



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

[REDACTED]
Myrtie P,¹
Complainant,

v.

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

Appeal No. 2019002676

Agency No. 1C-441-0002-19

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated February 28, 2019, 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.

BACKGROUND

During the period at issue, Complainant worked as a Mail Handler at the Agency's Annex facility in Cleveland, Ohio.

On January 30, 2019, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on race (African-American), sex (female), religion (Christian), and in reprisal for prior protected EEO activity.

In its final decision, the Agency noted that Complainant submitted correspondence to the Agency in February 2019, which raised new issues. The Agency asserts that these matters are like and related to the instant formal complaint. Thus, the Agency states that it processed these new matters as an amendment to the original formal complaint.

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.

In the instant final decision, the Agency framed Complainant's claims in the following fashion:

1. On September 30, 2018, [Complainant] was placed on Emergency Placement.
2. On February 15, 2019, a supervisor told [her] to help the clerks but did not give [her] instructions, watched her work, and told [her] that [she] could not have paper and pen on the floor;
3. On February 16, 2019, a supervisor instructed [her] in a rude and angry tone, then gave [her] a pre-disciplinary interview.

The Agency dismissed claim (1), the emergency placement, reasoning that Complainant settled this matter in a step two settlement on November 9, 2019. The Agency found that this rendered claim (1) moot.

The Agency dismissed claims (2) and (3) for failure to state a claim. The Agency found that Complainant did not allege a harm or loss with respect to a term, condition or privilege of employment. The Agency further found that the alleged incidents were not sufficiently severe or pervasive to set forth an actionable claim of harassment. Finally, regarding the basis of reprisal, the Agency found that these matters were not reasonably likely to deter Complainant or others from engaging in protected activity.

The instant appeal followed. On appeal, regarding claim (1), the emergency placement, Complainant asserts that "I never agreed to settle my EEO with my grievance that is why I did not sign off on it..." Complainant further asserts that she is still missing money due to the Emergency Placement. Complainant asserts that management has become retaliatory. Finally, Complainant states that she is requesting that her two claims from February 2019, be processed separately from her original complaint.

ANALYSIS AND FINDINGS

As an initial matter, we find the Agency properly amended Complainant's original complaint to include claims (2) and (3). EEOC Regulation 29 C.F.R. § 1614.106(d) provides, in pertinent part, that "a complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like or related to those raised in the complaint." A separate EEO complaint is not appropriate, however, if the new incident of discrimination raises a claim that is like or related to the original complaint. Rather, the original complaint should be amended to include the new incident of discrimination. Equal Employment Opportunity Management Directive for 29 C.F.R. 1614 (rev. Aug. 5, 2015) Ch.5 III(B). Complainant, on appeal, states that the two claims in February are "a direct result of the continued abuse and harassment of those in the leadership." Based on the foregoing, we find that the Agency properly found that the matters set forth in claims (2) and (3) are like or related to the original complaint, Claim (1).

The Agency improperly found that claim (1) had been settled. We acknowledge that the record contains a Step 2 Settlement Agreement dated November 9, 2018 which makes reference to a grievance and EEO Case No. 1C-441-0002-19. The step 2 settlement is signed by an Agency representative and a union representative. The agreement, however, does not contain Complainant's signature. Complainant asserts that she did not sign the agreement because she never agreed to settle her EEO complaint. In addition, the EEO Counselor's Report provides that Complainant elected not to sign the agreement. 29 C.F.R. § 1614.603 provides in pertinent part that "[a]ny settlement agreement reached shall be in writing and *signed by both parties...*" (emphasis added). Based on the foregoing, we find that Complainant did not enter into a valid settlement agreement to resolve claim (1) in the EEO process.

We further find that claim (1) has not been rendered moot. EEOC Regulation 29 C.F.R. § 1614.107(e) provides for the dismissal of a complaint when the issues raised in it have been rendered moot. To determine whether the issues raised in a complaint are moot, the factfinder must ascertain whether: (1) it can be said with assurance that there is no reasonable expectation that the alleged violation(s) will recur; and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged discrimination. See County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979). When such circumstances exist, no relief is available and no need for a determination of the rights of the parties is presented. The record is devoid of evidence that references to the Emergency Placement have been expunged from Complainant's personnel file and Agency records. In addition, Complainant asserts that she has not been provided with all of her missing compensation due to the Emergency Placement.

Complainant is also seeking compensatory damages. The Commission has held that an agency must address the issue of compensatory damages when a complainant shows objective evidence that she has incurred compensatory damages, and that the damages are related to the alleged discrimination. Jackson v. U.S. Postal Serv., EEOC Appeal No. 01923399 (Nov. 12, 1992), req. for recons. den., EEOC Request No. 05930306 (Feb. 1, 1993). Should complainant prevail on this complaint, the possibility of an award of compensatory damages exists. See Glover v. United States Postal Service 01930696 (Dec. 9, 1993). Because complainant requests compensatory damages, the agency must provide her the opportunity to provide some objective proof of the alleged damages, as well as objective evidence linking those damages to the adverse actions at issue. See Allen v. United States Postal Service, EEOC Request No. 05970672 (June 12, 1998). The issue of compensatory damages has not been addressed. Based on the foregoing, we find the Agency improperly dismissed claim (1) for mootness.

The Agency also improperly dismissed claims (2) and (3) for failure to state a claim. 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. The Court explained that an "objectively hostile or abusive work environment [is created when] a reasonable person would find [it] hostile or abusive:" and the complainant subjectively perceives it as such. Harris, supra at 21-22. Thus, not all claims of harassment are actionable.

Where a complaint does not challenge an agency action or inaction regarding a specific term, condition or privilege of employment, a claim of harassment is actionable only if, allegedly, the harassment to which the complainant has been subjected was sufficiently severe or pervasive to alter the conditions of the complainant's employment.

A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the complainant cannot prove a set of facts in support of the claim which would entitle the complainant to relief. The trier of fact must consider all of the alleged harassing incidents and remarks, and considering them together in the light most favorable to the complainant, determine whether they are sufficient to state a claim. Cobb v. Department of the Treasury, EEOC Request No. 05970077 (March 13, 1997).

The record reflects that Complainant is alleging that she has been subjected to a hostile work environment by management. Thus, we must consider all claims, (1)-(3), collectively. We find that when viewed collectively, Complainant has set forth an actionable claim of harassment. Complainant asserts that Agency management has subjected her to a hostile work environment by issuing her discipline (Emergency Placement), subjecting her to a pre-disciplinary interview, and excessively monitoring her work due to her protected classes. Thus, the alleged incidents are sufficiently severe or pervasive to set forth an actionable claim of harassment.

We REVERSE the Agency's final decision dismissing Complainant's complaint and we REMAND this matter to the Agency for further processing as set forth in the ORDER below.

ORDER (E0618)

The Agency is ordered to process the remanded (defined herein as a harassment/hostile work environment claim) 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:

A handwritten signature in blue ink, reading "Carlton M. Hadden", is written over a horizontal line.

Carlton M. Hadden, Director
Office of Federal Operations

July 3, 2019

Date