



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

[REDACTED]  
Rosita R,<sup>1</sup>  
Complainant,

v.

Gary Ashworth,  
Acting Secretary,  
Department of the Air Force,  
Agency.

Appeal No. 2022001313

Hearing Nos. 430-2019-00477X and 430-2019-00226X

Agency Nos. 9B1C18900645 and 9B1C1800411

DECISION

On January 11, 2022, Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's November 4, 2021 final order 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. and 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 AFFIRMS the Agency's final order.

At the time of events giving rise to this complaint, Complainant worked as a Social-Worker at Joint Base Langley-Eustis, Virginia.

Complainant, a probationary employee, filed two EEO complaints which were consolidated by the EEOC Administrative Judge (AJ). These complaints, containing numerous allegations, are detailed below.

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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.

A. Complainant alleged that she was discriminated against and subjected to non-sexual harassment on the bases of race (African-American), disability (physical) and reprisal (prior EEO Activity, filed complaint on April 10, 2018) when:

1. On May 1, 2018, Major (Major1) *purportedly* informed Complainant that her e-mails were "aggressive, unprofessional" and that Complainant was a "bully" and Complainant "forced HR's hand by sending e-mails to HR" referring to her reasonable accommodation request to receive a Varidesk;<sup>2</sup>

2. On May 2, 2018, Major (Major1) *purportedly* told Complainant that her Varidesk and mat were ordered and she would have to wait until after her reasonable accommodation request was processed through HR, although another employee would receive her Varidesk and mat without going through the same process Complainant used.

B. Complainant alleged that she was discriminated against and subjected to non-sexual harassment on the bases of race (African American), disability (physical) and reprisal (prior EEO Activity, filed complaint on April 10, 2018) when:

1. On numerous occasions since July 2017, the Senior Master Sergeant *purportedly* made comments on the appearance of African-Americans' hair, alluded to Complainant's hair not being done one day so she must have had a "bad day", or that her hair looks nice when she changes it;

2. In the month of August 2017, the Senior Master Sergeant *purportedly* told her there was no money for another order and asked for medical information to provide her a desk when no other personnel needed to provide medical documents initially to receive one and gave Complainant's promised desk to another person;

3. On April 9, 2018, the Senior Master Sergeant *purportedly* put a note on a resigned employee's door that said "all this will be the new Psych Nurse Practitioner Office.

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<sup>2</sup> Varidesk is equipment that can be adjusted to allow an individual to either stand or sit at their work station.

Do not remove any office items (desk, file cabinets, computer, stand) etc.” while the outgoing employee was still working in that office which negated her ability to get an available Varidesk;

C. Complainant alleged that she was discriminated against and subjected to non-sexual harassment on the basis of disability (physical) when on April 10, 2018, the Reasonable Accommodations Specialist *purportedly* asked for more medical documentation for the diagnosis than the reasonable accommodation form provided (which was included the medical information provided by the doctor) for Complainant’s request for a Varidesk that fourteen out of approximately thirty Family Advocacy/Mental Health employees already have without a requirement to provide medical documentation before receiving;

D. Complainant alleged that she was discriminated against on the bases of reprisal (prior EEO activity filed on April 10, 2018), race (African American), and disability (physical) by Major1 , another Major (Major2), the Family Advocacy Officer, the Senior Master Sergeant and other personnel, the Branch Chief of Labor Relations, 633 FSS/FSCA when they failed to provide Complainant her Varidesk pursuant to her Reasonable Accommodation request submitted April 5, 2018;

E. Complainant alleged that she was subjected to disparate treatment on the basis of disability (physical) by Major1, Major2, the Senior Master Sergeant, the Reasonable Accommodations Specialist and the Branch Chief of Labor Relations when her co-workers were routinely given Varidesks since July 2017, whether they were disabled or not, but because she requested her Varidesk as an accommodation to a disability, they were treating her differently than non-disabled co-workers because of her disability;

F. Complainant alleged that she was discriminated against on the basis of reprisal (ADA activity of April 5, 2018 and EEO activity of April 10, 2018) in reference to reasonable accommodation request(s) and subjected to a hostile work environment when on April 10, 2018, Major1 *purportedly* falsely informed Complainant that an individual filed an Inspector General complaint against Complainant and informed Complainant “I will have to tell Major2, as these are very serious allegations and could have serious consequences”;

G. Complainant alleged that she was discriminated against on the basis of reprisal (ADA activity of April 5, 2018 and EEO activity of April 10, 2018) in reference to reasonable accommodation request(s) and subjected to a hostile work environment when multiple times from April 10, 2018 to April

