

To:

Mr. Matthew Fogg
National Diversity & EEO Consultant
P.O. Box 30956
Washington, D.C. 20030

Ms. Rachael Leonard
Office of Administration
Executive Office of the President
1800 G Street, N.W.
Washington, D.C. 20503

Ms. Linda Sites, Director
Equal Employment Office
Executive Office of the President
725 17th Street, N.W., Room 4013
Washington, D.C. 20503

NOTICE TO THE PARTIES

TO THE AGENCY:

Within forty (40) days of receiving this decision and the hearing record, you are required to issue a final order notifying the complainant whether or not you will fully implement this decision. You should also send a copy of your final order to the Administrative Judge.

Your final order must contain a notice of the complainant's right to appeal to the Office of Federal Operations, the right to file a civil action in a federal district court, the name of the proper defendant in any such lawsuit, the right to request the appointment of counsel and waiver of court costs or fees, and the applicable time limits for such appeal or lawsuit. A copy of EEOC Form 573 (Notice of Appeal/Petition) must be attached to your final order.

If your final order does not fully implement this decision, you must simultaneously file an appeal with the Office of Federal Operations in accordance with 29 C.F.R. 1614.403, and append a copy of your appeal to your final order. See EEOC Management Directive 110, November 9, 1999, Appendix O. You must also comply with the Interim Relief regulation set forth at 29 C.F.R. § 1614.505.

TO THE COMPLAINANT:

You may file an appeal with the Commission's Office of Federal Operations when you receive a final order from the agency informing you whether the agency will or will not fully implement this decision. 29 C.F.R. § 1614.110(a). From the time you receive the agency's final order, you will have thirty (30) days to file an appeal. If the agency fails to issue a final order, you have the right to file your own appeal any time after the conclusion of the agency's (40) day period for issuing a final order. See EEO MD-110, 9-3. In either case, please attach a copy of this decision with your appeal.

Do not send your appeal to the Administrative Judge. Your appeal must be filed with the Office of Federal Operations at the address set forth below, and you must send a copy of your appeal to the agency at the same time that you file it with the Office of Federal Operations. In or attached to your appeal to the Office of Federal Operations, you must certify the date and method by which you sent a copy of your appeal to the agency.

WHERE TO FILE AN APPEAL:

All appeals to the Commission must be filed by mail, hand delivery or facsimile.

BY MAIL:

Director, Office of Federal Operations
Equal Employment Opportunity Commission
P.O. Box 19848
Washington, D.C. 20036

BY PERSONAL DELIVERY:

Director, Office of Federal Operations
Equal Employment Opportunity Commission
1801 L Street, NW
Washington, D.C. 20507

BY FACSIMILE:

Number: (202) 663-7022

Facsimile transmissions of more than ten (10) pages will not be accepted.

COMPLIANCE WITH AN AGENCY FINAL ACTION

Pursuant to 29 C.F.R. § 1614.504, an agency's final action that has not been the subject of an appeal to the Commission or a civil action is binding on the agency. If the complainant believes that the agency has failed to comply with the terms of this decision, the complainant shall notify the agency's EEO Director, in writing, of the alleged noncompliance within 30 days of when the complainant knew or should have known of the alleged noncompliance. The agency shall resolve the matter and respond to the complainant in writing. If the agency has not responded to the complainant, in writing, or if the complainant is not satisfied with the agency's attempt to resolve the matter, the complainant may appeal to the Commission for a determination of whether the agency has complied with the terms of its final action. The complainant may file such an appeal 35 days after serving the agency with the allegations of non-compliance, but must file an appeal within 30 days of receiving the agency's determination. A copy of the appeal must be served on the agency, and the agency may submit a response to the Commission within 30 days of receiving the notice of appeal.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON FIELD OFFICE
1801 L STREET, N.W., SUITE 100
WASHINGTON, D.C. 20507

Laura Jones,
Complainant,

v.

John Straub, Director, Office of Administration,
Executive Office of the President,
Agency.

