



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

[REDACTED]
Archie G.,¹
Complainant,

v.

Janet L. Yellen,
Secretary,
Department of the Treasury
(Internal Revenue Service),
Agency.

Appeal No. 2022003337

Agency No. IRS-21-0659-F

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 16, 2022, final decision concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, we AFFIRM the Agency's final decision.

ISSUE PRESENTED

Whether the Agency correctly determined that Complainant was not subjected to discrimination based on disability (learning disability/dyslexia).

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 Tax Examining Technician, GS-0592-07, at the Agency's Wage and Investment Service Center, Fresno Accounts Management facility in Fresno, California.

On October 4, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the basis of disability (learning disability/dyslexia) when his requested reasonable accommodation was denied and, as of August 26, 2021, he has not received the alternative reasonable accommodation agreed upon during the interactive process for his accommodation needs.

The investigation into the complaint revealed that Complainant has been diagnosed with learning disabilities and severe dyslexia. Complainant claimed that his medical conditions, which were first diagnosed in 2005,² adversely affected his cognitive processes, including his ability to read, spell, write, perform math, speak/communicate, organize, remember, and properly manage his time efficiently to meet deadlines and maintain productivity. Report of Investigation (ROI) at 113, 146-47, and 294.

He joined the Agency in 2016, and from 2017 to 2019, he worked as a Customer Service Representative. ROI at 144. According to Complainant, he was able to perform the essential functions of the CSR position due to the reasonable accommodations that the Agency provided him, which, in relevant part, consisted of three hours per week of one-on-one coaching, extra time to complete tasks, and job aids with written and visual examples. ROI at 69 and 117.

In 2019, Complainant transitioned to his current role as a Tax Examining Technician. As a Tax Examining Technician, Complainant was responsible for performing a range of duties involving adjustments in many kinds of tax accounts or identifying and explaining tax account actions to taxpayers concerning a wide variety of issues or questions. His duties included both nonportable and portable work. Nonportable work consisted of screening calls from taxpayers, sorting correspondence, and putting them in the correct bins.

² Complainant provided a 2005 Psychological Testing Report from the California Department of Vocational Rehabilitation, indicating that he has a reading disorder, and possible dyslexia, based on perceived problems with processing written text and abstract reasoning. ROI at 146.

Portable work was significantly more technical in nature and consisted of processing Correspondence Imaging System (CIS) cases in accordance with the policies, procedures, and guidelines set forth in the Agency's Internal Revenue Manual (IRM). ROI at 66-67.

Within months of becoming a Tax Examining Technician, Complainant was sent home due to the COVID-19 pandemic. He remained on Weather and Safety Leave for nearly a year. When he returned to the office on February 1, 2021, he asked management to provide him with refresher training and reasonable accommodation. ROI at 258.

Management subsequently met with Complainant and his union representative on March 10, 2021, to discuss Complainant's needs. During the meeting, Complainant asked management, in relevant part, to provide him a certified On-the-Job Instruction (OJI) coach, and job aids in the form of clear step by step instructions on how to perform his duties. He also asked the Agency to rewrite and/or modify the IRM to individually suit his needs and in a way that he could understand. ROI at 72. In response to Complainant's request, management agreed to provide Complainant with the following accommodations: 1) four weeks of refresher training with an On-the-Job Instruction (OJI) coach to help Complainant with his call screener work; 2) provide 100% review by OJI coach, on all work completed; 3) allow Complainant to meet with management on a weekly basis to discuss refresher training progress; 4) direct OJI coach to assist Complainant to develop proper research paths to find correct information; and 5) direct the OJI coach to work with Complainant to let Complainant make his own job aids for the work he needs to perform. Id. at 141-142.

On March 24, 2021, the Operations Manager formally issued Complainant a decision on his request for reasonable accommodation, notifying Complainant that management would provide him with all the accommodations promised to him during the March 10, 2021, meeting. However, the Operations Manager clarified to Complainant that the promised OJI coaching could only be provided via telephone, email, and Skype, due to social distancing rules. The Operations Manager also advised Complainant to take notes during training so that he could refer to them at the conclusion of the OJI training period. ROI at 423-425.

In accordance with the reasonable accommodation agreement, the Supervisory Technician assigned the Lead Tax Examining Technician (Lead) as Complainant's screener OJI coach. The training period began on March 30, 2021.