23, 2018, the Reasonable Accommodations Specialist *purportedly* delayed the processing of her reasonable accommodation request by asking Complainant to provide additional specific medical documentation although Complainant believed she already provided the information in the original reasonable accommodation request;

H. Complainant alleged that she was discriminated against on the basis of reprisal (ADA activity of April 5, 2018 and EEO activity of April 10, 2018) in reference to reasonable accommodation request(s) and subjected to a hostile work environment when on April 10, 2018, the Reasonable Accommodations Specialist and the Branch Chief of Labor Relations *purportedly* refused to provide Complainant with an ergonomic assessment by Occupational Health to assist her in her reasonable accommodation request;

I. Complainant alleged that she was discriminated against on the basis of reprisal (EEO activity on April 11, 2018) and subjected to a hostile work environment when on June 8, 2018, Major1 and Major2 *purportedly*:

1. informed Complainant she has additional derogatory items in her personnel file which she was not aware of until the June 8, 2018 meeting;
2. scrutinized Complainant's time and attendance more closely than others without justification;
3. asked Complainant "why do you feel the need to e-mail [the Colonel]", producing a chilling effect on Complainant's options to address perceived wrongdoing;
4. falsely accused Complainant of violating professional conduct policy and made false disparaging comments about Complainant to civilian personnel and leadership's superiors;

J. Complainant alleged that she was discriminated against on the bases of race (Black) and reprisal (EEO activity on April 11, 2018) when on June 15, 2018, Major1 cited verbal counseling informing Complainant she violated the professional conduct AFI due to Complainant's "sheer presence" and her facial features. Major1 further informed Complainant she is to say "yes, Ma'am or no Ma'am"; and

K. Complainant was discriminated against on the basis of reprisal (EEO activity on April 11, 2018) and subjected to a hostile work environment when on June 6, 2018, Major2 purportedly accused her of violating a Health Insurance Portability and Accountability Act (HIPAA) regulation by copying an unauthorized person on an e-mail in reference to a patient she was assisting during a meeting with other personnel.

L. Complainant was discriminated against on the bases of race (African-American), color (Black), disability (Physical), and reprisal (EEO activity 11 April 2018), at the 633d Air Base Wing, Joint Base Langley-Eustis Air Force Base, Virginia when:

1. On or about September 10, 2018 Complainant was informed by an HR specialist at a prospective federal government employer that Major1 and HR department civilian personnel staff of Langley AFB have repeatedly refused to return the prospective federal employer's phone calls to verify credentials and aggrieved Complainant's past employment, which has hindered the aggrieved Complainant in securing gainful employment with another agency in which she had received a tentative offer of employment;

2. On or about July 24, 2018 Major1 *purportedly* provided a false statement and disparaged Complainant to Unemployment Deputy. Complainant was informed by a Deputy Officer that Major1 stated that a reason for termination of Complainant was that Complainant no called and no showed for work on or about June 18, 2018. Complainant was ultimately denied unemployment benefits due to this *purported* fabricated statement by Major1 and Langley's HR department civilian personnel staff;

3. On 3 July 2018, the Colonel, 633 ABW Commander, sent a letter barring Complainant from Joint Base Langley-Eustis for five years;

4. On 29 June 2018, the Colonel, 633 MDOS Commander, elected to choose termination instead of Complainant's rebuttal justification;

5. On 20 June 2018, the Lieutenant Colonel, 633 MDOS Flight Commander, held a public meeting with Security Forces and Mental Health staff present, *purportedly* making unjustified false and disparaging comments toward Complainant's character;

6. On 19 June 2018, the Lieutenant Colonel, 633 MDOS Flight Commander, served Complainant a termination letter effective immediately, without giving Complainant time to prepare a rebuttal response;
7. On 19 June 2018, Members of the Security Forces, *purportedly* degraded and shamed Complainant when she was unnecessarily escorted within the Mental Health office and then off of the installation;
8. On 12 June 2018, Major1, 633 MOOS Family Advocacy Officer, and Lieutenant Colonel, 633 MDOS Flight Commander, gave a Satisfactory appraisal award to Complainant, resulting in a lower award (16 hours' time off, no cash), when others received more; and
9. On 7 June 2018, the Lieutenant Colonel, 633 MOOS Flight Commander, did not nominate Complainant for a Family Advocacy Program award.

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 AJ. Complainant requested a hearing. The Agency filed a Motion for Summary Judgment. Both Complainant and the Agency submitted replies. The assigned AJ determined that this matter did not warrant a hearing and over Complainant's objections issued a decision without a hearing on November 4, 2021.