EEOC Case No. 100-2005-00382x

Agency Case No. OA-04-01

APR 26 2006

DECISION

This Decision is issued pursuant to 29 C.F.R. § 1614.109(g) (2004). On June 30, 2005, the Commission issued an order explaining the legal standards for summary judgment.¹ The record before me consists of the Report of Investigation (ROI), and the Agency's *unopposed*² Motion for Summary Judgment.

The issue is whether the agency discriminated against the Complainant based on her race (Caucasian), color (Caucasian), sex (female), and reprisal for prior protected activity on April 9, 2004, in the following actions:

- a. Placement of a letter of reprimand into her personnel file on June 16, 2004;
- b. Her reassignment beginning July 19, 2004, from the West Wing mailroom to the mailroom at 1800 G Street and a change in her work hours from 10:30 a.m. – 7:00 p.m. to 9:30 a.m. – 6:00 p.m.

¹ The Commission's regulations are patterned after the procedures and guidelines for summary judgment set forth in the Federal Rules of Civil Procedure. *Pedersen v. Reno, Attorney General*, EEOC Request No. 05943339 (Feb. 24, 1995). Fed. R. Civ. P. 56 provides, "When a motion for summary judgment is made and supported as provided in this rule, . . . [t]he adverse party's response . . . must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party."

² The Agency's Motion was filed October 7, 2006. In an Order dated January 27, 2006 (*Determination of Claims Before the Commission*) I noted that Complainant had "failed to oppose or respond to the [the Agency's] motion in any way."

- c. Her three-day suspension for insolent behavior on July 15, 2004 toward her supervisors.³

I find that the investigative record has been adequately developed, there are no genuine issues of material fact, and I have no need to make findings of fact or credibility. Both parties had the opportunity to engage in discovery. Complainant was given ample notice of the Agency's motion for summary judgment, the Agency provided a comprehensive statement of the allegedly undisputed facts, and Complaint had the opportunity to respond to the Agency's motion. *Petty, Jr. v. Department of Defense*, EEOC Appeal No. 01A24206 (July 11, 2003); *see also* *Murphy v. Department of the Army*, EEOC Appeal No. 01A04099 (July 11, 2003).

Complainant has satisfied the procedural prerequisites for a hearing, but the evidence does not warrant one. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). I find that the Complainant has not shown that there are any issues requiring a hearing and therefore issue summary judgment in favor of the Agency.

FINDINGS AND ANALYSIS

Absent direct evidence of discrimination, the complainant in a Title VII case must carry the initial burden under the statute of establishing a *prima facie* case of discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). To establish a *prima facie* case of discrimination, Complainant must establish that she is in a protected group, and was treated less favorably than other similarly situated employees outside her protected group. *Arias v. Dep't of Interior*, EEOC No. 01942264 (Feb. 22, 1995).

³ While Complainant sought to include a claim for her removal, that claim was appealed to the Merit Systems Protection Board (Docket Number DC-0752-05-0689-I-1). *See Determination of Claims* order for a discussion of Complainant's request to include that claim in the instant case. Removal not being before me, this is not a mixed case.

However, in a disparate treatment case, whether Complainant has established a *prima facie* case loses its importance when the Agency, as in this case, responds to Complainant's charges by offering evidence of legitimate, nondiscriminatory reasons for its actions. *United States Postal Service Bd. of Gov. v. Aikens*, 460 U.S. 711, 717 (1983). Complainant then has to prove by a preponderance of the evidence that the proffered explanations are a pretext for unlawful discrimination. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 511 (1993).

A. Background

Complainant worked in the White House mail room beginning in 1995. During those years, she worked directly for Ken Hembree, who was then Director of the General Services Division. Evidently they worked well together, and Complainant was promoted up to the level of Lead Mail Clerk. In 2004, the Agency hired a new team of supervisors, Ken Haskins, Ken Miller, Marcia Fulham, and Jon Laurice. Several months later, Hembree retired.

B. Letter of Reprimand

In June 2004 former President Reagan died, and June 11, 2004 was declared a National Day of Mourning. Complainant volunteered to work that day, and was to report to work at 10:30 a.m. ROI, Ex. 24. However, as she was leaving work on June 9, Complainant submitted a leave request for June 10. Apparently her leave request for June 10 was granted, but Complainant, without having requested leave for June 11, did not report for duty on the 11th. She never claimed her absence was due to any illness or emergency.

