



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

[REDACTED]
Marlon H.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Appeal No. 2022004320

Hearing No. 520-2021-00462X

Agency No. 4B-100-0016-21

DECISION

On August 9, 2022, 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 July 6, 2022, final order 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, the Commission AFFIRMS the Agency's final order.

At the time of events giving rise to this complaint, Complainant worked as a Carrier Technician, Q-02, at the Agency's James A. Farley Post Office in New York, New York.

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 January 7, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of disability and in reprisal for prior protected EEO activity² when:

1. Management failed to provide him with a reasonable accommodation when his request for reassignment made on or about September 8, 2020, through the Agency's eReassign website was denied, and his requests for reasonable accommodation made on December 7, 2020, and January 8, 2021, were denied.
2. On September 18, 2020, his pay was input incorrectly for pay period 19, week 2, year 2020.

Regarding claim 1, the record shows that Complainant has had a modified assignment since January 30, 2017, to accommodate his physical limitations and work restrictions caused by a 2014 on-the-job injury and subsequent partial disability. On August 9, 2020, Complainant applied for a transfer to a City Carrier position in Brooklyn via the eReassign system. The request through eReassign was denied because of Complainant's unsatisfactory attendance record. Furthermore, the record shows that Complainant could not complete the full range of duties of the City Carrier position due to his physical limitations. Complainant's limitations included that he could only work two hours a day; he could not bend, kneel, stoop, twist, push, pull, or reach above the shoulder; he could stand for only half an hour a day; he could walk and climb stairs for up to one hour a day; he could drive for up to two hours per day; and he could lift and carry no more than 10 pounds.

The record shows that on December 7, 2020, and January 8, 2021, Complainant requested the reasonable accommodation of a reassignment to a modified assignment (limited duty) in the Triboro District on January 8, 2021. The Agency's District Reasonable Accommodation Committee (DRAC) held an interactive meeting with Complainant to discuss the request on January 15, 2021. Thereafter, the DRAC denied Complainant's request because it determined that Complainant was not eligible for the reassignment because he would not be able to perform the essential functions of the position with or without an accommodation.

Regarding claim 2, the record shows that Complainant's pay was mistakenly input into the system and that the one-time mistake was corrected the next pay period.

² Complainant identified his prior EEO activity as acting as a material witness in an EEO complaint filed in 2017.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing. When the Complainant did not object, the AJ assigned to the case granted the Agency's May 25, 2022, motion for a decision without a hearing and issued a decision without a hearing finding no discrimination on June 28, 2022.

The AJ found that the Agency articulated a legitimate, nondiscriminatory reason for denying the reassignment requested via eReassign. Specifically, the request was denied because of Complainant's unsatisfactory attendance record.

The AJ found that a limited duty assignment was not a job position but are duties within an individual's present job position that are provided due to a recovery process from an injury compensable under the Federal Employees' Compensation Act. The AJ found that the Agency was not required to create such a limited duty position for Complainant related to his December 7, 2020, and January 8, 2021, reasonable accommodation requests because the Rehabilitation Act does not require an agency to create "make do" work, "make work" jobs, or transform limited-duty assignments into permanent jobs as a reasonable accommodation.

The AJ found that the Agency articulated a reason for Complainant's incorrect pay in that a supervisor had made simple mistake. Finally, the AJ found that the record does not contain evidence of pretext for discriminatory or retaliatory animus for any of the discrete adverse actions.

The Agency subsequently issued a final order fully implementing the AJ's finding that Complainant failed to prove that the Agency subjected him 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.

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 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 6, 2025

Date