However, Complainant did not perform well during the OJI training period. Notes from the Lead revealed that Complainant could only work on simple cases that were in sequential order and did not require research. The Lead noted that after she assigned a case to Complainant that needed research, Complainant became frustrated. Ultimately, the OJI training ended on April 2, 2021, as Complainant refused to continue with OJI training with the Lead. ROI at 422.

On April 2, 2021, Complainant requested an urgent meeting with the Supervisory Technician. ROI at 421. During the meeting, Complainant informed the Supervisory Technician that he was frustrated with the OJI and emphasized that the provided coaching was not working for him. Id. Complainant asked the Supervisory Technician to provide him with a step-by-step guide on how to perform his duties. Id. Complainant also complained about the Agency's failure to provide him with a certified OJI coach. Id. The Supervisory Technician, however, responded that one could not be provided, as it was peak tax season. The Supervisory Technician emphasized to Complainant that OJI coaching was part of the Lead's duties and that was the best option she could provide at the time. Id.

On April 7, 2021, Complainant notified the Senior Reasonable Accommodation Coordinator that he did not believe that management was aware of his medical limitations, they did not fully understand his associated deficits and disorders, and that management had not collaborated with him to create a suitable action plan. ROI at 137-38. In response, the Senior Reasonable Accommodation Coordinator reassured Complainant that management was indeed aware of his disabilities and promised to schedule a follow up meeting with both Complainant and the union to continue the interactive process. Id.

The promised meeting occurred on April 13, 2021. During the meeting, the Agency notified Complainant that it would provide him with the following accommodations: 1) permit Complainant to perform clerical work and allow him to review the IRM until a certified OJI coach became available; 2) provide Complainant with tailored training that would enable him to perform clerical work; 3) provide a certified OJI coach to him and direct the coach to provide Complainant with screener training from the start to ensure that Complainant would know how to route calls; and 4) assign a Tax Analyst to help Complainant create job aids that would work for him. ROI at 135-136.

In accordance with the agreement, the Agency assigned clerical work to Complainant. However, on April 16, 2021, Complainant refused to perform clerical work because he did not like the work.

Instead, he elected to either read the IRM or take leave until the start of training. ROI at 277-278. On April 30, 2021, the Agency scheduled Complainant for training, starting on or around May 11, 2021. ROI at 72.

Following the five-week training period, Complainant received two weeks of OJI coaching with a certified OJI coach beginning June 28, 2021. ROI at 72. On June 28, 2021, Complainant sent Supervisory Technician an email, requesting job aids for his position that were specifically tailored to his learning disabilities. ROI at 23, 274. Complainant explained that he was unable to take notes or hear his coach explain job procedures to him. ROI at 24. He specified that he preferred to have job aids handy so that he could review them. Id. at 23.

On July 1, 2021, Complainant emailed Supervisory Technician, notifying her that management told the OJI coach that Complainant would not be doing live work. ROI at 25. Rather, Complainant would only be coached on screening. Id. This concerned Complainant, as he thought he would forget his prior training. Id. Complainant also asserted that management expected him to take notes, which he was unable to do due to his learning disability. Id.

On July 17, 2021, Complainant requested information on whether he could telework. ROI at 95. The following month, Complainant requested the opportunity to work a swing shift and restructure his position to remove counting and sorting from his duties. Id. at 17-18.

Complainant also met with his coach on August 5, 2021, to determine whether further job aids could be created for him. However, they were unable to find additional job aids for Complainant. During the meeting, Complainant explained to his coach that his reading comprehension skills were at the sixth-grade level and due to his learning disabilities, he could not understand the notes that he made for himself. Through his coach, Complainant informed management that he wanted to renew his request for sections of the IRM that pertained to his work to be rewritten specifically for him. Complainant specified that he wanted the Agency to provide him with a rewritten IRM that contained step by step instructions with a single sentence per line. ROI at 305.

On August 23, 2021, the Agency issued Complainant a response to his reasonable accommodation request. Therein, the Agency stated that it did not view his request as a disability accommodation request but responded as follows:

1. Rewrite/Modify IRM 1.20.2.2.1.6(8)

- The IRM will not and cannot be rewritten or modified. Other alternatives were provided with additional online tools, job aids, and coaching to help Complainant in performing the essential functions of the position as a Tax Examining Technician.

2. Swing Shift

- Management is unable to accommodate this request because there is no Screener Team on swing shift to continue your development and training as a Tax Examining Technician.