Complainant admits she volunteered to work on June 11. ROI, Ex. 4 at 1. Complainant explained that she did not submit a leave slip for June 11 because it was a holiday, and so she says she did not need to submit one. Complainant said she did not report to work on the 11th because she was told to arrive at 5:00 a.m. for an earlier shift, but she could not get in at that

hour. Complainant says she told Haskins she could not arrive at the earlier time, but did not tell him she could arrive for her regular hours.⁴ ROI, Ex. 4 at 3.

Complainant did not report to work at all on the 11th. She says she was not granted leave, and did not have to turn in a leave request, because it was a holiday. But as Haskins explained, Complainant had already volunteered to work that day. ROI, tab 6 at 2.

Also on June 9th, Complainant overheard a conversation from two other employees who were speaking in Spanish. ROI, Ex. 4 at 3. According to Haskins, Complainant stated that she was “the last one around,” which Haskins took to mean the last Caucasian working in her unit; and that “no spic is going to make [her] leave.” According to Complainant, she never used the word “spic,” and the reference to “last one around” was the fact that most of her co-workers had already left for the day. ROI, Ex. 4 at 3.

As a result of these two incidents, Complainant was issued a Letter of Reprimand on June 16, 2004. ROI, Ex. 24. Haskins, who issued the letter, explained that a first offense of failure to follow established leave procedures called for a five-day suspension. Haskins also criticized Complainant for use of defamatory language, and it would not be tolerated. Disciplinary guidelines provided for a suspension of ten days for a first offense. Nevertheless, Haskins only imposed a three-day suspension. *Id.*

C. Reassignment and Change in Work Hours

As for Complainant’s claim that she was reassigned to a remote mailroom in retaliation for her reporting what she believed was a security breach, the evidence does not support her claim. First, retaliation for reporting a security breach does not state a claim under any EEO law.

⁴ Haskins maintains Complainant was to work her normal hours, 10:30 a.m. to 7:00 p.m. ROI, tab 6 at 2. However, this dispute is not material to the ultimate issue of discrimination.

More importantly, both Ken Miller, Deputy Director, Office of Administration, and Kenneth Haskins, Manager, Mail/Messenger Operations, acknowledged that Complainant was assigned to a different work location, but she was not reassigned in the sense that her job and pay remained the same. ROI, Ex. 5 at 2. They said she was moved in order to help make operations more effective and efficient. *Id.* They also said that this relocation would enable Complainant to cross-train with other employees, learn other skills, and lead a larger mailroom, which would improve her qualifications when seeking a supervisory position in the future. *Id.* Altogether, there were six employees reassigned or relocated, one white Hispanic, three African American, one Asian, one Caucasian. *Id.* at 3. Contrary to Complainant's claim, she was not denied the opportunity to pack her personal things before she left the West Wing, rather, she was out sick before her transfer.

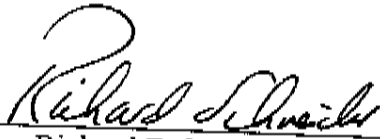
D. Suspension

In August 2004, Complainant was suspended for three days. The Notice of Proposed Suspension, issued July 27, 2004, was issued because Complainant "engaged in insolent conduct toward supervisors." ROI, tab 25. In particular, Complainant was accused of responding "with considerable hostility" to her supervisor, Haskins, when he told her she would be reassigned to the 1800 G Street mailroom. Haskins stated that Complainant said she did not wish to comply, and left the room. She returned moments later and thrust her access badge close to Haskins' face. *Id.*

Complainant submitted a written reply, ROI, tab 26, in which she apologized for her behavior, and claimed she was being punished for reporting a possible security violation in the mail room. Complainant did not deny the events as described, she only tried to excuse them. Consequently, the proposed suspension was imposed. ROI, tab 27.

Complainant has not shown that the Agency's explanations for the suspension, the reprimand or reassignment, were pretext for discrimination or retaliation.

The Complainant has not proffered evidence from which I could conclude that there are any genuine issues of material fact necessitating a hearing. The Agency is therefore entitled to summary judgment.



Richard E. Schneider
Administrative Judge

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