



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

[REDACTED]
Charlie L.,¹
Complainant,

v.

Carlos Del Toro,
Secretary,
Department of the Navy,
Agency.

Appeal No. 2022003545

Hearing No. 410-2022-00042X

Agency No. 21-00060-00444

DECISION

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 9, 2022, 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, we REVERSE the Agency's final decision.

ISSUES PRESENTED

The issues presented concern whether the Agency discriminated against Complainant based on his religion and in reprisal for prior protected EEO activity when it failed to grant his hardship request for religious observance, required him to report to work with no exception on the day of his religious observance, and treated him differently by requiring him to use his overtime hours, annual and sick leave as a religious accommodation.

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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Painter, WG-4102-07, at the Agency's Trident Refit facility, Repair Habitability Division Paint Shop, in Kings Bay, Georgia. Complainant was directly supervised by the Painter Supervisor, who, in turn, was supervised by the General Foreman (Foreman). See Report of Investigation (ROI) at 3-4.

On June 17, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of religion (Hebrew Israelite) and in reprisal for prior protected EEO activity when:

1. On or about February 4, 2021, Complainant was denied his request for hardship due to his religious observance (Sabbath) and was denied his request for permanent change to first shift due to the Sabbath;
2. On June 19, 2021, the Painter Supervisor and the Foreman required him to report to work with no exception on the day of his religious observance; and
3. On or about July 2019 to present, the Painter Supervisor and the Foreman treated him differently by requiring him to use his overtime hours, annual and sick leave as a religious accommodation.

The investigation into the complaint revealed that in July 2019, Complainant transferred to the Trident Refit facility in Kings Bay. At the time of his transfer, he informed the Painter Supervisor and the Foreman of his religious practice, which involved observing the Sabbath. Observing Sabbath meant that he did not work Fridays, starting at sunset, until sunset on Saturdays. ROI at 86; 87.

The facility operated on three shifts. First shift hours allowed Complainant to observe the Sabbath without issue. Complainant stated that the problem began when management rotated him from the first shift to the second and third shifts, as part of normal shift rotations. Complainant explained that for him to practice his faith while on the second and third shifts, he had to request leave, or convert his overtime into religious compensatory time at a one-to-one exchange rate, to take time off to observe the Sabbath. As other employees received time and a half pay for overtime, Complainant felt that the even exchange policy was unfair to those who needed to convert overtime for religious observance. ROI at 86; 87.

However, he conceded that the Painter Supervisor and the Foreman acted in accordance with Agency policy when they required him to request leave or religious compensatory time to observe the Sabbath. He also conceded that he was not aware of management treating him differently than other employees. ROI at 97.

In February 2021, Complainant was assigned to the third shift. That same month Complainant filed a hardship request to remain on first shift rather than rotate, citing, in relevant part, his religious needs. Complainant asserted that the Foreman denied the request on the grounds that moving Complainant to first shift would cause undue hardship on other employees. ROI at 87. As a result, Complainant remained on third shift for approximately three months. ROI at 135.

The Foreman, however, explained that Complainant's hardship request was denied because rotations were part of Complainant's work duties and consistent with Agency policy. The Foreman asserted that providing Complainant a permanent first shift position would create a hardship for other employees. Additionally, the Foreman noted that approving the request would "also start a precedence that would limit the shop's production which ultimately would disrupt [the] ship's schedule." ROI at 122; 133-136. The Foreman emphasized that Complainant was never prohibited from observing his religious practices during this time because he could have requested leave or used religious compensatory time to observe the Sabbath. ROI at 134. The Foreman also noted that Complainant was, on at least one occasion in 2021, able to stay on first shift by switching shift assignments with a colleague. ROI at 14. However, Complainant stated that he did not recall ever switching his shift with a colleague. ROI at 20.

The Painter Supervisor added that "all employees are required to use overtime hours, annual and sick leave as a religious accommodation." ROI at 123. The Painter Supervisor and the Foreman both asserted that Complainant never raised concerns with using leave, or overtime, as a form of religious accommodation. ROI at 124; 138.

On June 11, 2021, the parties unsuccessfully went through the Alternative Dispute Resolution (ADR) process. Shortly thereafter, Complainant was informed that he would have to work on Saturday, June 19, 2021, which fell on his day off, and on the Sabbath. While Complainant acknowledged that he did not formally request to be excused from work on June 19, 2021, as a religious accommodation, he emphasized that he was not originally scheduled to work that day.

Furthermore, Complainant emphasized that after the Painter Supervisor informed him that he had to come into work on June 19, 2021, he reminded the Painter Supervisor that he observed the Sabbath but was told that there were "no exceptions." Complainant added that after he reached out to the Foreman for assistance, the Foreman told him that due to the tremendous workload, "all shop personnel will be tasked to work in order to meet the scheduled date." ROI at 89-90.

