



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

[REDACTED]
Taunya P.,¹
Complainant,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service
(Southern Area),
Agency.

Appeal No. 2019000412

Hearing No. 450-2015-00236X

Agency No. 4G-760-0023-15

DECISION

The Equal Employment Opportunity Commission (EEOC or Commission) accepts Complainant's appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's August 16, 2018 final order concerning an equal employment opportunity (EEO) complaint claiming 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 Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

BACKGROUND

During the period at issue, Complainant worked as an Operations Support Manager, EAS-24, at the Agency's Fort Worth District Operations in Fort Worth, Texas.

On March 30, 2015, Complainant filed a formal EEO complaint claiming that the Agency discriminated against her based on race (Hispanic), sex (female), color (white), age (YOB: 1959), and in reprisal for prior protected EEO activity when:

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.

1. on November 5, 2014, Complainant was charged with eight (8) hours of Absent Without Leave (AWOL)/ Leave Without Pay (LWOP); and
2. in December 2014, Complainant was involuntarily reassigned to the Rio Grande District and in March 2015, Complainant was moved to the Southern Area.

After an investigation, 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). Complainant timely requested a hearing. On July 2, 2018, the AJ issued a Notice of Intent to Issue Summary Judgment (“Notice”). The Agency and Complainant submitted responses to the AJ’s Notice. On July 30, 2018, the AJ issued a decision by summary judgment, over Complainant’s objection, in favor of the Agency.

On August 16, 2018, the Agency subsequently issued a final order adopting the AJ’s finding of no discrimination.

The instant appeal followed. On appeal, Complainant refutes the AJ’s finding that the report of investigation included testimony that Complainant was marked AWOL/LWOP because she was not present to testify as a witness for a coworker’s hearing.

ANALYSIS AND FINDINGS

As an initial matter, Complainant argues, through counsel, that she has been subjected to an ongoing hostile work environment claim and that the instant complaint should have been consolidated with another complaint that was the subject of EEOC Appeal No. 0120180448 (Feb. 9, 2018). In that case, the Commission reversed the Agency’s dismissal of a claim of a July 2017 alleged attempt to discourage Complainant’s use of the EEO complaint process and remanded the matter to the Agency for further processing. However, it is not clear that there is an adequate nexus between the instant complaint concerning events that allegedly occurred over two years before the event alleged in Appeal No. 0120180448. Therefore, we find that the need to consolidate this complaint with Appeal No. 0120180448 has not been established.

The Commission’s regulations allow an AJ to issue a decision without a hearing when he or she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). This regulation is patterned after the summary judgment procedure set forth in Rule 56 of the Federal Rules of Civil Procedure. The U.S. Supreme Court has held that summary judgment is appropriate where a court determines that, given the substantive legal and evidentiary standards that apply to the case, there exists no genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a motion for summary judgment, a court’s function is not to weigh the evidence but rather to determine whether there are genuine issues for trial. Id. at 249. The evidence of the non-moving party must be believed at the summary judgment stage and all justifiable inferences must be drawn in the non-moving party’s favor. Id. at 255. An issue of fact is “genuine” if the evidence is such that a reasonable fact finder could find in favor of the non-moving party.

Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2D 103, 105 (1st Cir. 1988). A fact is “material” if it has the potential to affect the outcome of the case. If a case can only be resolved by weighing conflicting evidence, summary judgment is not appropriate. In the context of an administrative proceeding, an AJ may properly consider summary judgment only upon a determination that the record has been adequately developed for summary disposition.

In this case, the AJ stated that “witnesses testified that [Complainant] never showed up” to the co-worker’s EEO hearing. The record supports a determination that the responsible management official (“RMO”) who charged Complainant 8 hours AWOL/LWOP testified that she was informed, by the Agency attorney assigned to the coworker’s EEO case, that Complainant did not appear for the November 5, 2014 hearing. The record also includes a letter, dated November 6, 2014, from the RMO to Complainant informing Complainant that she would be charged LWOP because the RMO was “notified” that Complainant “did not appear to testify or report to work” on November 5, 2014.

To successfully oppose a decision by summary judgment, a complainant must identify, with specificity, facts in dispute either within the record or by producing further supporting evidence and must further establish that such facts are material under applicable law. While Complainant has, in a very general sense, asserted that facts are in dispute, she has failed to point with any specificity to particular evidence in the investigative file or other evidence of record that indicates such a dispute.

For the reasons discussed below, we find that, even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable fact-finder could not find in her favor. Therefore, we find that the AJ properly issued a decision here by summary judgment.

