



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

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Heidi B.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 0120182601

Agency No. 4C370000918

**DECISION**

On July 3, 2018, 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 May 22, 2018 final decision concerning her 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 REVERSES the Agency's final decision, in part.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Rural Carrier Associate (RCA), B/05, at the Lawrenceburg, Tennessee Post Office. On December 22, 2017, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of religion (Christian) and reprisal (for current protected EEO activity) when: (1) on December 12, 2017, she was issued a Seven-Day Suspension; (2) on December 14, 2017, she was issued a 14-Day Suspension; and (3) on January 17, 2018, she was issued a 14-Day Suspension.

After 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.

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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.

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 as alleged.

### FACTUAL BACKGROUND

#### *Claims 1 and 2 – Suspensions (Sunday Work)*

The record shows that in or about October 2017, RCAs were informed that they would have to rotate working on Sundays during the holiday season.<sup>2</sup> According to Complainant's supervisor (S1) (Christian) all employees were scheduled alphabetically in a rotating manner, and if someone needed off on a certain Sunday, it was up to the employee to work out a replacement or agree to swap with another employee.

Complainant advised her supervisors that she would not work Sundays due to her religious beliefs.<sup>3</sup> Complainant did not report to work on Sunday, December 3 and 10, 2017. Management issued Complainant a Seven-Day Suspension (reduced to Letter of Warning) for the December 3<sup>rd</sup> absence and a 14-Day Suspension (reduced to a Seven-Day Suspension) for the December 10<sup>th</sup> absence.<sup>4</sup>

Complainant's supervisor asserted that he provided Complainant with a blank reasonable accommodation form on December 4, 2017, which she denied receiving. However, the record does establish that on December 11, 2017, S1 gave Complainant a blank reasonable accommodation form and advised her to fill it out. However, we note that the form pertains to physical or mental disabilities, not religious accommodation. S1 asserted that Complainant did not submit a formal request for an accommodation and the Agency did not offer her an accommodation, other than giving her the option of coming to work after church. S1 also stated that no employees were asked to switch days off with Complainant. S1 affirmed that (without Complainant) there were only four RCAs that could work on Sunday. Three RCAs were generally scheduled to work on Amazon Sunday.

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<sup>2</sup> The record contains an undated note from the Postmaster (PM) stating that in the last week of October 2017, he informed his RCAs that they would be rotating Sundays for the delivery of Amazon parcels.

<sup>3</sup> PM's undated note indicates that Complainant told him that she would not be working Sundays because she had to attend church. PM told Complainant that she could attend her Sunday worship services and then report to work after they were over, at which point the Complainant explained that she was not working at all on Sundays.

<sup>4</sup> The record shows that Complainant received AWOL charges for unscheduled absences beginning December 17, 2017, for which Complainant has not yet been disciplined.

Each RCA was given the fourth Sunday off. S1 stated, without explanation, that if Complainant was not required to conform to Sunday delivery, he would not have anyone to carry Amazon Sunday.

*Claim 3 – Suspension (Failure to Follow Instructions)*

The record shows that on Saturday, December 23, 2017, Complainant completed her route and refused to stay beyond her shift to assist another RCA (RCA1) as instructed by management. According to S1, Complainant remarked that RCA1 needed to do a better job of managing his time, and that she had a family get together to attend. Complainant was issued a 14-Day suspension for failing to follow instructions.

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”).

*Claim 1 and 2 – Religious Accommodation*

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. 42 U.S.C. § 2000e(j); 29 C.F.R. § 1605.2(b)(1). The traditional framework for establishing a prima facie case of failure to provide a religious accommodation requires an employee to demonstrate that: (1) she has a bona fide religious belief, the practice of which conflicted with their employment; (2) she informed the agency of this belief and conflict; and (3) the agency nevertheless enforced its requirement against the employee. Heller v. EBB Auto Co., 8 F.3d 1433, 1438 (9th Cir. 1993); Turpen v. Missouri-Kansas-Texas R.R. Co., 736 F.2d 1022, 1026 (5th Cir. 1984).

