



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

**[REDACTED]**  
Georgianne B,<sup>1</sup>  
Complainant,

v.

Douglas A. Collins,  
Secretary,  
Department of Veterans Affairs  
(Veterans Health Administration),  
Agency.

Appeal No. 2022004378

Hearing No. 530-2020-00394X

Agency No. 2004-0613-2019102780

**DECISION**

On August 10, 2022, Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's July 12, 2022 final order concerning her 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 an Advanced Medical Support Assistant ("MSA") at the Agency's Martinsburg VA Medical Center.

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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.

On July 18, 2019, Complainant filed a formal complaint alleging that the Agency discriminated against her on the bases of disability (association) and reprisal for prior protected EEO activity when:

1. On March 12, 2019, the Chief of Primary Care Service ("Chief"), and the Program Manager reassigned Complainant from Transition and Care Management (TCM) Team to Comprehensive Primary Care (CPC) Team, effective April 7, 2019.
2. On March 19, 2019, the union representative attended a meeting on behalf of Complainant to discuss her reassignment; however, Chief refused to provide him information on her new assignment.
3. On March 26, 2019, the Program Manager refused to accept Complainant's request for Family Medical Leave Act (FMLA) for April 11, 2019; May 6 & 29, 2019; June 10, 2019; and October 2, 2019, until reassignment into her new position.
4. Since April 8, 2019, Complainant has not been provided with an office telephone as an accommodation.
5. On June 10, 2019, the Program Manager informed Complainant her reassignment from the TCM Clinic was permanent.
6. On July 19, 2019, Complainant was informed by Human Resources that the Program Manager failed to put her in for a step increase from a GS-6 to a GS-8 in March 2019, despite the fact that he was informed that she was eligible.
7. On September 24, 2019, Chief reassigned Complainant to work one day a week at the CPC-1 Clinic.

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 Administrative Judge (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 in favor of the Agency on July 7, 2022.

The AJ explained that the Agency maintains the reassignment (claims 1 & 5) was not an adverse action, as “[T]here is no evidence of anything more than slight differences in working conditions between her MSA position in the TCM and her MSA position in the CPC.” According to the Agency, Complainant had no loss in pay due to the reassignment. Complainant had no loss in benefits due to the reassignment. Complainant had the same job title and grade following the reassignment. Complainant simply did not suffer an adverse employment action and therefore cannot demonstrate a prima facie case of discrimination. According to Complainant, however, she suffered an adverse action. For one, Complainant asserted that she did not have reliable cell phone service (claim 4) following the reassignment. Additionally, Complainant argued that she was deprived of the community involvement and institutional knowledge from her previous assignment. The AJ concurred with the Agency and noted that when two positions have the same grade, pay, and title, a reassignment from one position to the other is not an adverse employment action. See Leming v. Dep’t of Transp., EEOC App. No. 0120072692, 2007 WL 2350781, at \*4 (Aug. 7, 2007). As for the lack of phone service, once the Agency discovered an issue with Complainant not having access to the phone network, the Agency rectified the situation. Thus, it was not Complainant’s reassignment that placed her in a position in which she temporarily lacked cell phone service. The AJ concluded that Complainant did not suffer an adverse action and thus she cannot make out a claim for discrimination based on her reassignment. Similarly, the AJ found that a transfer to essentially the same position fails to constitute action that would dissuade an individual from pursuing EEO activity.

The AJ determined that the undisputed evidence is that Complainant’s leave requests (claim 3) were not denied. At most, they were briefly held in abeyance to allow her new supervisor to approve the requests. There is no evidence that Complainant’s supervisor sat on the requests because Complainant’s husband has a disability or because of Complainant’s prior EEO activity. And while Complainant’s husband’s disability understandably would lead Complainant to want her leave requests quickly handled for peace of mind, there is no indication that she was left to wait an unreasonable amount of time. Complainant made leave requests, and those requests were ultimately approved. Based on the record, Complainant cannot make out a discrimination claim.

Regarding the purported meeting with Chief and the union representative (claim 2), the AJ noted that it is not clear if this meeting happened.

Chief asserted that he had no recollection of the meeting and there are no corroborating documents that arose from the meeting that would confirm that the two men met on March 19, 2019 to discuss Complainant's reassignment. However, even accepting that the meeting took place, and that Chief would not discuss Complainant's reassignment, no claim of discrimination would arise. First, the terms of the reassignment were well known to Complainant. As the Agency notes—and Complainant does not dispute—"the details of her reassignment were provided to Complainant via the March 5, 2019 reassignment memo, and via conversations and e-mails from her supervisor." The reassignment was explained to Complainant and the failure to have an additional meeting further explaining it is not discriminatory. Moreover, as noted previously, the reassignment does not constitute an adverse action. It is hard to fathom how refusing to meet to explain a non-adverse action could constitute an adverse action. Thus, there is no claim of discrimination based on these allegations.

With respect to Complainant's claim that she was eligible for a step increase (claim 6), the AJ concluded that according to the record, Complainant was not entitled to a step increase and there is nothing from HR to support her belief. Certainly, Complainant admits that she was at the highest grade-level of GS-6 for her MSA position and that she had received her automatic step increase from GS-6, step 8 to GS-6, step 9 on March 10, 2019.

In her appeal submissions, Complainant through counsel mainly asserts that Complainant's reassignment was an adverse action amounting to unlawful discrimination. In response, the Agency maintains that the reassignment was not an adverse employment action; that Complainant did not suffer a loss of pay and that the reassignment was from one MSA position to another in the same clinical service. Further, the other issues in this matter, claims 2 through 7, do not rise to the level of an adverse employment action.

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 the AJ erred in not determining the reassignment to be an adverse action, and that a hearing is warranted, we disagree. Having reviewed the entire record before us, we do not find an abuse of discretion by the AJ in both his 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 the Agency is entitled to summary judgment and Complainant's discrimination claims were properly dismissed.

As the AJ correctly noted, and as detailed above, Complainant did not suffer an adverse employment action and therefore cannot demonstrate a prima facie case of discrimination.

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 6, 2025  
Date