Complainant believed this was retaliation for participating in ADR and noted that except for the incident on June 19, 2021, management never interfered with his right to use religious compensatory time and/or other leave options for religious observance. Additionally, Complainant felt that management either planned poorly or forced him to report to work out of spite, noting that there was so little work that the team was released after working half the day. Complainant emphasized that he had three coworkers who were out on vacation, that were junior in seniority to him, and could have been pulled into work if the situation was as dire as management made it seem. ROI at 104. Complainant noted that the Agency's collective bargaining agreement (CBA) allowed for management to cancel employee leave requests. ROI at 87-89; 104; 215.

In response to Complainant's allegations, the Foreman noted that Complainant always had an opportunity to observe his religious beliefs, except for that one day. The Foreman explained that due to the mission critical work, all employees were required to come into work unless they were already on scheduled leave, had called in sick, were on some form of light/limited duty, or out due to COVID-19 protocols. The Foreman stated that this was a one-time situation, and if Complainant had wanted, he could have called out sick to observe the Sabbath. ROI at 132;138-139. The Foreman emphasized that this had nothing to do with Complainant's religion, but rather the needs of the Agency that required everyone to come in. ROI at 117; 132;138-139.

The CBA covered a variety of issues, including shift assignments and workday change requests. Shift assignment preferences were provided based on seniority. Any workday change requests would "normally be granted when the change would not adversely affect the workflow, facility mission, and overall employee morale." Management was required to take into consideration whether the "Agency would be seriously handicapped in carrying out its mission or that costs would be substantially increased." Under Article 11, Sections 1101 and 1102, employees were permitted to file hardship requests to alleviate hardships caused, in relevant part, by shift rotations.

The CBA encouraged employees to work with management to come to a consensus on alleviating the hardship. However, Article 11, Section 1102, of the CBA advised management that when considering hardship accommodations, "the requesting employee's hardship accommodations should not create any hardship, loss of rights, or benefits to another employee." ROI at 195-221.

Post-Investigation

At the conclusion of the investigation, the Agency provided Complainant with a copy of the ROI and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing but subsequently withdrew his request. Consequently, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). In its decision, the Agency found that Complainant never made a formal religious accommodation request and analyzed his claims under the legal standard for disparate treatment. The Agency ultimately concluded that management had legitimate, nondiscriminatory reasons for its actions, which Complainant failed to rebut.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant asserts that he faces continuous issues in being able to observe his faith. Complainant details a recent incident as demonstration that he is being treated differently based on his religious practice. Complainant also generally reiterates prior arguments about the claims at issue. The Agency did not respond.

STANDARD OF REVIEW

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").

ANALYSIS

Denial of Religious Accommodation

As an initial matter, we note that the Agency found that Complainant never made a formal religious accommodation request and analyzed the complaint under the legal standard for disparate treatment. However, we disagree with this finding. Contrary to the Agency's conclusion, we find that Complainant's allegations involve concern whether the Agency provided him with reasonable accommodation, and not whether the Agency treated him in a disparate manner. As such, we will address the complaint under the appropriate legal standard.

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). A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to comply with their religious beliefs. See Ian S. v. Dep't of the Treas., EEOC Appeal No. 0120160622 (Apr. 27, 2018); Complainant v. Dep't of Justice, EEOC Appeal No. 0120132112 (Apr. 17, 2015). 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. Id. The employer's duty to accommodate will usually entail making a special exception from, or adjustment to, the particular requirement so that the employee will be able to practice their religion. Id. When an employee's religious belief or practice conflicts with a particular task, appropriate accommodations may include relieving the employee of the task or transferring the employee to a different position or location that eliminates the conflict with the employee's religion. Id.

The traditional framework for establishing a prima facie case of discrimination based on religious accommodation requires an employee to demonstrate that: (1) they have a bona fide religious belief, the practice of which conflicted with his employment; (2) they 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).

Here, we find that Complainant has met his initial burden, as the record shows that Complainant is a Hebrew Israelite who observes the Sabbath, a practice that conflicts with his employment. Complainant informed the Foreman and the Painter Supervisor of his religious needs when: 1) management denied his hardship request for a permanent shift change to observe the Sabbath; and 2) on at least one occasion, required Complainant to work on his day off, and during the Sabbath, despite his objections. The burden therefore shifts to the Agency to either establish that it offered Complainant a reasonable accommodation or that it could not reasonably accommodate the employee's religious practice or observance without undue hardship.

"A refusal to accommodate is justified only when an employer ... can demonstrate that an undue hardship would in fact result from each available alternative method of accommodation." 29 C.F.R. § 1605.2(c). Pursuant to 29 C.F.R. § 1605.2(d), 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. See Samuel R. v. Dep't of Com., EEOC Appeal No. 2019001557 (Aug. 19, 2020). The U.S. Supreme Court has clarified that an "undue hardship" means that providing reasonable accommodation would result in substantial increased costs in relation to the conduct of the employer's business. Groff v. DeJoy, 600 U.S. 447 (2023).