We find that Complainant established a prima facie case of failure to provide a religious accommodation because: (1) it is undisputed that Complainant had a “bona fide” religious belief; (2) she repeatedly requested to have Sundays off to observe her religion, which management denied. S1 stated that he denied Complainant's requests because he only has a few RCAs to work on Sundays and without Complainant it was difficult to staff the Sunday deliveries, which were part of the RCA's job requirements. S1 further explained that without Complainant, it was difficult to continue with his schedule of rotating Sundays off (i.e., allowing the other RCAs in the office to have a Sunday off every few weeks).

Once an employee establishes a prima facie case, the Agency must show that it made a good faith effort to reasonably accommodate the religious beliefs and, if such proof fails, the Agency must show that the alternative means of accommodation proffered by the employee could not be granted without imposing an undue hardship on the Agency's operations.<sup>5</sup> See Tiano v. Dillard Dept. Stores, Inc., 139 F.3d 679, 681 (9th Cir. 1998); Redmond v. GAF Corp., 574 F.2d 897, 902 (7th Cir. 1978); Cardona v. U.S. Postal Serv., EEOC Request No. 05890532 (Oct. 25, 1989). Pursuant to 29 C.F.R. § 1605.2(a)-(e), the Commission's "Guidelines on Discrimination Because of Religion" (the Guidelines), alternatives for accommodating an employee's religious practices include, but are not limited to, voluntary substitutes and swaps, flexible scheduling, and lateral transfers and job changes. The employee should be accommodated in his or her current position if doing so does not pose an undue hardship. If no such accommodation is possible, the employer needs to consider whether lateral transfer is a possible accommodation. See also EEOC Compliance Manual Section 12, "Religious Discrimination," No. 915.003 (July 22, 2008) (Compliance Manual).

To show undue hardship, an employer must demonstrate that an accommodation would require more than a de minimis cost. Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 74 (1977). To prove undue hardship, the employer needs to demonstrate how much cost or disruption a proposed accommodation would involve. An employer cannot rely on potential or hypothetical hardship when faced with a religious obligation that conflicts with scheduled work, but rather should rely on objective information. See Compliance Manual.

We find that the Agency did not show that it made a good faith effort to reasonably accommodate Complainant's request. S1 testified that he did not explore any type of accommodation for Complainant that would address her inability to work on Sunday. There is no indication whether it was feasible to ask other non-RCAs to volunteer to work on Amazon Sundays. The Agency then argued that granting Complainant's request would be an undue hardship. Essentially, S1 makes the argument that with one less RCA to work on Sunday during the peak season, it would be harder to continue the practice of rotating Sunday off, which would perpetuate the poor morale among the RCAs over this issue.

We find the evidence in the record insufficient to demonstrate an undue hardship because it is mere speculation. The Agency has failed to present evidence of the impact to its operations if it had only two RCAs on certain Sundays during peak season or if it had to give the remaining RCAs a day off less frequently. We note that the record lacks any documentation from which we can discern the actual staffing or scheduling needs of the Amazon Sunday program. Accordingly, the record establishes that the Agency violated Title VII when Complainant was disciplined in the form of a Letter of Warning and suspension for her refusal to work on Amazon Sundays.

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<sup>5</sup> We note that the Agency's apparent reliance on a formal request for an accommodation is misplaced. The undisputed record shows that Complainant informed management of her religious belief and conflict.

*Claim 3 – Suspension - Failure to Follow Directions*

To prevail in a disparate-treatment claim absent direct evidence of discrimination, Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973). Complainant carries the initial burden of establishing a prima facie case by demonstrating that she was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Co. v. Waters, 438 U.S. 567, 576 (1978). Proof of a prima facie case will vary depending on the facts of the particular case. McDonnell Douglas, 441 U.S. at 802 n. 13. The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the Agency has met its burden, Complainant bears the ultimate responsibility to prove, by a preponderance of the evidence, that the reason proffered by the Agency was a pretext for discrimination. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993).