#### *Denial of Reasonable Accommodation*

The AJ observed that Complainant's myriad, but largely redundant individual claims reflect Complainant's overarching objection, that she was required to go through the prescribed, reasonable accommodation process after having requested a Varidesk through the reasonable accommodation process. The AJ noted that while perceptions of this issue differ, the factual background is not in dispute. The undisputed facts are that Varidesks were initially distributed before Complainant was hired by the Agency based on seniority. A waitlist was created for additional desks. Complainant joined the waitlist along with another employee. Neither individual originally pursued a Varidesk as a Reasonable Accommodation. After months of waiting, Complainant began pursuit of a Varidesk through the reasonable accommodation process.

On April 5, 2018, Complainant submitted a request for a Varidesk as a reasonable accommodation to Major1, and Major1 provided her signature on Part A of the form on Monday, April 9, 2018. The form was forwarded to the HR personnel responsible for completing the form shortly thereafter. On or about April 10, 2018, Complainant was notified that the signature from her physical therapist was insufficient to complete her request. After much protest from Complainant, the completed reasonable accommodation request was signed by Complainant's physician on April 25, 2018 and submitted to the HR office by Complainant. On May 4, 2018, Complainant was notified that her reasonable accommodation request was approved for a Varidesk and anti-fatigue mat as suggested by her physician and that equipment was being ordered. Shortly before Complainant received her desk. A co-worker was given a Varidesk due to her position on the seniority waitlist. Complainant received her Varidesk and anti-fatigue mat on May 7, 2018, slightly less than one month after the request was first submitted, and just 12 days after Complainant received the proper documentation from her physician.

While an unnecessary delay in providing reasonable accommodation can result in a violation of the Rehabilitation Act, the AJ explained that there is no evidence here that the Agency "dragged its feet" in reviewing the medical documentation to determine its obligation or otherwise unduly delayed giving Complainant a Varidesk after receiving her completed documentation. Moreover, while Complainant alleges that she should have been able to obtain a Varidesk outside of the reasonable accommodation process, this assertion evidences a misunderstanding of the process. The reasonable accommodation process does not entitle Complainant to the accommodation of her choice. Neither is submitting a reasonable accommodation request a way to jump the line or obtain workplace changes not able to be obtained by other means. Once Complainant initiated the reasonable accommodation process, the Agency was clearly required to assess the request, engage in the interactive process, and provide her with an accommodation. The undisputed evidence reflects that it met its obligation to do so, without any undue delay. Complainant has failed to prove she was denied or unreasonably delayed in receiving a reasonable accommodation.

### *Disparate Treatment*

The AJ concluded that even assuming, *arguendo*, that Complainant could meet her burden of establishing a prima facie case on any basis, the Agency has met its burden of articulating legitimate, non-discriminatory reasons for its actions.

For example, with respect to the Varidesk process, the evidence reflects, and the Agency asserts, that the other individuals who received a Varidesk on the basis of seniority and because they were a “nice to have” and not as part of the reasonable accommodation process. Complainant was on the list to obtain a Varidesk via the seniority system, but once she requested a reasonable accommodation, the Agency was required to proceed with the interactive process to determine what accommodations were appropriate. The information requested in support of the request served the legitimate, non-discriminatory purpose of confirming that what Complainant was requesting (a Varidesk) was responsive to the condition she had. The request for additional medical documentation was supported by AFI 36-205 Chapter 8.3.4.1.1, which directs that the accommodation form be completed by Complainant’s personal physician, not a physical therapist. With respect to the ergonomic assessment, the Varidesk accommodation was approved on May 4, 2018 without the need for an ergonomic assessment. The Senior Master Sergeant placed a notice on the empty office to prevent it being raided prior to arrival of a new psychologist. The Agency further asserted that it directed Complainant to recall the e-mail which violated HIPAA in an effort to remedy the improper disclosure of patient information. Complainant had been previously trained on HIPAA and was aware of its requirements. Complainant was barred from JBLE because she accessed the base improperly after turning in her credentials following her termination and attended a meeting with the unit that she was no longer a part of. The AJ found that the Agency has met its burden of demonstrating legitimate, non-discriminatory reasons for its actions.

### *Hostile Work Environment*

The AJ determined that a finding of a hostile work environment in this case is also precluded because the record is void of any evidence with which Complainant could establish that the actions taken by the Agency were motivated by discriminatory animus. Moreover, even if Complainant could meet her burden, the AJ found that Complainant's allegations, even if accurately described, were not severe or pervasive enough to establish a hostile work environment. Complainant largely takes umbrage with her manager’s supervisory actions, such as directing her to just say “Yes, Ma’am,” presumably instead of arguing, making annotations in her work file, and cautioning her about the manner in which she carried herself within the office or interacted with supporting agencies and her co-workers. Such incidents in the nature of personality disputes and general workplace tribulations do not constitute a hostile work environment.

