



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

[REDACTED]
Aida E.,¹
Complainant,

v.

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

Appeal No. 2019002920

Agency No. 4C-190-0010-19

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated March 29, 2019, 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. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. Upon review, the Commission finds that Complainant's complaint was improperly dismissed pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim.

ISSUE PRESENTED

Whether the Agency properly dismissed Complainant's EEO complaint alleging she was subjected to harassment, based on Complainant's sex, race, age, and reprisal.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Plant Manager at the Agency's Processing and Distribution Center (P&DC) in Philadelphia, Pennsylvania.

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.

On February 22, 2019, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination and harassment on the bases of race (bi-racial), sex (female), age (43), and reprisal. The Agency defined Complainant's claim as the following:

1. On July 17, 2018, the District Manager yelled at Complainant in a threatening manner;
2. On subsequent dates not specified, the Office of Inspector General (OIG) conducted an audit on Complainant;
3. On October 10, 2018, a Postal Inspector informed Complainant she was performing an audit for Complainant's office;
4. On October 19, 2018, a Postal Inspector said "We don't like people who aren't from Philly, we don't like and have never liked outsiders"; and
5. On October 26, 2018, Complainant became aware that a clerk had posted on social media that she was being investigated.

In her complaint, Complainant detailed the following as incidents in support of her claim of harassment: on July 13, 2018, Complainant learned of an ethical violation committed by her District Manager (S1). Complainant went to S1 and informed her of the ethical violation and advised S1 to report the violation to the Manager Operation Support (S2) Eastern Area, as required. On July 17, 2018, S1 contacted Complainant's Administrative Assistant to instruct Complainant to report to S1's office immediately. When Complainant advised S1 of a previously scheduled meeting, S1 told Complainant to have someone else cover the meeting. Upon arriving at S1's office, S1 closed the door and began yelling at Complainant, stating, "I don't know how long I will be the DM [District Manager], but maybe you do, but as long as I am the District Manager, you will respect me." On July 17, 2018, Complainant contacted S2 and a human resource manager (HRM) regarding what took place in the meeting with S1. In a phone call between Complainant and S2, prior to Complainant's meeting with S1, S2 advised Complainant to leave the meeting if it should become "personal." In July 2018, after the meeting with S1, Complainant was audited by the Office of Inspector General (OIG) concerning an allegation of Complainant having employees wash her car. Complainant states that American Postal Workers Union's (APWU) president was working with S1 and initiated the OIG audit against Complainant.

In late July or August 2018, Complainant states that she was contacted by the Delaware Plant Manager (DPM) and advised that S1 is connected to a Postal Inspector (PI), who stated, "this bitch isn't going to get away with this [S1] being gone." DPM went on to inform Complainant that S1 is connected to the Postmaster General, and conveyed that the PI also said that S1 is "a 62-year-old white woman and that [Complainant] is a younger, bi-racial female." In August 2018, Complainant conducted an audit on her building, and after discussion with the Acting District Manager, Complainant emailed managers on August 15, 2018 that they would no longer have access to the Postal inspection door.

On September 5, 2018, Complainant states that PI contacted the Acting District Manager (ADM) regarding door access and Complainant states that PI alleged that Complainant targeted inspectors when removing access to the doors. On October 10, 2018, PI informed Complainant that she would be conducting an audit for a week. Complainant states that she told PI that she knew that APWU President intended to have Complainant taken down and walked out by Postal Inspectors. Later that day, PI called Complainant's Administrative Assistant, but Complainant answered the phone. PI was unaware that it was Complainant who answered, instead of her Administrative Assistant. Complainant states that PI asked for Complainant's Administrative Assistant to let APWU President in, to allow PI to meet with him.

On October 19, 2018, during Complainant's exit interview with PI and PI's supervisor, PI stated that, "[w]e don't like people who aren't from Philly, we don't like and never have liked outsiders." On October 26, 2018, Complainant was made aware that a clerk, who was friends with APWU President, posted on Facebook that Complainant was under investigation for falsifying official reports.

On March 29, 2019, the Agency issued a final decision. Therein, the Agency dismissed the formal complaint, as it defined it, pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim, finding that Complainant was not aggrieved. The Agency stated that the Complainant may have felt disrespected and offended by the alleged discriminatory events but determined that the incidents were not sufficiently severe or pervasive to state a claim of discriminatory harassment. The instant appeal followed. Complainant raised no new contentions on appeal.

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 or disabling condition. 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. Department of the Air Force, EEOC Request No. 05931049 (April 21, 1994). If Complainant cannot establish that she is aggrieved, the Agency shall dismiss a complaint for failure to state a claim. 29 C.F.R. § 1614.107(a)(1).

The Commission has held that where, as here, a complaint does not challenge an agency action or inaction regarding a specific term, condition, or privilege of employment, the claim of harassment may survive if it alleges conduct that is sufficiently severe or pervasive to alter the conditions of the complainant's employment. See Harris v. Forklift Systems, Inc., 510 U.S. 17, 23 (1993). We find that Complainant's allegations are sufficient to state a claim of a hostile work environment.

In her complaint, Complainant alleged a series of events spanning from July through November 2018. Specifically, Complainant alleged that she was subjected to ongoing harassment that created

a hostile work environment. Instead of treating all alleged incidents as evidence proffered by Complainant in support of her hostile work environment claim, the Agency considered some of the incidents individually as claims of harassment. Thus, we find that the Agency acted improperly by treating matters raised in Complainant's complaint in a piecemeal manner. See Meaney v. Department of the Treasury, EEOC Request No. 05940169 (November 3, 1994) (an agency should not ignore the "pattern aspect" of a complainant's claims and define the issues in a piecemeal manner where an analogous theme unites the matter complained of). The agency should not fragment, or break up, a complainant's legal claim during EEO complaint processing, as fragmented processing compromises a complainant's ability to present an integrated and coherent claim of an unlawful employment discrimination. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 5, § III. (Aug. 5, 2015). Here, we find that Complainant's complaint consists of related incidents that constitute a claim that she was subjected to harassment that created a hostile work environment based upon sex, race, age, and reprisal. Consequently, when all the incidents alleged by Complainant are viewed in the context of Complainant's hostile work environment complaint, together they state a viable claim and the Agency's dismissal for failure to state a claim was improper.

After a review of the entire record, we find the Agency improperly dismissed Complainant's complaint. If proven to be true and viewed in a light most favorable to Complainant, the record may indicate that the Complainant's alleged incidents are severe or pervasive enough to alter the conditions of employment and constitute employment discrimination. As such, this case must be remanded for further investigation into Complainant's allegations.

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is **REVERSED**. The complaint is hereby **REMANDED** to the Agency for further processing in accordance with this decision and the **ORDER** below.

ORDER (E0618)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108. 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 (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.

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 that reads "Carlton M. Hadden". The signature is written over a horizontal line.

Carlton M. Hadden, Director
Office of Federal Operations

August 8, 2019

Date