



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

[REDACTED]

Kiera H.,<sup>1</sup>  
Complainant,

v.

Megan J. Brennan,  
Postmaster General,  
United States Postal Service  
(Great Lakes Area),  
Agency.

Appeal No. 0120172032

Agency No. 4J481006013

**DECISION**

On May 18, 2017, 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 April 14, 2017, final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission REVERSES the Agency's final decision and REMANDS this matter for processing in accordance with the Order below.

**PROCEDURAL BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a City Carrier at the Agency's Detroit-Brightmoor Station in Detroit, Michigan.

On May 20, 2013, Complainant filed an EEO complaint alleging that the Agency discriminated against her based on disability and in reprisal for prior protected EEO activity when, on December 29, 2012, she was placed on Emergency Placement in an Off-Duty Status and escorted from the building; and on March 9, 25, and 26, 2013, she was sent home.

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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.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), 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 her to discrimination or reprisal as alleged.

Complainant appealed the Agency's final decision. In a decision on November 18, 2016, the Commission affirmed the Agency's findings with respect to the claims the Agency accepted for investigation. Kesha Y. v. U.S. Postal Serv., EEOC Appeal No. 0120140713. However, the Commission found that the Agency improperly framed Complainant's allegations and excluded a reasonable accommodation claim from its investigation. Accordingly, the Commission remanded the complaint for a supplemental investigation into Complainant's reasonable accommodation allegation.

Complainant's complaint before us alleges that she was subjected to discrimination on the bases of disability (knee tendonitis) and in reprisal for prior protected EEO activity when the Agency withdrew Complainant's reasonable accommodation.

### FACTUAL BACKGROUND

Complainant alleged that since 2005, she has been granted the use of an ergonomic chair due to a knee injury. The record reveals that in November 2012, Complainant submitted medical documentation stating that she would "benefit from an adjustable chair for height and proper posture." At some point, Complainant claimed that the chair was taken from her. Complainant's manager (M1) believed that it was misplaced during the facility's move into a new building sometime in 2012. M1 did not recall seeing the ergonomic chair following the move and asserted that Complainant never asked about the chair.

In December 2012, Complainant was scheduled for a District Reasonable Accommodation Committee (DRAC) meeting. Before the meeting could occur, Complainant expressed during an investigative interview regarding her failure to be regular in attendance that she was having suicidal thoughts about driving her postal vehicle in a manner that would injure herself. Complainant claimed that the thoughts occurred after the chair she was given as an accommodation was taken away from her. Management officials denied that Complainant's chair was taken from her. Complainant's supervisor (S1) stated that she provided Complainant a chair with a cushioned back area, but that Complainant was not pleased with the chair because it did not have wheels. Complainant was subsequently placed in emergency placement in off-duty status until she was cleared by the medical unit. The DRAC meeting was postponed while Complainant was in the off-duty status. Complainant returned to work on February 26, 2013.

The DRAC meeting was rescheduled for April 17, 2013. The Labor Relations Specialist completed a worksheet indicating that Complainant had requested to "sit on intermit[tent] basis one hour per day."

The record contains a “prescription” dated March 29, 2013, from Complainant’s doctor for an “ergonomic chair and adjustable seat back and height” and the previously submitted November 2012 medical documentation stating that Complainant could benefit from an “adjustable chair.” Complainant attended the DRAC meeting to address her request for reasonable accommodation. Following the meeting, in May 2013, the DRAC stated it was granting Complainant the use of an ergonomic chair that she could use to sit one hour per day in accordance with her restrictions. Complainant claimed that she never received the chair and instead was given a stool at some point. Complainant returned to full duty without restrictions on April 18, 2014.

The record also contains statements from employees at the Brightmoor facility who stated that Complainant requested an ergonomic chair from management, that her requests were ignored, and that Complainant had been given a green chair instead.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). In accordance with Complainant’s request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b).

In its decision, the Agency assumed *arguendo* that Complainant was a qualified individual with a disability and found that Complainant did not demonstrate that the Agency denied her a reasonable accommodation. In making this finding the Agency determined that although the DRAC referred to an ergonomic chair, Complainant was provided with a cushioned chair with a back. The Agency found that this accommodation may not have been the one Complainant preferred, but that it allowed her to perform her duties without endangering her and allowed her to quickly recover. Accordingly, the Agency found that Complainant had not been denied reasonable accommodation.

