



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

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Laquita H.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2022003864

Hearing No. 490-2019-00101X

Agency No. 4G-720-0058-18

**DECISION**

On June 30, 2022, 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 May 24, 2022 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.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a City Carrier at the Agency's Post Office facility in West Helena, Arkansas.

On September 25, 2018, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the basis of sex (female) and reprisal under Title VII when:

1. On June 18, 2018, Complainant was issued a Letter of Warning (LOW);
2. On August 27, 2018, Complainant was issued a 7-Day Suspension; and
3. On September 10, 2018, Complainant was issued a 14-Day Suspension.

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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.

At the conclusion of its investigation into the complaint, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). Complainant timely requested a hearing but subsequently withdrew her request. Consequently, the Agency issued a final decision (FAD) pursuant to 29 C.F.R. § 1614.110(b).

The FAD concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged. Specifically, the FAD found initially found that Complainant failed to establish a *prima facie* case of discrimination with regard to any of the claims because she failed to show she was treated differently from otherwise similarly situated coworkers outside of her protected bases. The FAD further found that, assuming *arguendo* that Complainant established a *prima facie* case, Agency officials articulated legitimate nondiscriminatory reasons for their actions.

With regard to claim 1, the FAD found that Complainant's supervisor (Supervisor 1: male) averred that he issued the LOW because Complainant had been Absent Without Leave (AWOL) on two occasions. With regard to claim 2, Supervisor 1 averred that he issued the suspension for poor performance of daily duties. With regard to claim 3, Supervisor 1 averred that Complainant failed to perform daily duties within an 8-hour time frame and her mail volume did not warrant the amount of overtime used. The FAD concluded that Complainant failed to establish that these articulated reasons for the disputed actions were pretextual.

The instant appeal from Complainant followed.

### 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").

Where, as here, a complainant does not have direct evidence of discrimination, a claim alleging disparate treatment is examined under the three-part test set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Under this analysis, a complainant initially must establish a *prima facie* case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, *i.e.*, that a prohibited consideration was a factor in the adverse employment action. See St Mary's Honor Center v. Hicks, 509 U.S. 502, 507 (1993); Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981); McDonnell Douglas 411 U.S. at 802.

Next, in response, the agency must articulate a legitimate, nondiscriminatory reason for the challenged actions. See Burdine, 450 U.S. at 253-54; McDonnell Douglas, 411 U.S. at 802. Finally, it is complainant's burden to demonstrate by a preponderance of the evidence that the agency's action was based on prohibited considerations of discrimination, that is, its articulated reason for its action was not its true reason but a sham or pretext for discrimination. See Hicks, 509 U.S. at 511; Burdine, 450 U.S. at 252-53; McDonnell Douglas, 411 U.S. at 804.

Following a review of the record, we agree with the FAD's finding that Complainant failed to establish a *prima facie* case of reprisal because Complainant identifies her protected EEO activity as the filing of the instant complaint, whereas the alleged retaliatory actions occurred prior to that date. We note that management officials averred that they had no knowledge of any protected EEO activity and Complainant has not identified any protected activity that occurred prior to the disciplinary actions.

However, in order to establish a *prima facie* case of sex discrimination, a complainant may show that she is a member of a protected class, that she was subjected to adverse treatment, and that she was treated differently than otherwise similarly situated employees outside of the protected class. See Potter v. Goodwill Industries of Cleveland, 518 F.2d 864 (6th Cir. 1975). Complainant is female and engaged in EEO activity and was issued a LOW, a seven-day suspension, and a fourteen-day suspension. The FAD found that Complainant failed to establish a *prima facie* case with regard to any of the claims because she failed to establish that otherwise similarly situated male employees were treated differently. Specifically, the FAD noted that, with regard to claim 1, Complainant identified two male comparators, Coworkers 1 and 2, and with regard to both claims 2 and 3, Complainant again identified Coworker 1, as well as two additional male comparators, Coworkers 3 and 4.

