROI at 55. According to Complainant, she was never given a reason for why she was not offered light duty and believed that management assumed she could not perform her job while pregnant. ROI at 50-51.

Complainant stated that Supervisor-1 allowed another Mail Handler Assistant to work while she was pregnant (Comparator-1). ROI at 52. According to Complainant, Comparator-1 complained about the same machine as Complainant. ROI at 52.

Complainant averred that she filed a union grievance regarding management not allowing her to work. ROI at 54. Complainant alleged that, although the Agency settled the grievance on December 18, 2020, she was only awarded 80 hours of back pay, when she was out of work for more than 80 hours. ROI at 54, 61.

On December 23, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the basis of sex (female/pregnancy) when, on or around August 24, 2020, she was not accommodated when: her Light Duty request was denied, and she was not permitted to work.

Complainant also alleged that she was subjected to harassment by the Supervisor. In its Notice of Acceptance, the Agency stated in a footnote that Complainant's harassment allegation appeared to consist of being denied light duty, which the Agency found did not constitute harassment. ROI at 28. The Agency stated that Complainant's allegations related to management's conduct towards her could be cited as background information. ROI at 28.

At the conclusion of the investigation into the accepted claim, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ).

When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b).

In its final decision, the Agency determined that Complainant failed to establish a prima facie case of pregnancy discrimination.² Assuming for the purposes of the decision that Complainant could establish a prima facie case of discrimination, the Agency found that management articulated a legitimate, nondiscriminatory reason for its actions. The Agency determined that Complainant did not establish that the legitimate, nondiscriminatory explanation for denying her request for light duty was pretextual. The decision concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

The instant appeal followed. On appeal, Complainant contends that her EEO complaint also included a claim of harassment by Supervisor-1. Complainant also provides the correct spelling of the first name of Comparator-1, as well as her last name.

ANALYSIS AND FINDINGS

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (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”).

As a preliminary matter, on appeal, Complainant asserts that her EEO claim included a claim of supervisory harassment. However, the record reflects that it was considered as background information with respect to her pregnancy accommodation claim and was not accepted for investigation as a separate distinct claim. The Agency’s January 21, 2020, Notice of Acceptance provided that, if Complainant believed that her claim was improperly framed, she should contact the Agency within seven calendar days. ROI at 28-29. The record is devoid of evidence that Complainant contacted the Agency during this time frame to notify the Agency that her claim was improperly framed. Accordingly, we will consider Complainant’s harassment allegations as background.

² The Agency also analyzed Complainant’s claim as a denial of reasonable accommodation for disability. Because Complainant did not allege discrimination based on disability, we will not analyze Complainant’s claim under Section 501 of the Rehabilitation Act, as amended, 29 U.S.C. § 791 et seq.

It is unlawful for an employer to “discriminate against any individual with respect to ... terms, conditions, or privileges of employment, because of such individual's ... sex.” 42 U.S.C. § 2000e-2(a)(1). “The terms “because of sex” or “on the basis of sex” include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions.” § 2000e(k). “Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes ... as other persons not so affected but similar in their ability or inability to work....” Id.

Complainant alleged that she was subjected to discrimination based on sex when the Agency failed to accommodate her pregnancy-related medical restrictions. A complainant alleging that the denial of an accommodation for a pregnancy-related condition constituted disparate treatment sex discrimination may state a prima facie case by showing that (1) she belongs to the protected class; (2) she sought accommodation; (3) the agency did not accommodate her; and (4) that the agency did accommodate others “similar in their ability or inability to work.” Young v. United Parcel Service, 575 U.S. 206, 229 (2015).

An agency may then seek to justify its refusal to accommodate the complainant by relying on “legitimate, nondiscriminatory” reasons for denying her accommodation. Young, 575 U.S. at 229 (citing McDonnell Douglas v. Green, 411 U.S. 792, 802 (1973)). “That reason normally cannot consist simply of a claim that it is more expensive or less convenient to add pregnant women to the category of those (‘similar in their ability or inability to work’) whom the employer accommodates.” Id.

The complainant may then show that the agency’s reasons are pretextual, which can be done “by providing sufficient evidence that the employer’s policies impose a significant burden on pregnant workers, and that the employer’s “legitimate, nondiscriminatory reasons are not sufficiently strong to justify the burden, but rather--when considered along with the burden imposed--give rise to an inference of intentional discrimination.” Young, 575 U.S. at 229.

Supervisor-1 stated that, when he received Complainant’s medical restrictions, he reviewed all operations at the P&DC and could not find any work within her restrictions. ROI at 68-72. According to Supervisor-1, for all four operations at the P&DC, the employee has to lift up to 70 pounds on a consistent basis for eight to 12 hours per day. ROI at 82. The Manager Distribution Operations (Manager-1) stated that she was the concurring official, that all operations were reviewed, and that there was no work available within Complainant’s restrictions because of the requirement to lift up to 70 pounds for all operations at the P&DC. ROI at 105-07, 117. Supervisor-1 and Manager-1 both noted that the P&DC did not perform sales, so sales operation was not an option. ROI at 72, 109.

Supervisor-1, Manager-1, and the Plant Manager denied knowledge of Comparator-1, but, during the EEO investigation, Comparator-1’s first name was misspelled, and no last name was provided. ROI at 73, 78-79, 88, 96, 110-12. On appeal, Complainant corrects the spelling of Comparator-1’s first name and provides her last name.

However, since Complainant alleged that Comparator-1 was also pregnant, evidence showing that Comparator-1's pregnancy-related medical restrictions were accommodated would not help Complainant establish a prima facie case of pregnancy discrimination. Complainant has not identified any employees with similar medical restrictions who were not pregnant yet were accommodated. Supervisor-1, Manager-1, and the Plant Manager stated that, within the past 12 months, they were unaware of any employees with similar restrictions to Complainant who were allowed to work. ROI at 81-86, 97, 101-02, 113-14, 116-17. However, we will assume without so finding that Complainant established a prima facie case of pregnancy discrimination.

The Agency's legitimate, nondiscriminatory reason for not accommodating Complainant was that there was no work available at the P&DC within her medical restrictions. As evidence of pretext, Complainant suggests that the only possible reason for denying her light duty request was an assumption that she was not able to work because of her pregnancy. However, a Complainant's unsubstantiated belief, without more, is insufficient to establish pretext. Complainant also contends on appeal that her case has merit because the Agency settled her grievance and paid her for 80 hours. The record reflects that the December 18, 2020, grievance settlement was "non-precedent setting," and, as Complainant noted, she was paid back pay for 80 hours although she was out of work more than 80 hours when her pregnancy-related medical restrictions were not accommodated. ROI at 149. We do not find the grievance settlement to constitute evidence of pretext. Complainant also alleges that, when she asked Supervisor-1 to state in writing that there was no work available within her restrictions, he told her that the only thing he could provide in writing was termination paperwork, or she could resign. While we agree that Complainant's description of Supervisor-1's response sounds unprofessional, this does not show that Supervisor-1 was motivated by her pregnancy and her sex. Finally, the record reflects that Complainant informed the EEO counselor that she had accepted a Clerk position at a different facility. ROI at 14, 24. However, the existence of work within her restrictions at another facility does not show that the Agency's assertion that there was no work within her restrictions was pretextual. Accordingly, we find that Complainant has not established by the preponderance of the evidence in the record that the Agency's legitimate, nondiscriminatory reason for denying her request for pregnancy accommodation was a pretext for discrimination based on sex.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's final decision finding no discrimination.

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 (S0610)

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. 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

June 29, 2023

Date