



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

[REDACTED]

Hana D.,¹
Complainant,

v.

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

Appeal No. 2019002336

Agency No. 4B-040-0045-18

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated November 15, 2018, dismissing a formal 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., and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

BACKGROUND

During the period at issue, Complainant worked for the Agency as a Lead Sales and Services Associate in Rutland, Vermont.

On July 13, 2018, Complainant initiated EEO Counselor contact. Informal efforts to resolve her concerns were not successful.

On October 25, 2018, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on disability and in reprisal for prior protected EEO activity under when:

1. On March 26, 2018, her work area was changed, and a note was placed on her

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.

door stating that the office was to be used for passports only;

2. On March 27, 2018, she was given a non-postal thumb drive to use at work;
3. On July 3, 2018, she was sent a group text which stated that she could not change her leave to Leave Without Pay (LWOP);
4. On July 24, 2018, a copy of her clock rings was left on the workroom floor desk; and
5. On unspecified dates, she had to wait for a computer to be located or become available.

On November 15, 2018, the Agency issued a final decision dismissing claims one and two of the instant matter as untimely raised with an EEO Counselor in accordance with EEOC Regulation 29 C.F.R. § 1614.107(a)(2). The Agency determined that Complainant failed to contact an EEO Counselor in a timely manner regarding her concerns. The Agency dismissed all claims pursuant to EEOC Regulation 29 C.F.R. §1614.107(a)(1) for failure to state a claim.²

This appeal followed.

ANALYSIS AND FINDINGS

Failure to State a Claim

Upon review of the record, we find that the subject claims support a finding that Complainant has shown an injury or harm to a term, condition, or privilege of employment for which there is a remedy. See Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (April 21, 1994). The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that an Agency shall dismiss a complaint that fails to state a claim. An Agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that Agency because of race, color, religion, sex, national origin, age or disabling condition. 29 C.F.R. §§ 1614.103, 1614.106(a).

In Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993), the Supreme Court reaffirmed the holding of Meritor Savings Bank v. Vinson, 477 U.S. 57, 67 (1986), that harassment is actionable if it is sufficiently severe or pervasive to alter the conditions of the complainant's employment. Thus, not all claims of harassment are actionable. As noted by the Supreme Court in Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998): "simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the 'terms and conditions of employment.'"

² In its final decision, the Agency also briefly cited EEOC Regulation 29 C.F.R. § 1614.107(a)(7) as a dismissal ground. We find, however, that these dismissal grounds are not relevant here.

An examination of the Complainant's formal complaint and the report of the EEO Counselor reveals that, Complainant has alleged that she was subjected to harassment on a "daily" basis, of which the specific claim in her complaint were examples. Complainant alleges, for example, that while she was on vacation, her supervisor sent Complainant a group text regarding Complainant's request for LWOP, when her clock rings were left on a desk on the workroom floor, and when she was forced to wait to for an available computer to use. When viewing these alleged incidents collectively, we find that these matters are sufficient to set forth an actionable hostile work environment claim.

Further, as a remedy, Complainant requested that the compensatory damages for her pain and suffering. While each of the claims by themselves may appear to concern relatively minor matters, given the breadth of Complainant's allegations, we find that, when considering the incidents together, she has stated a cognizable claim under the EEOC regulations that requires further investigation and adjudication. See Cervantes v. U.S. Postal Serv., EEOC Request No. 05930303 (Nov. 12, 1993).

Untimely EEO Counselor Contact – Claims 1 and 2

The Agency also improperly dismissed claims 1 and 2 for untimely EEO Counselor contact. Complainant initiated EEO Counselor contact on July 13, 2018. The Commission has held that "[b]ecause the incidents that make up a hostile work environment claim collectively constitute one unlawful employment practice, the entire claim is actionable, as long, as at least one incident that is part of the claim occurred within the filing period. This includes incidents that occurred outside the filing period that the [Complainant] knew or should have known were actionable at the time of their occurrence." EEOC Compliance Manual, Section 2, Threshold Issues at 2 - 75 (revised July 21, 2005) (citing National Railroad Passenger Corp. v. Morgan, 536 U.S. 101, 117(2002)).

Claims 3, 4 and 5 comprising Complainant's hostile work environment claim occurred within the 45-day time period preceding Complainant's July 13, 2018 EEO Counselor contact, as discussed above. After a fair reading of the record we find that the matters identified in claims 1 and 2 are part of that Complainant's hostile work environment claim. In that regard, we find that the Agency improperly dismissed these claims for untimely EEO Counselor contact.

CONCLUSION

The Agency's final decision dismissing the formal complaint is REVERSED. The formal complaint, defined herein as a harassment claim, is REMANDED to the Agency for further processing in accordance with the ORDER below.

ORDER (E0618)

The Agency is ordered to process the remanded claims (ongoing harassment/hostile work environment) 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 (K0618)

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.

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 (R0610)

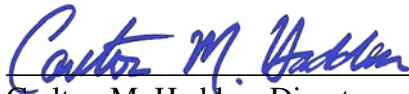
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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

June 11, 2019

Date