



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

[REDACTED]
Ian S.,¹
Complainant,

v.

Steven T. Mnuchin,
Secretary,
Department of the Treasury
(Internal Revenue Service),
Agency.

Appeal No. 0120160622

Agency No. IRS-15-0987-F

DECISION

On November 25, 2015, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's October 26, 2015, final decision concerning his equal employment opportunity (EEO) complaint alleging 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. For the following reasons, the Commission AFFIRMS the Agency's final decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Senior Individual Taxpayer Advisory Specialist, Wage and Investment Division, Taxpayer Assistance Center, located in San Antonio, Texas. On February 2, 2015, Complainant filed an EEO complaint alleging that the Agency discriminated against him based on religion (Jehovah's Witness) when in December 2014, his manager (S1) denied his request for an exception to the Agency's "open container" policy, not allowing Complainant to eat at his desk and avoid exposure to holiday decorations in the break room which offended his religious beliefs.

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.

After the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an EEOC Administrative Judge (AJ). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

PROCEDURAL DISMISSALS

On April 10, 2014, the Agency's Office of Civil Rights and Diversity dismissed the following claims, based on Complainant's race (Black), religion (Jehovah's Witness), disability (unspecified), and retaliation (prior protected activity) when: (a) in August 2014, the Territory Manager issued Complainant a letter of reprimand following a Treasury Inspector General for Tax Administration investigation concerning an April 1, 2014 incident; (b) in May 2014, management officials made a false statement to the Occupational Safety and Health Administration and denied Complainant medical treatment related to his February 3, 2014 workers' compensation claim; and (c) in July 2013, Agency counsel and a Labor Relations Specialist accessed Complainant's medical information without authorization.

We agree with the Agency that Claims B and C were not raised with an EEO Counselor within 45 days of the alleged discriminatory events. See 29 C.F.R. §§1614.105(a)(1) and 1614.107(a)(2). The record shows that Complainant initiated EEO contact on December 22, 2014. Therefore, the incidents described in Claims B and C each occurred more than 45 days prior to EEO contact. The Agency also noted that Claim B was dismissed because it is a collateral attack on another process and fails to state a claim, pursuant to 29 CFR §1614.107(a)(1). For the reasons cited by the Agency, we affirm the dismissal of Claims B and C.

The Agency originally dismissed Claim A for untimely EEO contact but reversed its dismissal in its final decision finding that the dismissal of Claim A was in error because Complainant raised it in his appeal to the Merit Systems Protection Board (MSPB), which he filed on August 6, 2014, the same date he received the letter at issue. The Agency notes that Complainant's MSPB appeal raised matters that alleged the Agency's action was effected, in whole or in part, because of discrimination prohibited by EEO law. The record shows that the MSPB dismissed Complainant's appeal for lack of jurisdiction on November 21, 2014, and Claim A reverted to the Agency for further action as a non-mixed matter. Pursuant to 29 C.F.R. § 1614.302(b), the date on which a person filed such a mixed case appeal with the MSPB shall be deemed the date of initial contact with the EEO counselor. Therefore, the Agency found that Claim A should have been accepted. Accordingly, the Agency decision advises Complainant that it is docketing Claim A as a new complaint of discrimination and referring the issue to an EEO investigator for investigation. The Agency further advises Complainant in its final decision that after completion of an EEO investigation, it will provide Complainant a copy of the new report of investigation on this issue and will provide Complainant an opportunity to elect a hearing before an EEOC AJ or an immediate final agency decision. Since this matter is no longer in dispute, we affirm the Agency's reversal of its dismissal of Claim A.

FACTUAL BACKGROUND

The record shows that on December 16, 2014, Complainant sent an email to S1 explaining he did not celebrate Christmas and requested that he be permitted to eat at his desk instead of the breakroom during his break because the break room contained Christmas and holiday decorations, which made him feel uncomfortable. Complainant indicated that his usual snack was a breakfast sandwich. Not hearing back from S1, the next day Complainant sent a second email to S1 asking for a response. Complainant also wrote that he preferred that his co-workers not question him regarding why he was eating at his desk.

On December 22, 2014, Complainant learned that his request had not been granted. Specifically, Complainant asserts that S1 denied his request based on “expense,” which apparently was a reference to the closed container food policy to protect computer equipment in the work area,² and suggested that Complainant take his break on the fourth floor of an adjacent building, which did not have holiday decorations. Complainant asserts that such an alternative was not reasonable as it would take him up to 15 minutes to get to the fourth-floor break room. Complainant also argues that eating a breakfast sandwich was far less dangerous to the equipment than use of liquids in covered containers at one’s desk. The undisputed record shows that despite S1’s denial, the food policy was not enforced because Complainant continued to eat at his desk without any consequence.

ANALYSIS AND FINDINGS

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency’s decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review “requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker,” and that EEOC “review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission’s own assessment of the record and its interpretation of the law”).

