



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

[REDACTED]  
Porter P.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2019002521

Agency No. 4V362000418

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated January 23, 2019, dismissing his 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**

At the time of events giving rise to this complaint, Complainant worked as a Mechanic 8 at the Agency's Scranton Pennsylvania Processing and Distribution Center facility in Scranton, Pennsylvania.

On January 5, 2019, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of sex (male), disability, and reprisal for prior protected "Union Activity". As reflected in the record, including the EEO Alternative Dispute Resolution Specialist's (ADRS) Inquiry Report (EEO counseling report), Complainant alleged that he was subjected to ongoing harassment, when:

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<sup>1</sup> 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 July 6, 2018, Complainant's manager failed to appropriately address harassment by a co-worker;<sup>2</sup>
2. On July 11, 2018, management failed to provide a safety representative when Complainant had an on-the-job injury;
3. On July 12, 2018, management argued with Complainant and accused him of falsifying a work injury;
4. On July 25, 2018, management threatened Complainant for reporting a manager for violations of federal law, the national contracts, and USPS policy and tried to bully Complainant and suppress his grievances;
5. On August 8, 2018, Complainant was "put in for FMLA leave" when Complainant did not request it;
6. Beginning on August 21, 2018, management stalked him and, on August 23, 2018, management followed him into the restroom and stood over his stall;
7. On September 6, 2018, upper management failed to address Complainant's alleged harassment by his Manager;
8. On September 20, 2018, "management made a statement about work schedules for contractors;"
9. On October 22, 2018, management accused him of failing to submit a leave slip for not taking a lunch, but he had submitted the leave slip on October 19, 2018;
10. On October 24, 2018, management allowed Complainant's leave slip to be mislabeled as approved and disapproved;
11. On November 28, 2018, Complainant's supervisor eavesdropped on his conversation; and
12. On an unspecified date in December of 2018, management interfered with his EEOC case by contacting the local union's craft director regarding his complaints of harassment.

We note that Complainant included an attachment with his formal complaint, that referenced his claims against his manager for age discrimination, harassment, and retaliation.<sup>3</sup> The record shows that Complainant serves as the Scranton Shop Steward. On July 6, 2018, Complainant had a conversation with his manager (RMO1) and informed him about the harassment that Complainant experienced from a co-worker. On July 9, 2018, Complainant had a sit-down meeting with the Scranton Plant Manager and Installation Head (RMO2). He told him about the harassment that he had reported to his manager (RMO1) on July 6, 2018.

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<sup>2</sup> On July 10, 2018, Complainant filed a "grievance (ML0711) against his manager, alleging age discrimination. During the period July 13, 2018 to July 16, 2018, Complainant filed additional grievances against the same manager, alleging harassment and retaliation.

<sup>3</sup> The Agency acknowledged that, at the informal stage of the complaint process, Complainant raised additional issues involving claims of harassment pertaining to an injury claim, and a leave request not being properly processed. Although he raised the issues with his supervisor and the union, the Agency found that Complainant did not include those issues in his formal complaint.

On July 10, 2018, Complainant filed a grievance against his manager (RMO1) for age discrimination against another craft employee. Around the same time, on July 11, 2018, Complainant sustained an injury at work. When he discussed the injury with the Manager (RMO1) on July 12, 2018, the Manager argued with Complainant and accused him of claiming an on-the-job injury for an injury that took place outside of work. On July 13, 2018, Complainant filed another grievance against RMO1 for not reporting the harassment, as required by USPS policy and federal law. On July 15, 2018, Complainant filed a third grievance against RMO1 for retaliation and harassment.

On July 25, 2018, the Manager, Fleet Operations, Eastern Region (RMO3) out of Pittsburgh and the Manager, Vehicle Operations out of Cleveland (RMO4) entered the Scranton VMF, unannounced. The Manager, Vehicle Operations (RMO4) approached Complainant in his work area around 10:00 AM. He asked Complainant if he had some time to talk with him and the other official "about the atmosphere in the Scranton VMF." Complainant asked if this was a union matter, he was told "No."