Neither are routine work assignments, instructions, and admonishments sufficiently severe or pervasive to rise to the level of harassment. In addition, the Senior Master Sergeant's comments about Complainant's hair also fall well short of demonstrating a hostile work environment based on a protected class. Simple comments that someone's hair looks nice is insufficient to establish racial animus absent any evidence of discriminatory intent. The AJ concluded that Complainant's reprisal claims fail because she could not demonstrate that any action taken by the Agency was motivated by reprisal for her protected activity. Notwithstanding the detailed listing of allegedly discriminatory incidents in the complaints, Complainant has adduced no evidence that would support that discriminatory animus was at the heart of her employer's conduct. For example, Complainant admits she has no proof that anyone directed the HR office in its interactions with a future employer. Similarly, while she takes umbrage with being counseled for violating HIPAA and for contacting the Inspector General about a potential patient complaint against her, she does not deny that she was directed to recall the e-mail and did not do so or that she was directed not to attempt to interfere with the Inspector General process but did so anyway. Moreover, while she accuses the Agency of scrutinizing her attendance, she admits that the negative interpersonal interactions she had with her co-workers stemmed from their scrutiny of her attendance. Finally, with respect to Complainant's probationary termination, the Commission has long held that probationary employees are subject to termination at the discretion of an agency so long as the decision is not based on discriminatory considerations. Here, the record contains sufficient documentation of Complainant's conduct issues which were cited in her termination letter and warranted her probationary termination. While Complainant notes that her performance rating preceding the termination (March 2018) was a "3," and claims that is pre-text, Complainant was not terminated for poor work performance. She was terminated for conduct.

The Agency acknowledged that it failed to issue a final order fully implementing the AJ's decision within a 40-day period, but subsequently ratified the AJ's decision on December 14, 2021. The instant appeal followed.

In her January 11, 2022 appeal statement, Complainant mainly asserts that a hearing is warranted in this matter and the AJ failed to consider all of her proffered evidence.

The Commission's regulations allow an AJ to grant summary judgment when he or she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). An issue of fact is "genuine" if the evidence is such that a reasonable fact finder could find in favor of the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A fact is "material" if it has the potential to affect the outcome of the case. In rendering this appellate decision we must scrutinize the AJ's legal and factual conclusions, and the Agency's final order adopting them, *de novo*. See 29 C.F.R. § 1614.405(a)(stating that a "decision on an appeal from an Agency's final action shall be based on a de novo review..."); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110), at Chap. 9, § VI.B. (as revised, August 5, 2015)(providing that an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed *de novo*).

We find the record in the present case was fully developed. While Complainant asserts on appeal that she provided evidence that would materially change the outcome in this matter, we disagree. Having reviewed the entire record before us, we do not find an abuse of discretion by the AJ in both her consideration and analysis of pertinent evidence.

In order to successfully oppose a decision by summary judgment, a complainant must identify, with specificity, facts in dispute either within the record or by producing further supporting evidence and must further establish that such facts are material under applicable law. Such a dispute would indicate that a hearing is necessary to produce evidence to support a finding that the agency was motivated by discriminatory animus. Here, however, Complainant has failed to establish such a dispute. Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable fact-finder could not find in Complainant's favor.

Upon careful review of the AJ's decision and the evidence of record, as well as the parties' arguments on appeal, we conclude that the AJ correctly determined that the preponderance of the evidence did not establish that Complainant was discriminated against by the Agency as alleged.

As the AJ correctly noted, most of Complainant's numerous allegations stem from Complainant's dissatisfaction with having to interact with Agency personnel concerning her reasonable accommodation request for a Varidesk. As detailed above, the Agency's response was timely, and Complainant was accommodated.

Concerning the remaining claims, the Agency provided legitimate, nondiscriminatory reasons (above) for its actions. Furthermore, because the Agency explained its various actions, Complainant cannot show that she was subjected to a hostile work environment.

We find Complainant failed to show that the alleged actions were based on discriminatory animus. Moreover, Complainant failed to show that the Agency denied her reasonable accommodation.

Accordingly, we AFFIRM the Agency's final order fully implementing the AJ's decision finding no discrimination.

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 (S0124)

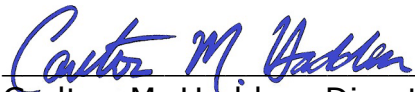
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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. 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

March 4, 2025  
Date