With regard to claim 1, Complainant averred that she was treated differently than Coworker 1 who "has called in numerous of [sic] times, has been asked to work his off days, but still doesn't come to work and hasn't been disciplined for attendance." Complainant provided the dates for Coworker 1's absences, and further averred that Coworker 2's "dates are unknown because management refused to provide attendance reports for Carriers." The FAD found that Supervisor 1 averred that Coworkers 1 and 2 were not valid comparators because their absences "were of an entirely different nature and could not be equally compared to the actions of the complainant" because they had notified management beforehand that they would be missing work due to an illness. With regard to claim 2, the FAD found Coworkers 1, 3, & 4 were not valid comparators based on Supervisor 1's averment that "no other employee has the same issues as the complainant in failing to perform daily duties within an 8-hour time frame." Finally, with regard to claim 3, the FAD found the same three Coworkers were not valid comparators because the comparators' time-cards "reflected only sporadic overtime hours."

We disagree with the FAD's finding that Complainant failed to establish a *prima facie* case based on sex with regard to all three claims. We find that the reasons provided by the Agency for the difference in treatment constitute part of the Agency's legitimate nondiscriminatory reasons for its actions, not valid arguments that Complainant and the comparators were not similarly

situated. Because Complainant is female and received adverse treatment that male coworkers working in the same position and under the same supervisor did not receive, we find she has established a *prima facie* case based on sex with regard to all three claims. The burden now shifts to the Agency to articulate a legitimate, nondiscriminatory reason for the challenged actions. See Burdine, 450 U.S. at 253-54; McDonnell Douglas, 411 U.S. at 802.

With regard to claim 1, the LOW states it was being issued for, “unsatisfactory Performance – on May 30, 2018, through June 7, 2018, you failed to meet minimum office time requirements and cannot provide any justifiable reason for the poor performance. Your documented performance is unacceptable and will not be tolerated.” Supervisor 1 averred that Complainant:

was notified along with the rest of the office that due to staffing shortages everyone would be scheduled to work on their office unless I notified them that they would not be working. All other employees either worked their Scheduled off [sic] or they notified me in advance that they were not available.

With regard to claim 2, the Notice of Seven-Day Suspension stated, “Beginning July 19, 2018, for nine (9) consecutive days you failed to work within an 8 hour day. You continue to use overtime to complete your assigned duties even though the mail volume warranted 8-hour [sic] days.” Supervisor 1, however, further averred that Complainant grieved the matter and the suspension was rescinded because “just cause was not substantiated.” With regard to claim 3, the Notice of Fourteen-Day Suspension stated, “Unacceptable Performance. You fail to work within an 8 hour day. You continue to use overtime to complete you [sic] assigned duties even though the mail volume warranted 8 hour days.” Supervisor 1 averred that Complainant:

continued to fail perform [sic] daily duties within an 8 hour time frame. [Complainant]'s mail volume didn't warrant the amount of overtime used. We had an investigative interview to find out why Overtime [sic] was used on August 24, 27, 29-31, September 1, 5, 6, of 2018. [Complainant] has previously demonstrated the ability to perform daily duties within an 8 hour time frame with mail volumes consistent with the times they used Overtime [sic].

The Agency having articulated legitimate nondiscriminatory reasons for its actions, the burden shifts back to Complainant to establish, by a preponderance of the evidence, that the Agency's reasons were not its true reasons, but were pretexts for discrimination. See Hicks; Burdine; McDonnell Douglas. Following a review of the record we find that Complainant has failed to meet this burden with regard to claim 1.

With regard to claim 1, Complainant averred that management changed the schedule without her knowledge and without notifying her. She averred that previously her schedule included Tuesdays as one of her “off” days and that she had been on leave prior to the schedule change and was unaware that she was now supposed to work on Tuesdays. Complainant further averred that two male coworkers left work early but had not been disciplined for their attendance.

Following a review of the record we find that Complainant has not shown, by a preponderance of the evidence, that the Agency's articulated reason for its action is a pretext. Supervisor 1 averred that the coworkers identified by Complainant either worked on their off days and/or notified management beforehand that they would not be able to work due to illness, which "is not the same thing as an employee who was scheduled to work failing to show up for work or notify anyone that they would not report to work."