Upon review of the record, we find that the Agency failed to reasonably accommodate Complainant's religious beliefs and has not established undue hardship. While both the Painter Supervisor and Foreman asserted that they could not grant Complainant's request to permanently stay on first shift and were required under the CBA to direct Complainant to take leave and religious compensatory time for religious observance, we find no language in the CBA that would preclude the Agency from accommodating Complainant's request to stay on first shift. Indeed, a fair reading of the CBA demonstrates no language regarding religious accommodations. While the Agency also alluded to sections regarding assignments and work changes to support its position, neither section addresses accommodation requests. Furthermore, we note that Article 11, Sections 1101 and 1102, of the CBA acknowledges, in relevant part, that shift rotations may pose hardships on employees and specifically encourages employees to work with management to come to a consensus on alleviating the hardship. ROI at 195. While Section 1102 of the CBA forbids management from granting hardship accommodations that would impose hardships on others or impinge on their rights, we find that the Agency failed to provide more than generalizations to justify its outright denial of Complainant's hardship request for religious observance.

In this regard, we note that the Foreman stated that approving the request would “also start a precedence that would limit the shop’s production which ultimately would disrupt [the] ship’s schedule.” ROI at 136. However, aside from this generalized statement, neither the Foreman nor the Agency provided any documentation to support how approving the request would limit the shop’s production and/or disrupt schedules or otherwise create hardships or impinge on the rights of others. Given the lack of evidence to corroborate the Agency’s claim of undue hardship, we are not persuaded that Complainant’s request for a permanent shift change would impose *substantial* increased costs on the Agency.

Furthermore, we are not persuaded that excusing Complainant from working on the Sabbath on June 19, 2021, would have constituted an undue hardship for the Agency. While the Foreman stated that due to the expected work, no exceptions were made for Complainant, we find that the record clearly shows that management did in fact make exceptions for employees who were in leave status, sick, on limited/light duty, or out due to COVID-19 restrictions. ROI at 132. Neither the Foreman nor the Painter Supervisor explained why an exception for an individual requesting a religious accommodation would have posed an undue hardship when other exceptions were clearly being made. Additionally, Complainant noted that three junior employees were out on annual leave and per the CBA, could have been called to work if the situation warranted. ROI at 104; 215. The Agency, however, made no attempt to address this allegation. Lastly, while we recognize that the Foreman asserted that Complainant could have called in sick to observe the Sabbath, we do not find this suggestion to be an adequate response to Complainant’s request for religious accommodation, as nothing in the record suggests that employees can use sick leave for religious observances.²

Considering this, and after a thorough review of the record, we find that the Agency failed to meet its burden to demonstrate that it made a good faith effort to reasonably accommodate Complainant’s religious beliefs, or that to do so would have imposed an undue hardship upon the Agency’s operations.³

² According to the Agency’s sick leave policy, employees may request sick leave for “sickness, injury, or pregnancy and confinement, or for medical, dental, or optical examination or treatment” or to care for an immediate family member whose movements have been restricted by local health authorities due to contagious illness. ROI at 219.

³ As we have found that Complainant established a violation of Title VII with respect to his denial of religious accommodation claims, we need not address

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 determination regarding the provision of a religious accommodation. The Agency is ordered to take further action in accordance with the Order below.

ORDER

1. Within **thirty (30) calendar days** from the date this decision is issued, the Agency shall provide Complainant a reasonable accommodation for his religious beliefs in the form of permanent reassignment to the first shift, unless the parties mutually agree otherwise. The Agency shall also continue to offer Complainant leave/religious compensatory time in accordance with the Agency's policies.
2. Within **sixty (60) calendar days** of the date this decision is issued, the Agency shall restore or compensate Complainant for any leave that Complainant has been forced to use to avoid working on the Sabbath.
3. Within **ninety (90) calendar 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 eeoc.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 **thirty (30) calendar days** after the completion of the investigation.
4. Within **ninety (90) calendar days** from the date that this decision is issued, the Agency shall provide two hours of EEO training to the management officials, including the Painter Supervisor or the Foreman⁴, at the Kings Bay, Georgia facility, of in-person or interactive training on

whether these matters also constituted reprisal because this would not alter the remedial relief available.

⁴ The Painter Supervisor is identified in the ROI at 114. The Foreman is identified in the ROI at 127.

Title VII and an Agency's obligation to provide accommodations to its employees for religious observances. If the Painter Supervisor or the Foreman has left the Agency's employ, the Agency shall furnish documentation of his/her/their departure date.

For assistance in obtaining the necessary training, the Agency may contact the Commission's Outreach, Training and Engagement Division via email, at FederalTrainingandOutreach@eeoc.gov. The Agency shall provide the Compliance Officer with proof of attendance, as well as the contents and materials it used for the training.

5. Within **sixty (60) calendar days** of the date this decision is issued, the Agency shall consider taking disciplinary action against the responsible management officials identified as the Painter Supervisor and the Foreman. 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 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).

POSTING ORDER (G0617)

The Agency is ordered to post at its Trident Refit Facility in Kings Bay, Georgia 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 C.F.R. § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0124.1)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that 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 for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.** A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within 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).

Complainant should submit their request for reconsideration, and any statement or brief in support of their request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>. Alternatively, Complainant can submit their request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files their request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the 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(f).


COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0124)

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 their 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:


Carlton M. Hadden, Director
Office of Federal Operations

December 10, 2024
Date