After Complainant sat down, he said the Manager, Fleet Operations (RMO3) harshly told Complainant that he was "not happy with [Complainant's] grievances," that he was holding in his hand. The second official told Complainant that he should have responded in a different manner and not have filed the grievances. He told Complainant that he should have reported his issues to RMO1's supervisor. Complainant replied that he was following the grievance process.

Complainant alleged that, at some point during the conversation, he believed that he was being threatened with discipline, because of his reporting of the RMO1 for his "violations against the national contract, USPS policy, and federal law."

On July 30, 2018, the Agency and Complainant agreed to hold Complainant's grievances "in abeyance as per our discussion." See email from the Labor Relations Specialist.

RMO1 denied stalking Complainant. Complainant stated that he notified upper management regarding the harassment that he was suffering, and upper management did nothing to stop the harassment.

The Agency issued a final decision, dismissing the entire complaint for failure to state a claim. The Agency reasoned that Complainant's claims of retaliation for grievances or union activity is not protected activity. In addition, the Agency reasoned that claims involving the collective bargaining process and the Family and Medical Leave Act do not fall under the jurisdiction of the EEOC. Next, the Agency concluded that Complainant was not aggrieved and that his other claims of sex and disability discrimination were too vague, speculative, and insufficient to state a harassment claim.

This appeal followed. On appeal, Complainant contends that the Agency's decision failed to address Complainant's issues of retaliation by management, Complainant also asserts that he was not collaterally attacking the grievance process, as there has been no decision yet on the grievances because his grievances were held in abeyance. He states that upper management engaged in threats of discipline and harassment after he raised harassment claims. He states that he raised harassment claims on many occasions and that the manager's harasser was aware of his medical condition (Ulcerative Colitis) when he followed him into the restroom. He asserts that female employees are not treated in the same manner. He claims, among other things, that he has the right to be free from being harassed and intimidated by his manager and the right to act as a Shop Steward. Finally, he asserts that the failure of the Agency to recognize and address his retaliation and harassment claims were errors of law.

The Agency did not file a brief in response to Complainant's appeal.

#### ANALYSIS AND FINDINGS

Under the regulation set forth at 29 C.F.R. Part 1614, 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). Retaliation is also covered by Title VII. 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).

In this case, a fair reading of the complaint, in conjunction with the related EEO counseling report, shows that Complainant was alleging that he had been subjected to a hostile work environment and a series of related incidents of disparate treatment based on his sex, disability, and retaliation, after he raised concerns with his manager about what he perceived to be harassment against him, as well as non-compliance with the national bargaining agreement. He specifically told his manager that he did not believe that he was doing enough to address Complainant's own harassment claims. He stated that, after he raised his concerns, his supervisor began stalking him. No other employees were subjected to this treatment, except for him. He also contends that upper management sent officials to "strong-arm" him into rescinding his claims.

We construe Complainant as alleging claims of sex and disability and retaliatory harassment that were part of an ongoing pattern of targeting him, as an employee with a medical condition who had complained about being harassed by a co-worker and his manager. In short, he claims that he was denied a fair opportunity to be employed under the favorable working conditions and terms of employment that the Agency provided to those who were not in his protected groups.

We recognize that there is an issue regarding whether Complainant had engaged in protected EEO activity, but that issue goes to the merits of the complaint and does not determine the procedural issue of whether the complaint stated a justiciable claim under the EEO laws. See Tim H. v. US. Postal Serv., EEOC Appeal No. 0120180329 (February 7, 2018).

We find 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). Upon review, we find that Complainant's complaint was improperly dismissed pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim.

### CONCLUSION

Accordingly, we REVERSE the Agency's final decision dismissing Complainant's complaint. We REMAND the complaint 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 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 (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.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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 tends 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).

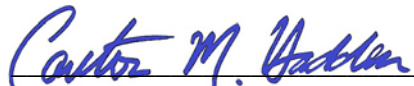
#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

December 26, 2019

Date