A claim of disparate treatment is examined under the three-part analysis first enunciated in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973). For a complainant to prevail, he or she must first 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 McDonnell Douglas, 411 U.S. at 802; Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978). The burden then shifts to the agency to articulate a legitimate, non-discriminatory reason for its actions. See Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the agency has met its burden, the complainant bears the ultimate responsibility to persuade the fact finder by a preponderance of the evidence that the agency acted on the basis of a prohibited reason. See St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

This established order of analysis in discrimination cases, in which the first step normally consists of determining the existence of a prima facie case, need not be followed in all cases.

Where the agency has articulated a legitimate, nondiscriminatory reason for the personnel action at issue, the factual inquiry can proceed directly to the third step of the McDonnell Douglas analysis, the ultimate issue of whether complainant has shown by a preponderance of the evidence that the agency's actions were motivated by discrimination. See U.S. Postal Service Board of Governors v. Aikens, 460 U.S. 711, 713-714 (1983); Hernandez v. Department of Transportation, EEOC Request No. 05900159 (June 28, 1990); Peterson v. Department of Health and Human Services, EEOC Request No. 05900467 (June 8, 1990); Washington v. Department of the Navy, EEOC Petition No. 03900056 (May 31, 1990).

Here, the AJ summarily adopted his analysis provided in the July 2, 2018 Notice. We note that the AJ's analysis was confined exclusively to a determination that Complainant did not establish a prima facie case of disparate treatment based on her race, color, age, sex, or reprisal for prior protected EEO activity.

Our review of the record, however, indicates that the Agency also provided legitimate non-discriminatory reasons for its actions, even though the AJ did not address this analysis.

Regarding claim 1, the RMO testified that Complainant was scheduled to testify as a witness for another co-worker's EEO case. The RMO stated that she instructed Complainant to return back to work if the EEO hearing was less than 8 hours. The RMO further stated that 3 other coworkers also testified at the EEO hearing, but Complainant was the only employee who did not return to work even though the case concluded in less than 8 hours. The RMO also stated that an attorney assigned to the co-worker's EEO case informed the RMO that Complainant never testified or appeared at the hearing. Consequently, the RMO stated that she mailed Complainant a Leave without Pay letter, dated November 6, 2014.

Nevertheless, the RMO explained that Complainant's attorney provided her a letter stating that Complainant was an approved witness and was present at the EEO hearing. The RMO further explained that the letter was received at the end of the pay period. The RMO completed a pay adjustment for the next pay period, and Complainant received compensation for the day she testified at the EEO hearing.

The record includes a November 6, 2014 letter from the RMO to Complainant stating that Complainant failed to appear at the November 5, 2014 hearing, and Complainant also failed to appear to work that day. The letter informs Complainant that she did not submit documentation to support her absence and she would be charged LWOP for November 5, 2014. The letter further states that a copy of the LWOP letter would be placed in Complainant's personnel file.

The record also includes a copy of a November 6, 2014 letter from Complainant's attorney stating that Complainant was present during the November 5, 2014 EEO hearing.

A November 14, 2014 email from the RMO to Complainant states that Complainant's "pay adjustment was submitted for November 5, 2014 on [November 14, 2014] to give [Complainant] a full work week."

Regarding claim 2, the Area Manager for Labor Relations (“M1”) clarified that Complainant was sent on a “temporary involuntary developmental detail” to the Rio Grande District, and was not involuntarily reassigned. M1 explained that it was in the “best interest to move [Complainant] to another position” because a report indicated that Complainant “caused dissention among members for the Ft. Worth District staff and had developmental areas relating to communication with supervisors and subordinates.” M1 also acknowledged that Complainant had informed him that “she did not feel she could be successful in the Ft. Worth District and wanted to be moved somewhere else.” M1 stated that the purpose of the detail was to provide Complainant an opportunity to improve her interpersonal and communications skills in a different environment. M1 further stated that Complainant was asked and accepted a detail to the Area office in March 2015.

The record includes a copy of a December 15, 2014 letter, entitled “Temporary Involuntary Reassignment” indicating that Complainant was assigned to the Waco, Texas office for a period of 90 days “for the purpose of developing [her] interpersonal skills.”

We conclude that neither during the investigation, nor on appeal, has Complainant proven, by a preponderance of the evidence, that these proffered reasons for the disputed actions were a pretext for unlawful discrimination based on her race, color, age, sex, or reprisal for prior protected EEO activity.

The Agency's final order implementing the AJ's finding of no discrimination is AFFIRMED.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which 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 to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in 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). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your 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)

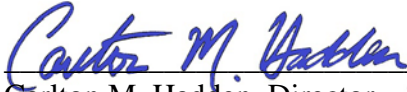
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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 4, 2019

Date