



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

[REDACTED]
Shanta S.,¹
Complainant,

v.

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

Appeal No. 2019002511

Agency No. 6I000000117

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated October 31, 2018, dismissing her 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. For the reasons set forth below, the Agency's final decision is AFFIRMED.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Letter Carrier, GS-5 at the Agency's Bartlett Post Office facility in Memphis, Tennessee. On October 10, 2018, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination, specifically harassment, on the basis of reprisal for prior protected EEO activity when:

1. On August 24, 2018, her supervisor (S1) singled her out by telling her to "get off [her] stool" at a meeting.
2. On September 1, 2018, she called S1 to request more time to deliver the mail, and S1 told her to bring back the mail she couldn't deliver and be off his clock at 4:30. When Complainant called S1 back to ask if this was a "direct order," S1 did not reply.

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.

The Agency dismissed Complainant's complaint pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim. The Agency held that there was no reprisal discrimination because Complainant did not show that the Agency took an action that would deter a reasonable person from participating in protected EEO activity. Moreover, the Agency held that Complainant could not show that it took the actions complained of for the purpose of harassing her because of one of her protected bases. The Agency further held that the actions were not sufficiently severe or pervasive to create a discriminatory hostile or abusive work environment.

ANALYSIS AND FINDINGS

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, disabling condition, genetic information, or reprisal. 29 C.F.R. §§ 1614.103, .106(a). The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994).

When a complainant has alleged harassment rather than disparate treatment regarding a specific term, condition, or privilege of employment, the Commission examines whether a complainant's claims, when considered together and assumed to be true, were sufficient to state a hostile or abusive work environment claim. See Estate of Routson v. National Aeronautics and Space Administration, EEOC Request No. 05970388 (February 26, 1999). In doing so, the Commission considers whether the alleged actions were sufficiently severe or pervasive to alter the conditions of the complainant's employment. Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993). EEO regulations forbid "only behavior so objectively offensive as to alter the conditions of the victim's employment." Oncale v. Sundowner Offshore Serv., Inc., 523 U.S. 75, 81 (1998). The Commission has consistently found that claims of a few isolated incidents of alleged harassment usually are not sufficient to state a harassment claim. See Phillips v. Dept. of Veterans Affairs, EEOC Request No. 05960030 (July 12, 1996); Banks v. Health and Human Serv., EEOC Request No. 05940481 (February 16, 1995). Furthermore, remarks or comments unaccompanied by a concrete action by an agency usually are not a direct and personal deprivation sufficient to render an individual aggrieved for the purposes of Title VII. See Backo v. U.S. Postal Serv., EEOC Request No. 05960227 (June 10, 1996); Henry v. U.S. Postal Serv., EEOC Request No. 05940695 (February 9, 1995).

The Commission's guidance also provides that an employee states a claim of retaliation or reprisal when an Agency takes a materially adverse action against her for engaging in protected EEO activity, such as participating in an EEO claim or opposing a discriminatory practice in the workplace. The Commission considers reprisal claims broadly. See Carroll v. Department of the Army, EEOC Request No. 05970939 (April 4, 2000). The alleged retaliatory actions need not impact a term, condition, or privilege of employment.

See Burlington Northern and Santa Fe Railway Co. v. White, 548 U.S. 53 (2006). Rather, Complainants are protected from any discrimination that is reasonably likely to deter protected EEO activity. See EEOC Enforcement Guidance on Retaliation and Related Issues, No. 915.004 (August 25, 2016), at 8-15; see also Carroll, supra.

Here, Complainant alleges discrimination, specifically harassment, based on reprisal for prior EEO activity. Complainant does not allege any harm or loss with respect to a term, condition, or privilege of employment, as the alleged discriminatory incidents consist of two verbal exchanges with S1 that had no impact on any part of her employment with the Agency. The two verbal exchanges consisted of S1 giving Complainant directions. S1 told Complainant to get off her stool after a meeting ended and told her to bring back the mail she could not deliver by 4:30 when she requested time to deliver mail beyond the eight-hour workday. We find that neither verbal exchange was accompanied by any concrete Agency action; they were simply remarks and comments. Complainant does not show that these incidents occurred frequently or for a long period of time, but rather cited two incidents she perceived as discriminatory over a two-week period. Applying the reasonable person standard, the evidence does not show that S1's instructions to Complainant were objectively offensive to the point of altering the conditions of her employment. Taken together, Complainant's alleged discriminatory incidents are not sufficiently severe or persuasive as to constitute a hostile work environment and render Complainant aggrieved for Title VII purposes. Thus, we hold that Complainant has not stated a viable harassment claim.

As noted above, Complainant's allegations of discrimination based on reprisal do not indicate a harm or loss to a term, condition, or privilege of her employment. Therefore, the relevant inquiry is whether the alleged discriminatory incidents are reasonably likely to deter protected EEO activity. Complainant stated that she engaged in EEO activity on March 5, 2018 and that S1 retaliated against her on account of her EEO participation. Complainant has not provided evidence, however, showing a causal connection between her March 5 EEO activity and her verbal exchanges with S1. As we found above, S1's comments, which were not accompanied by concrete Agency action, did not rise to the level of harassment. We further find that they were not reasonably likely to deter either her or other employees from engaging in protected EEO activity. Thus, we find that Complainant has not stated a viable claim for reprisal.

CONCLUSION

Accordingly, we AFFIRM the final Agency decision dismissing Complainant's complaint for failure to state a claim.

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).

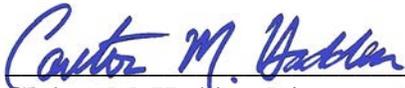
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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:

A handwritten signature in blue ink that reads "Carlton M. Hadden". The signature is written in a cursive style and is positioned above a horizontal line.

Carlton M. Hadden, Director
Office of Federal Operations

June 18, 2019

Date