



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

Cecile E. Castello,
Complainant,

v.

Patrick R. Donahoe,
Postmaster General,
United States Postal Service
(Northeast Area),
Agency.

Request No. 0520110649

Appeal No. 0120111795

Agency No. 1G-701-0071-10

DECISION TO RECONSIDER

The Equal Employment Opportunity Commission (EEOC or Commission), on its own motion, reconsiders the decision in Cecile E. Castello v. U.S. Postal Service, EEOC Appeal No. 0120111795 (July 22, 2011). EEOC Regulations provide that the Commission may, in its discretion, reconsider any previous Commission decision. 29 C.F.R. § 1614.405(b).

ISSUE PRESENTED

The issue presented is whether the Agency properly dismissed Complainant's complaint pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim under Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Mail Handler at the Agency's Processing and Distribution Center in New Orleans, Louisiana. On December 28, 2010, Complainant filed an EEO complaint alleging that the Agency subjected her to discriminatory harassment when, on September 15, 2010, the Manager of Distribution Operations (MDO) stated, "Cece [Complainant] gets more pussy than the men in the building."

On her Information for Pre-Complaint Counseling Form, Complainant listed "sexual orientation / sex - female" as the discrimination factors. In the EEO Counselor's Report, the

EEO Counselor wrote that Complainant alleged discrimination based on sex. In addition, the EEO Counselor checked the "sex" box and specified "female." On her formal complaint form, Complainant checked the "sex" box and wrote the term "sexual orientation" next to the box.

The Agency dismissed Complainant's complaint pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim. The Agency determined that Complainant was alleging harassment on the basis of sexual orientation and noted that sexual orientation was not a basis covered by the EEOC Regulations.

On appeal, Complainant asserted that she was the victim of ongoing workplace harassment. Complainant argued that the Agency's Policy on Workplace Harassment prohibits, in pertinent part, "making offensive or derogatory comments or engaging in physically threatening, intimidating or humiliating behavior based upon ... "sex (including gender identity and gender stereotypes) ... [and] sexual orientation." [emphasis in original]. In response, the Agency requested that we affirm its dismissal.

In Cecile E. Castello v. U.S. Postal Service, EEOC Appeal No. 0120111795 (July 22, 2011), the Commission affirmed the Agency's dismissal of Complainant's complaint for failure to state a claim. The previous decision found that Complainant alleged harassment based on sexual orientation, a basis not covered by Title VII. The previous decision acknowledged that Title VII prohibits sex stereotyping discrimination, but determined that Complainant did not allege sex stereotyping in the instant case.

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. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994).

While Title VII's prohibition of discrimination does not explicitly include sexual orientation as a basis, Title VII does, however, prohibit sex stereotyping discrimination. Price Waterhouse v. Hopkins, 490 U.S. 228, 250 (1989); see Hitchcock v. Dep't of Homeland Sec., EEOC Appeal No. 0120051461 (May 3, 2007) (affirming an AJ's decision to dismiss a claim of sexual orientation discrimination but remanding Complainant's sex stereotyping discrimination claim); see also Schroer v. Billington, 577 F.Supp.2d 293 (D.D.C. 2008) (finding that an employer's decision to withdraw a job offer from a transsexual applicant constituted sex stereotyping discrimination in violation of Title VII). A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that a complainant can prove no set of

facts in support of the claim which would entitle the complainant to relief. Cobb v. Dep't of the Treasury, EEOC Request No. 05970077 (Mar. 13, 1997).

In this case, based upon a fair reading of the record, we find that Complainant has alleged a plausible sex stereotyping case which would entitle her to relief under Title VII if she were to prevail. Complainant alleged that she was subjected to a hostile work environment when MDO made an offensive and derogatory comment about her having relationships with women.

Complainant has essentially argued that MDO was motivated by the sexual stereotype that having relationships with men is an essential part of being a woman, and made a negative comment based on Complainant's failure to adhere to this stereotype. In other words, Complainant alleged that MDO's comment was motivated by his attitudes about stereotypical gender roles in relationships.

In light of the Commission's decision in Veretto v. U.S. Postal Service, EEOC Appeal No. 0120110873 (July 1, 2011), which found that the Agency erred in dismissing a claim of sex stereotyping discrimination under Title VII (where a gay man alleged he was harassed because he intended to marry a man rather than a woman), we find that Complainant's allegation is sufficient to state a viable hostile work environment claim under Title VII.¹

CONCLUSION

After reconsidering the previous decision and the entire record on its own motion, the Commission VACATES the decision in Cecile E. Castello v. U.S. Postal Service, EEOC Appeal No. 0120111795 (July 22, 2011), REVERSES the Agency's decision dismissing Complainant's complaint, and REMANDS the matter to the Agency for further processing in accordance with the Order below.

ORDER (E0610)

The Agency is ordered to process the remanded claim (hostile work environment based on sex stereotyping) in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to the Complainant that it has received the remanded claim **within thirty (30) calendar days** of the date this decision becomes final. 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 becomes final, 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.

¹ In her statement on appeal and in her comments on reconsideration, Complainant alleged other incidents of discrimination. If she has not already done so, we advise Complainant to contact an EEO Counselor if she wishes to pursue those matters.

A copy of the Agency's letter of acknowledgment to Complainant and a copy of the notice that transmits the investigative file and notice of rights must be sent to the Compliance Officer as referenced below.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0610)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report within thirty (30) calendar days of the completion of all ordered corrective action. The report shall be submitted to the Compliance Officer, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 77960, Washington, DC 20013. The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. 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.

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 (Z0610)

If you decide to file a civil action, and if you do not have or cannot afford the services of an attorney, you may request from the Court that the Court appoint an attorney to represent you and that the Court also permit you to file the action without payment of fees, costs, or other security. See Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et

seq.; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791, 794(c). The grant or denial of the request is within the sole discretion of the Court. Filing a request for an attorney with the Court does not extend your time in which to file a civil action. Both the request and the civil action must be filed within the time limits as stated in the paragraph above ("Right to File a Civil Action").

FOR THE COMMISSION:

Carlton M. Hadden, Director
Office of Federal Operations

Date

CERTIFICATE OF MAILING

For timeliness purposes, the Commission will presume that this decision was received within five (5) calendar days after it was mailed. I certify that this decision was mailed to the following recipients on the date below:

Cecile E. Castello
2326 Robert St
New Orleans, LA 70115

Jerome Watson
5867 E Louis Prima Dr
New Orleans, LA 70128

U.S. Postal Service (Northeast)
NEEOISO - Appeals
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PO Box 21979
Tampa, FL 33622-1979

Date

Equal Opportunity Assistant