With regard to claims 2 and 3, however, we find that Complainant has successfully established pretext. Complainant argued that she notified management that she could not complete her route in the assigned eight hours and further argued that three male coworkers (Coworkers 1, 2, & 3) received no discipline for working overtime. A review of the record confirms that these coworkers did indeed work what appears to have been unscheduled overtime, yet the record contains no evidence they, like Complainant, were disciplined for doing so. We note that, while the record contains Workload Reports for Complainant, showing her workload was such that overtime would be not expected for her to complete her route, no such Reports are included for Coworkers 1, 2, & 3, yet the Agency's "Employee Everything Reports" show that these male coworkers did in fact work overtime. If the Agency has evidence showing that these coworkers had a heavier workload than Complainant and thus their use of overtime was acceptable while hers was not, the Agency has not provided such evidence. We note that in Ericson v. Department of the Army, EEOC Request No. 05920623 (January 14, 1993), the Commission stated that "the agency has the burden of providing evidence and/or proof to support its final decisions." See also Gens v. Department of Defense, EEOC Request No. 05910837 (January 31, 1992). The Agency, however, does not even argue that these coworkers are not similarly situated with Complainant because their workloads were such that overtime was necessary, or that they too were disciplined for working overtime just as Complainant was. Instead, we note that when Supervisor 1 and the Postmaster (female) were asked about these male comparators and their use of overtime without receiving discipline, both provided responses that were essentially non-responsive to the question, simply asserting that Complainant's overtime was unwarranted based on her workload but failing to address the fact that male comparators worked overtime while receiving no discipline for doing so.

Because the Agency has not addressed the fact that similarly situated male coworkers were treated differently, we find that Complainant has successfully established discrimination based on sex for claims 2 and 3, but not for claim 1.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the FAD in part and REVERSE and REMAND the FAD in part. The Agency shall comply with the ORDER below.

ORDER

The Agency is ordered to take the following remedial action:

1. Within sixty (60) calendar days of the issuance of this decision, the Agency, if it has not already done so, shall remove all records of discipline for the August 27, 2018 7-Day Suspension and the September 10, 2018 14-Day Suspension from Complainant's personnel files. Complainant shall be provided backpay, with interest, for any pay lost during these suspensions.<sup>2</sup>
2. Within sixty (60) calendar days of this decision, the Agency shall provide at least eight (8) hours of EEO training to Supervisor and Postmaster.
3. Within sixty (60) calendar days of this decision, the Agency shall consider taking disciplinary action against Supervisor and Postmaster. If the Agency decides not to pursue any disciplinary action against either or both employees, the Agency shall provide an explanation for its decision.
4. Within ninety (90) calendar days of the date this decision is issued, the Agency shall complete a supplemental investigation concerning Complainant's entitlement to compensatory damages and determine the amount of compensatory damages due, then issue a new final decision which addresses compensatory damages and includes appeal rights to the EEOC. The Agency shall pay the determined award of compensatory damages within sixty (60) calendar days of the date the new FAD is issued.

During the supplemental investigation, the Agency shall provide Complainant with the opportunity to submit evidence in support of a claim for compensatory damages, and Complainant shall cooperate in determining compensatory damages, including responding to the Agency's requests for evidence, input, and/or documents. The Agency shall allow at least 30 days for Complainant to reply to any Agency requests for information.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation of the Agency's calculation of back pay and other benefits due Complainant, including evidence that the corrective action has been implemented.

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<sup>2</sup> The record shows Complainant challenged the 7-day suspension through the union grievance process (claim 2) and the suspension was rescinded. It is unclear whether or not Complainant received backpay following the resolution of the grievance.

POSTING ORDER (G0617)

The Agency is ordered to post at its Post Office, West Helena, Arkansas, facility copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

ATTORNEY'S FEES (H0610)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), he/she is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of this decision becoming final. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

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).

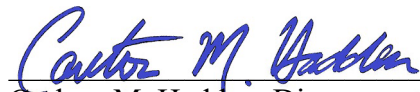
#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

September 25, 2023

Date