



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, DC 20507**

[REDACTED]
Winford M.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Headquarters),
Agency.

Request No. 2020003106
Appeal No. 2019005757
Agency No. 4X-148-0009-19

DECISION ON REQUEST FOR RECONSIDERATION

On its own motion, the Equal Employment Opportunity Commission (EEOC or Commission) exercises its discretion to reconsider its decision in EEOC Appeal No. 2019005757 (November 5, 2019).

The record indicates that at the time of events giving rise to this complaint, Complainant worked as a Customer Care Agent, P-06, at the Agency's Los Angeles Customer Call Center in Los Angeles, California.

On June 11, 2019, Complainant filed his complaint alleging discrimination based on age (over 40), disability, and in reprisal for prior EEO activity when:

Between October 19, 2013, and March 30, 2019,² he was working a flexible and compressed work schedule of four ten-hour days per week and was denied

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.

² The record indicates that the Agency and the union negotiated an agreement eliminating all bids of ten-hour days/four days a week and replaced all bids with eight-hour days/five days a week effective March 30, 2019. This involved approximately 220 employees. Complainant was one of the employees impacted by the change.

overtime for the two hours per day he worked more than eight hours and was only paid eight hours a day for his holidays.

On July 8, 2019, the Agency issued its final decision dismissing the complaint for failure to state a claim and/or due to untimely EEO Counselor contact pursuant to 29 C.F.R. §§ 1614.107(a)(1) and/or 1614.107(a)(2), respectively. The Agency declined to accept and investigate the complaint on the ground that all of the employees at this facility who worked compressed work schedules were subject to the same restrictions, a fact that was known to both the Agency and Complainant when the complaint was filed.

Upon Complainant's appeal, the Commission previously found that Complainant's claim stated an actionable claim and his EEO Counselor contact was timely. The Commission thus reversed the Agency's final decision dismissing the complaint and remanded the matter for further processing.

Upon review, the Commission finds its prior decision incorrectly reversed the Agency's dismissal of Complainant's complaint. The Commission notes that it is undisputed by Complainant that all employees at the Call Center, regardless of their protected status, who worked a four-day/ten-hour schedule (numbering over 200) were treated in the same manner. Although in Complainant's initial complaint he states that he was denied overtime due to his protected classes, in his appeal he does not allege that his protected class was the cause of the adverse treatment. To the contrary, Complainant states:

The Issue of discrimination is bases [sic] on a double standard of employment where employees who were placed or assigned in a work bid of ten hour work day and four day work week, whereby these employees in the ten hour per day, four day work schedule were not paid any overtime when the employee exceeded an eight hour work day. And the second issue of discrimination is if an employee on the ten hour work day and four day work week, the postal service would only pay eight hours of Holiday pay which would penalized the employee by forcing the employee to use there [sic] own annual or leave with out [sic] pay to compensate the lost hours.

Complainant's clarification on appeal reveals that he is alleging all employees who worked ten-hour shifts, four days a week—rather than eight-hour shifts, five days a week—were subject to the harm that Complainant described in his initial complaint. When the record reveals that a complainant is alleging a loss suffered by an entire group of people, and that group is not defined by any class protected by employment laws, he has alleged a generalized grievance rather than a claim of unlawful discrimination. See McPherson Dep't of the Interior, EEOC Appeal No. 0120064234 (Mar. 22, 2007) (claim that employees in the Houston office were offered Voluntary Early Retirements and Voluntary Separation Incentive Payments, while employees in the Tulsa office where the complainant worked were not).

Here, it appears Complainant is raising a generalized grievance that, by definition, does not state a viable claim of disparate treatment discrimination or unlawful retaliation. See Warth v. Seldin, 422 U.S. 490, 499 (1975) (“When the asserted harm is a ‘generalized grievance’ shared in substantially equal measure by all of a large class of citizens, that harm alone normally does not warrant the exercise of jurisdiction.”).

Regarding Complainant’s argument that the Agency’s actions violated the Fair Labor Standards Act, the Agency’s Employee Manual, the terms of the collective bargaining agreement, or amounted to an unfair labor practice, he should raise these non-EEO matters with the appropriate entities such as the U.S. Department of Labor or the National Labor Relations Board.³

After a careful review of the record, the Commission finds that the Agency properly dismissed the complaint for failure to state a claim. 29 C.F.R. § 1614.107(a)(1); Diaz v. Department of the Air Force, EEOC Request No. 05931049 (April 21, 1994). Accordingly, we AFFIRM the Agency’s final decision dismissing Complainant’s complaint.

CONCLUSION

After reconsidering the previous decision and the entire record, the Commission finds that the decision in Appeal No. 2019005757 should be and is REVERSED, and we thereby AFFIRM the dismissal of Complainant’s complaint for failure to state a claim. There is no further right of administrative appeal on the decision of the Commission on this matter.

COMPLAINANT’S RIGHT TO FILE A CIVIL ACTION (P0610)

This decision of the Commission is final, and there is no further right of administrative appeal from the Commission’s decision. 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.

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**

³ Because we have affirmed its dismissal for failure to state a claim, we need not address the Agency’s alternative dismissal for untimely EEO Counselor contact.

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:

/S/ Bernadette B. Wilson
Bernadette B. Wilson
Executive Officer
Executive Secretariat

August 11, 2020
Date