3. Telework

- This request will be revisited once you have successfully completed the next phases of training. At that time, management will evaluate your eligibility to telework.

4. Reclassification of Position

- Standards or reclassification of your position will not be changed. The Agency is unable to classify any standards or position descriptions for an employee based on their specific limitations. You are expected to perform the full essential functions of your current position (Tax Examining Technician GS-592-07), with or without accommodations.

ROI at 419-420

Management informed Complainant that they would continue to provide coaching, training, and resources to assist Complainant with performing the essential functions of the position. ROI at 419-420. Complainant signed this memorandum under protest on August 26, 2021. Id. While Complainant eventually demonstrated the ability to perform non-portable work, he ultimately could not perform portable work due to the technical nature of the work. Id. at 76-77, 257.

In late September 2021, Complainant notified the Agency that he was seeking reassignment as a reasonable accommodation. He requested reassignment to the position of Equal Opportunity Assistant, a position that he believed was suited for individuals with learning disabilities.

After the Agency asked Complainant to provide a resume and more information about his background to facilitate the reassignment process, Complainant withdrew his request for reassignment. ROI at 292-296.

Post-Investigation

At the conclusion of the investigation into the complaint, 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). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). While the Agency found, in relevant part, that Complainant established a prima facie case of discrimination regarding his denial of reasonable accommodation claim,³ the Agency ultimately concluded that management provided Complainant with effective alternate accommodations, namely providing double the amount of training and coaching as other employees receive, granting Complainant extra time to complete certain tasks, as well as providing custom-made visual aids and other tools to assist him in performing the essential functions of the position.

In reaching this conclusion, the Agency acknowledged that management did not grant Complainant's requested accommodation of modifying the IRM to suit his needs and allowing him to exclude counting and sorting as job functions. However, the Agency emphasized that it was under no legal obligation to do so because 1) rewriting the IRM would constitute an undue hardship for the Agency, as it would require the Agency to have multiple variations of the IRM, and given that each taxpayer scenario is unique, the Agency could not possibly provide Complainant with step by step directions for every scenario; and 2) contrary to Complainant's assertion, Complainant's counting and sorting duties were not marginal duties, but rather essential functions that management was not obligated to remove.

³ Specifically, the Agency found that Complainant established a prima facie case of denial of RA based on showing he is an individual with a disability due to his learning disability/dyslexia. According to the Agency, Complainant appeared qualified for the position and management did not attempt to show that Complainant was not qualified. Complainant was denied his RA requests for a shorter version of the IRM that is tailored for his learning limitations, and/or provision of additional job aids that walk him through the processes that he needs to perform and the relevant IRM guidance. The Agency also refused to remove certain duties such as counting and sorting.

The Agency ultimately concluded that management went well beyond their legal obligations to accommodate Complainant.

The instant appeal followed.

CONTENTIONS ON APPEAL

Complainant contends that the Agency failed to interview a material witness, namely a union representative, who had relevant knowledge because she represented him throughout the entire reasonable accommodation process. He further argues that counting and sorting are marginal functions of his job and not essential functions like the Agency opined. He argues that management and coworkers still complain about his counting and sorting, which is the reason for his requested relief from the marginal functions of his job where he still finds difficulty. Complainant asserts that he requested a different job in a different department which did not include screening duties. According to Complainant, the Agency did not follow its own procedures or include him in the meeting with the Job Accommodation Network.⁴

In response, the Agency maintains that it provided Complainant with every training, coaching, and job aid that was possible for Complainant's situation. The Agency argues that management made an extensive, ongoing, and good faith effort to meet Complainant's requests. The Agency contends that to the extent that such accommodations were ineffective, Complainant did not indicate a feasible alternative other than to vaguely request that the Agency fundamentally modify the complex environment in which he must operate.

According to the Agency, Complainant's requests reflect Complainant's desire for the tax rules and Agency policies to be simple and straightforward, which they are not, and the complexity of the job aid materials reflected the complexity of performing the essential functions of Complainant's job. The Agency contends, on appeal, that Complainant was simply not qualified for the position that he held.

Regarding Complainant's allegation that the Agency failed to engage in the interactive process, the Agency contends that this argument is without merit.

⁴ As Complainant did not challenge the Agency's denial of his request for telework and swing shifts as a reasonable accommodation, we need not address these matters on appeal.

Furthermore, the Agency argues that Complainant's assertion that the Agency did not include him in the interactive process is contradictory and baseless.