A complainant may establish a prima facie case of reprisal by showing that: (1) she engaged in a protected activity; (2) the agency was aware of the protected activity; (3) subsequently, she was subjected to adverse treatment by the agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000); Hochstadt v. Worcester Found. for Experimental Biology, 425 F. Supp. 318, 324 (D. Mass.), *aff'd*, 545 F.2d 222 (1st Cir. 1976); Coffman v. Dep't of Veteran Affairs, EEOC Request No. 05960473 (Nov. 20, 1997). The Commission's policy on retaliation prohibits any adverse treatment that is based on a retaliatory motive and is reasonably likely to deter a complainant or others from engaging in a protected activity. See EEOC Enforcement Guidance on Retaliation and Related Issues, No. 915.004 (Aug. 25, 2016).

We find that Complainant failed to establish that the Agency's articulated, legitimate, non-discriminatory/retaliatory explanation for issuing discipline was a pretext for discriminatory or retaliatory animus. The record is undisputed that Complainant failed to stay after completion of her route to help RCA1 as instructed by management. The record is devoid of discriminatory or retaliatory animus. At all times, the burden of persuasion lies with Complainant to show that it was discriminatory or retaliatory animus that motivated the Agency. See U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711 (1983). To ultimately prevail, a complainant must prove, by a preponderance of the evidence, that the agency's explanation is a pretext for discrimination. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133 (2000). The Commission finds that, aside from her bare assertions, Complainant has not provided any evidence to rebut the Agency's asserted legitimate, nondiscriminatory reasons for its actions as to this claim. Therefore, the Commission finds that Complainant has not established that she was subjected to discrimination or reprisal as alleged in Claim 3.

### CONCLUSION

We find that the Agency discriminated against Complainant when it denied her requests for a religious accommodation and ORDER the Agency to take further action in accordance with the Order below.

### ORDER

The Agency is ordered to take the following remedial action:

1. Within 30 days from the date this decision is issued, the Agency shall provide Complainant a reasonable accommodation for her religious beliefs. The Agency may consider all possible methods of accommodating her religious beliefs, including, but not limited to, voluntary substitutions or swaps, lateral transfers, or changes in job assignments or crafts.
2. Within 60 days of the date this decision is issued, the Agency shall remove and expunge all disciplinary actions and records from all Agency official personnel files that are related to Complainant's failure to work on Sundays.<sup>6</sup>
3. Within 60 days of the date this decision is issued, the Agency shall immediately restore any leave that Complainant has been forced to use to avoid working on Sundays. The Agency shall determine the appropriate amount of annual leave benefits due Complainant, pursuant to 29 C.F.R. § 1614.501.
4. Within 90 days of the date this decision is issued, the Agency shall conduct a supplemental investigation with respect to Complainant's entitlement to compensatory damages, including providing Complainant an opportunity to submit evidence of pecuniary and non-pecuniary damages. For guidance on what evidence is necessary to prove pecuniary and non-pecuniary damages, the parties are directed to EEOC Enforcement Guidance: Compensatory and Punitive Damages Available Under § 102 of the Civil Rights Act of 1991 (July 14, 1992) (available at [eoc.gov](http://eoc.gov)). Complainant shall cooperate with the Agency in this regard. The Agency shall issue a final decision addressing the issue of compensatory damages no later than 30 days after the completion of the investigation.
5. Within 90 calendar days from the date that this decision is issued, the Agency shall provide EEO training to the responsible management officials identified in this decision (i.e., PM and S1), including at least eight hours of in-person or interactive training on Title VII and an Agency's obligation to provide accommodations to its employees for religious observances. If any of the responsible management officials have left the Agency's employ, the Agency shall furnish documentation of their departure date(s).

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<sup>6</sup> This includes, but is not limited to, Letters of Warning, suspensions, and Absent without Leave notices.

6. Within 60 calendar days from the date this decision is issued, the Agency shall consider taking disciplinary action against the responsible management officials identified as PM and S1. The Commission does not consider training to be disciplinary action. The Agency shall report its decision to the Compliance Officer. 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. If any of the responsible management officials have left the Agency's employ, the Agency shall furnish documentation of their departure date(s).

The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation verifying that the corrective action has been implemented.

#### POSTING ORDER (G0617)

The Agency is ordered to post at its Lawrenceburg, Tennessee Post Office, 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 (K0719)

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.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 CFR § 1614.503(f) for enforcement by that agency.

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/action in part, 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 such time as 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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

November 8, 2019

Date