



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

[REDACTED]
Twanna C.,¹
Complainant,

v.

Douglas J. Burgum,
Secretary,
Department of the Interior,
Agency.

Appeal No. 2022002970

Hearing No. 570-2020-01212X

Agency No. DOI-BOEM-19-0660

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 March 31, 2022, 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 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 Program Support Specialist, GS-0301-09, at the Agency's Strategic Resources Office in Sterling, Virginia.

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.

On September 12, 2019, Complainant filed a formal complaint alleging discrimination and harassment based on race (African American), sex (female), national origin (Russian), age (52), disability (rheumatoid arthritis), and reprisal when:

1. Starting on or about April 24, 2019, to present, Complainant's Supervisor disparaged Complainant after she requested a reasonable accommodation and called her names verbally or in writing such as: intellectually impaired, argumentative, tactless, obstinate, manipulative, lack of candor, and too slow;
2. On or about May 15, 2019, after Complainant requested a reasonable accommodation from Supervisor, Supervisor reassigned Complainant from her office of three years to a much smaller office that was previously used as a storage room to store records and office supplies;
3. On or about May 21, 2019, Supervisor, without Complainant's knowledge or knowledge of Complainant's condition for which she was requesting an accommodation, included in the partial reasonable accommodation memorandum that Complainant needed an accommodation for an "intellectual impairment," even though Complainant's request was for a specific physical disability;
4. On or about June 7, 2019, Complainant was at an approved out of office training when Supervisor, who approved the training, called Complainant's home looking for her and then sent an email reprimanding Complainant because she could not locate her;
5. On or about June 26, 2019, Supervisor requested Complainant provide a doctor's note for the one day she was out sick even though Agency practice only requires a letter if one is absent for three or more days;
6. Supervisor delayed the reasonable accommodation process by requesting additional information from Complainant's doctor even though she had already provided sufficient responses in his letter. As a result, the final accommodation memorandum was delayed and Complainant's medical telework was not granted until June 27, 2019.
7. On or about August 1, 2019, Supervisor, during a weekly staff meeting, disclosed to the entire staff of the potential disciplinary action against an employee with initials matching Complainant's initials by showing on a large screen her email box with an email subject line visibly stating: Draft Reprimand for [initials];
8. On August 8, 2019, Complainant received an official reprimand letter from Supervisor for: (1) failure to follow instructions; (2) lack of candor; (3) delay in carrying out instruction; (4) failure to perform assigned duties; and (5) discourteous conduct.

9. As a result of the letter, Complainant was no longer approved for a core telework schedule.

Regarding claim 2, Supervisor stated that she moved Complainant to a new cubicle to promote team cohesion by having Complainant closer to teammates. Regarding Complainant's reasonable accommodation request, which is referenced in claims 1, 3, and 6, the record shows that Complainant made the request on April 24, 2019. Supervisor provided Complainant with an article titled: "What No One Sees." Supervisor reported a belief that Complainant's reasonable accommodation request was based on physical and mental impairments referenced in that article and that this belief was why a reference to an intellectual impairment was included in her initial response to Complainant's request. The record shows that the initial supporting medical documentation did not specify Complainant's disability but referred only to her "medical condition." On or about May 21, 2019, Supervisor offered Complainant the accommodation of an ergonomic chair and mouse as well as lifting restrictions while requesting further medical information to support Complainant's additional request for telework. On or about June 24, 2019, following the submission of additional medical documentation, Complainant was issued a second decision regarding her reasonable accommodation which permitted telework up to once every four months after a medical flare up, consistent with Complainant's physician's second note.

Regarding claim 4, Supervisor stated that she had forgotten about Complainant's approved attendance for an out of office training. The record shows that Supervisor emailed Complainant to advise Complainant to disregard her inquiries. Supervisor explained that she had turned off all staff calendars, which caused her to forget Complainant was attending training.

Regarding claim 5, Supervisor reported that she believed Complainant had offered to provide a doctor's note during a conversation regarding Complainant's sick leave request and that Supervisor then accepted Complainant's offer.

Regarding claim 7, Supervisor stated that the team meeting was conducted via a program that was linked to Supervisor's email application and that she was unaware of the unread email with those initials in the subject line.

Regarding claim 8, the record shows that Supervisor outlined examples of Complainant's misconduct in support of each charge contained in the

reprimand letter. For instance, Supervisor detailed that Complainant was discourteous during a phone call where they discussed a project which Complainant had been previously assigned. Complainant has not argued that the reprimand somehow denied her a reasonable accommodation.

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). Complainant requested a hearing. Over Complainant's objections, the AJ assigned to the case granted the Agency's November 30, 2021, motion for a decision without a hearing and issued a decision without a hearing finding no discrimination on March 18, 2022.

The Agency subsequently issued a final order fully implementing the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged. The instant appeal followed.

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. (Aug. 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*).

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.

Agency officials articulated legitimate, nondiscriminatory reasons for the adverse actions at issue in the complaint. For instance, the reprimand letter included specific examples of conduct that violated Agency policy. Supervisor also explained that Complainant's office relocation was due to a desire for increased team cohesion. Complainant failed to present evidence to show that the Agency's articulated reasons were a mere pretext for discrimination or retaliation.

Regarding the claims of harassment, we find that Complainant failed to present evidence to establish that the conduct complained of was based on Complainant's membership in a protected class or in reprisal for her prior EEO activity. We also find the record shows that Complainant was provided a reasonable accommodation. Initially, she was offered lifting restrictions as well as ergonomic chair and mouse. Following further clarification from her physician, Complainant was also offered telework up to once every four months after a medical flare up of her symptoms.

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.

Accordingly, we AFFIRM the Agency's final order implementing the AJ's decision.

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

February 26, 2025

Date