As for Complainant's concerns regarding the sufficiency of the record, the Agency asserts that Complainant failed to indicate why the witness was material, did not describe what testimony the witness would provide, and did not provide any supporting evidence.

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

Preliminary Matters

Initially, we address Complainant's concerns regarding the Agency's failure to interview the union representative who represented him throughout the entire reasonable accommodation process. While we certainly understand Complainant's concerns, we ultimately do not find the record to be deficient, as Complainant never explained how the Agency's failure to do so adversely affected his case. Furthermore, we note that Complainant could have requested a hearing to resolve any concerns he may have had about the adequacy of the record. By choosing not to request a hearing before an AJ, Complainant waived the opportunity to develop the record through discovery and to cross examine witnesses. See Irene W. v. Dep't of Vet. Affs., EEOC Appeal No. 2021003834 (Mar. 9, 2023), citing Tommy O. v. U.S. Postal Serv., EEOC Appeal No. 0120152090 (June 8, 2017). As we find we find the record to be sufficiently developed, we find that this case is ripe for adjudication on the merits.

Reasonable Accommodation

An agency is required to make reasonable accommodation to the known physical and mental limitations of an individual with a disability unless the agency can show that accommodation would cause an undue hardship. 29 C.F.R. §§ 1630.2(o) and (p). In order to establish that he was denied a reasonable accommodation, Complainant must show that: (1) he is an individual with a disability as defined by 29 C.F.R. § 1630.2(g); (2) he is “qualified” as defined by 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (Enforcement Guidance on Reasonable Accommodation), No. 915.002 (Oct. 17, 2002).

The term “qualified,” with respect to an individual with a disability, means that the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position.” 29 C.F.R. § 1630.2(m). The term “position” is not limited to the position held by the employee but may also include positions that the employee could have held as a result of reassignment. Therefore, in determining whether an employee is “qualified,” an agency must look beyond the position which the employee presently encumbers. Enforcement Guidance on Reasonable Accommodation.

Once an employer becomes aware of the need for an accommodation of an employee’s disability, the employer should engage in an interactive process with the employee to identify and implement appropriate reasonable accommodations. See 29 C.F.R. § 1630.2(o)(3) (2019). An Agency may choose among reasonable accommodations as long as the chosen accommodation is effective, and while the preference of the individual with a disability should be given primary consideration, an Agency has the ultimate discretion to choose between effective accommodations. See Enforcement Guidance on Reasonable Accommodation, supra, at Q. 9.

At the outset, we note that Complainant’s status as an individual with a disability is undisputed. As such, we need only determine whether Complainant was qualified as defined by 29 C.F.R. § 1630.2(m) and whether the Agency failed to provide him with a reasonable accommodation.

While the parties, on appeal, dispute whether Complainant was qualified for the position that he held, we find that even if Complainant made the requisite showing, the probative record shows that the Agency engaged in good faith in the interactive process and provided him with effective accommodations. Indeed, the record demonstrates extensive discussion within the Agency on the best ways to accommodate Complainant's needs and ultimately, the Agency offered accommodations that Complainant accepted or alternative accommodations that effectively addressed Complainant's needs. For example, Agency officials attested that Complainant was provided with extra training time, repeated coaching on how to perform his job duties, various job aids, and additional time to review the training materials. ROI at 249, 251, 265, 276, 278, 284-285, 371, 390-391. The record shows that due to all these efforts, Complainant was able to eventually demonstrate the ability to successfully perform his non-portable duties.

While we recognize that Complainant continued to struggle with his portable work, the record reflects that management did not hold this deficiency against him and attempted to work with him to improve his performance in this area and even allowed him to refuse assignments that were clearly within his job description. Furthermore, management attempted to work with Complainant on his request for reassignment. However, Complainant ultimately withdrew this request. We agree with the Agency that the probative record shows that management appears to have gone well beyond their legal obligations to accommodate Complainant.

To the extent that Complainant was denied the specific accommodations that he wanted, we note that the Commission has long held that while protected individuals are entitled to reasonable accommodation, they are not necessarily entitled to their accommodation of choice. Castaneda v. U.S. Postal Serv., EEOC Appeal No. 01931005 (Feb. 17, 1994). As the record reflects that management took reasonable actions to effectively accommodate Complainant, we find that Complainant failed to persuasively show that he was denied a reasonable accommodation.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's final 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

December 4, 2024
Date