Under Title VII, employers are required to accommodate the religious practices of their employees unless a requested accommodation is shown to impose an undue hardship. 29 C.F.R. § 1605.2(b)(1). The traditional framework for establishing a prima facie case of discrimination based on religious accommodation requires complainant to demonstrate that: (1) he has a bona fide religious belief, the practice of which conflicted with his employment; (2) he informed the agency of this belief and conflict, and; (3) the agency nevertheless enforced its requirement against

² *The record shows that employees were not permitted to eat or drink at their desks due to the risk of damaging equipment. However, it appears that employees were permitted to have water bottles and other drinks with covers.*

him. Baum v. Social Security Administration, EEOC Appeal No. 01A05985 (March 21, 2002); Bullock III v. U.S. Postal Service, EEOC DOC 07A40101 (Aug. 3, 2005).

A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to comply with his or her religious beliefs. However, it is subject to the limit of more than *de minimis* cost or burden. The need for religious accommodation most frequently arises where an individual's religious beliefs, observances, or practices conflict with a specific task or requirement of the job or the application process. The employer's duty to accommodate will usually entail making a special exception from, or adjustment to, the specific requirement so that the employee or applicant will be able to practice his or her religion. Accommodation requests often relate to work schedules, dress and grooming, or religious expression or practice while at work. EEOC Compliance Manual Section 12, "Religious Discrimination" No. 915.003, (July 22, 2008) (Religious Discrimination Compliance Manual).

We assume for the purposes of this decision that Complainant has presented sufficient evidence to establish the elements of a prima facie case as set forth above. The record also shows that S1 made a good faith effort to reasonably accommodate Complainant's religious beliefs. S1 advised Complainant that he could take his meal break in the fourth-floor break room. Although the break room was on a different floor, in a distinct area separate from the space in which Complainant apparently spent most of his time, the break room was in an immediately adjoining building which was accessible by elevators.³ Significantly, the record is devoid of evidence showing that Complainant ever informed S1 or anyone else in management that getting to and from the fourth-floor break room would take too much time to be considered a reasonable accommodation.⁴ The record shows that Complainant also informed S1 that he was uncomfortable with his co-workers questioning why he ate at his desk. However, the record is devoid of evidence that any co-worker in fact questioned Complainant on this topic.

In addition to finding that the Agency provided a reasonable accommodation to Complainant, we note that the record indicates that the holiday decorations that offended Complainant were secular decorations that are permitted throughout the federal government and work environment. The record shows that the holiday decorations in the breakroom consisted of a tablecloth and two poinsettias. There was a Christmas tree in the office. However, it was not visible from the break room. According to the U.S. Supreme Court, such holiday decorations amount to secular symbols rather than an expression of a religion and displaying them in the federal workplace does not violate the establishment clause of the First Amendment. see County of Allegheny v. ACLU, 492 U.S. 573 (1989). We also note that Title VII does not require a public or private employer to

³ *Where there is more than one reasonable accommodation that would not pose an undue hardship, the employer is not obliged to provide the accommodation preferred by the employee. Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60 at 68-69 (1986). *The employer is not obligated to provide employee's preferred accommodation even if accommodation is not convenient to employee. Wilshin v. Allstate Ins. Co.*, 212 F. Supp. 2d 1360 (M.D. Ga 2002).

⁴ *It is also unknown whether S1 would have agreed to add additional time to Complainant's break to account for the added distance to the fourth-floor break room.*

remove holiday decorations or add holiday decorations associated with other religions.⁵ In addition, to the extent that Complainant raises a claim of hostile work environment, we find the record devoid of evidence to support such a claim.

CONCLUSION

Accordingly, based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's final decision.

ORDER

To the extent that the Agency has not already done so, within ninety (90) days of receipt of this order, the Agency shall process Claim A in accordance with 29 C.F.R. § 1614.108. 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.

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.

In accordance with Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § IX.E (Aug. 5, 2015), the Agency shall give priority to this remanded case to comply with the time frames contained in this Order. The Office of Federal Operations will issue sanctions against agencies when it determines that agencies are not making reasonable efforts to comply with a Commission order to investigate a complaint.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0617)

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

⁵ See Religious Discrimination Compliance Manual, Ex. 52 (a wreath and Christmas tree are permissible holiday decorations); and Religious Discrimination Compliance Manual, n. 112 citing County of Allegheny v. ACLU, 492 U.S. 573 (1989) (the U.S. Supreme Court has held that wreaths and Christmas trees are "secular" symbols, akin to items such as lights, Santa Claus, and reindeer, and thus that government display of these items does not violate the establishment clause of the First Amendment); see also Guidelines on Religious Exercise and Religious Expression in the Federal Workplace, at Section D (example b) August 14, 1997 (an employer may put a wreath over the entrance of the office's main reception area).

action. The report shall be in the digital format required by the Commission, and submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). 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.

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 (T0610)

This decision affirms the Agency's final decision, but it also requires the Agency to continue its administrative processing of a portion of your complaint. 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 on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until the Agency issues its final decision on your complaint. 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. If you file a request to reconsider and, also file a civil action, **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:



Carlton M. Hadden, Director
Office of Federal Operations

April 27, 2018
Date