Next, the Agency found that management had articulated legitimate, nondiscriminatory reason for its actions. Specifically, the record revealed that Complainant’s initial chair was misplaced during a facility move. M1 stated that Complainant never asked for the chair again following the move to a new facility. In addition, S1 stated Complainant was provided a chair with a cushioned back and seat area, but Complainant wanted one with wheels which would have been unsafe on the workroom floor. S1 affirmed that Complainant still had the chair at the end of November 2013, when S1 left the Brightmoor Station.

The Agency concluded that Complainant failed to show that management’s reasons for its actions were pretextual. As a result, the Agency found that Complainant had not been subjected to discrimination or reprisal as alleged. The instant appeal followed.

#### CONTENTIONS ON APPEAL

On appeal, Complainant argues that she was initially allowed to use the ergonomic chair, but the chair was taken away from her after she filed a prior EEO complaint. Complainant claims that management was attempting to constructively discharge her and force her to resign. Accordingly, Complainant requests that the Commission reverse the FAD.

## 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”).

### *Denial of Reasonable Accommodation*

Under the Commission’s regulations, a federal agency may not discriminate against a qualified individual on the basis of disability and is required to make reasonable accommodation to the known physical and mental limitations of an otherwise qualified individual with a disability unless the Agency can show that reasonable accommodation would cause an undue hardship. See 29 C.F.R. § 1630.2(o), (p). The Commission will assume arguendo that Complainant is an individual with a disability.

Here, the available documentary record evidence shows that Complainant needed to sit intermittently for an hour due to her knee injury. Complainant submitted documentation indicating that she could benefit from an “adjustable chair” and a March 2013 “prescription” for an “ergonomic chair and adjustable seat back and height.” Complainant later went out on emergency placement in off-duty status. When she returned, she met with the DRAC to further address her accommodation request. The DRAC granted her request to sit intermittently for an hour and authorized the use of an ergonomic chair with adjustable seat and back height. There is no evidence in the record indicating that Complainant ever received the chair, however. S1 asserted that she “gave [Complainant] a chair that had cushion in the back area and seat area.” S1 stated that Complainant was dissatisfied with this chair because it did not have wheels. Complainant contended that the chair or stool provided was not effective because it was not adjustable to her height or posture as indicated by her November 2012 medical documentation.

The record is undisputed that the Agency previously granted Complainant an ergonomic chair as a reasonable accommodation. Complainant indicated that she had one in the past, and that the Agency perhaps lost the chair during a move. When Complainant submitted a renewed request for an ergonomic, adjustable chair in April 2013, the DRAC granted the request. The record does not support that she ever received the chair, however. Agency management’s alternative accommodation was not effective because it was not adjustable as requested by Complainant’s doctor.

Thus, from what we can glean from the record, Complainant was not provided with an effective reasonable accommodation following the May 2013 DRAC meeting until her return to full duty in April 2014.<sup>2</sup>

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency's decision and REMAND the matter for processing in accordance with the Order below.

### ORDER

The Agency is ordered to take the following remedial action:

1. Within ninety (90) days of the date this decision is issued, the Agency shall conduct a supplemental investigation with respect to Complainant's claim of compensatory damages. The Agency shall allow Complainant to present evidence in support of her compensatory damages claim. See Carle v. Dep't of the Navy, EEOC No. 01922369 (Jan. 5, 1993). Complainant shall cooperate with the Agency in this regard. The Agency shall issue a final decision addressing the issues of compensatory damages no later than thirty (30) days after the completion of the investigation.
2. Within ninety (90) days of the date this decision is issued, the Agency shall provide a minimum of eight (8) hours of in-person or interactive training to the Detroit-Brightmoor Station's management officials emphasizing the Agency's obligations under Section 501 of the Rehabilitation Act, particularly its duties regarding reasonable accommodation.
3. Within sixty (60) days of the date this decision is issued the Agency shall consider taking appropriate disciplinary action against Complainant's supervisors (at the time of the discrimination). The Agency shall report its decision to the Compliance Officer referenced herein. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

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<sup>2</sup> Since the Commission finds that the Agency's denial of reasonable accommodation constituted a violation of the Rehabilitation Act, we need not address Complainant's claim that these actions were also motivated by retaliatory animus as well.

Further, the report must include supporting documentation of the Agency's calculation of compensatory damages, back pay, and other benefits due Complainant, including evidence that the corrective action has been implemented.

#### POSTING ORDER (G0617)

The Agency is ordered to post at its Detroit-Brightmoor Station facility copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

#### IMPLEMENTATION OF THE COMMISSION'S DECISION (K0618)

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.

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 (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:

A handwritten signature in blue ink that reads "Carlton M. Hadden". The signature is written in a cursive style and is positioned above a horizontal line.

Carlton M. Hadden, Director  
Office of Federal Operations

March 21, 2019

Date