



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

Roshawn Ritter-Jenkins a/k/a
Sadie B.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs
(Veterans Health Administration),
Agency.

Appeal No. 2022004813

Hearing No. 430-2021-00513X

Agency No. 2004-0565-2021102921

DECISION

On September 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 August 31, 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.

ISSUES PRESENTED

- 1) Whether the AJ's grant of summary judgment in favor of the Agency was appropriate, or whether genuine disputes of material fact exist that require a hearing.

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.

- 2) Whether the Agency's final order properly found that Complainant was not subjected to discrimination on the basis of disability when her request for reasonable accommodation was denied.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a GS-6 Advanced Medical Support Assistant (MSA) at the Fayetteville VA Medical Center (FVAMC). On June 22, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the basis of disability (Post Traumatic Stress Disorder, generalized anxiety disorder, panic attacks, depression, migraines, and high blood pressure) when, on March 5, 2021, the Assistant Chief Health Administration (Assistant Chief) and Complainant's supervisors (Supervisor1 and Supervisor2) denied her request for a reasonable accommodation.

As an MSA, Complainant was responsible for checking patients into their appointment, scheduling appointments, verifying orders and insurance, checking patients out of their appointments, and assisting veterans and staff within the Behavioral Health Clinic.

On October 5, 2020, Complainant requested an accommodation. On October 14, 2020, Complainant completed and submitted VA Form 0857A, Written Request for Reasonable Accommodation, and requested to work from home or a private setting citing emotional anxiety, panic attacks, stress, migraines, lack of sleep, and inability to focus due to her husband's death as the basis for the request. On or about October 14, 2020, Complainant submitted medical documentation to support her request for reasonable accommodation. The medical documentation indicated that Complainant was unable to interact with veterans and staff due to emotional anxiety, panic attacks, loss of concentration, and focus. The medical provider stated that Complainant's limitations were communication, interactions with customers and peers, and an inability to perform her job duties. On October 20, 2020, Supervisor1 provided Complainant Form 0857B acknowledging receipt of her request for accommodation.

On November 25, 2020, the Local Reasonable Accommodation Coordinator (LRAC) contacted Complainant and requested more information about her limitations. Complainant responded that there was no time limitation on her restrictions and that she would follow up with her medical provider. On December 10, 2020, Supervisor1 requested information about Complainant's limitations to process the request for accommodation.

At that time, LRAC noticed that Complainant's medical provider indicated that she was unable to perform her job duties. LRAC contacted Complainant and informed her that her medical documentation indicated that she was unable to work and could possibly lead to removal for medical disqualification. LRAC requested that Complainant provide her job description to the medical provider and have him correct the medical documentation based on the information listed on the form.

On January 4, 2021, Complainant sent the forms to her medical provider to complete. On January 8, 2021, Complainant submitted new medical documentation that listed her conditions as disappearance/death of a family member, adjustment disorder, and migraines. The medical provider indicated that Complainant was experiencing increased stress and anxiety due to ongoing life stressors and indicated that her limitations were stress, anxiety, migraines, and large crowds. The medical provider indicated that the symptoms decrease and improve with quiet surroundings and minimal social volume.

On January 20, 2021, Supervisor2 met with Complainant to discuss her request for accommodation. On January 28, 2021, Supervisor2 informed LRAC that the service did not have a private office where they could place Complainant. Supervisor2 also stated that she would not be able to accommodate Complainant if she was unable to work around or interact with others since this was a critical part of her job.

On February 3, 2021, Complainant provided an additional medical note that stated she was able to complete work life tasks, but not in a work-like setting and recommended that Complainant work from home. The medical note did not provide any medical conditions, restrictions, and/or limitations. In early February 2021, LRAC worked with Supervisor2 to develop options for the accommodation that could be provided to Complainant. On February 18, 2021, Supervisor2 approved Complainant's request for accommodation and provided an alternative accommodation of noise-cancelling headphones when not working with a veteran or staff members, five-minute breaks every hour, and a rotation to one of the back desks in Complainant's work area where the partitions were located.

Supervisor2 testified that the accommodations offered were effective because they allowed Complainant to still assist doctors and nurses onsite. Additionally, she was allowed to rotate her work area and take breaks to get away from coworkers and veterans.

She only shared the space with one person until they resigned; thereafter, Complainant had the work area to herself. She also had noise-cancelling headphones if the area became too noisy. Supervisor2 also offered to find Complainant a vacant area to work from in another department; however, Complainant declined the offer.

On February 23, 2021, the Agency terminated COVID-19 temporary telework approvals for all employees because the facility reopened and resumed 100 percent operation and veteran appointments. All MSAs were told to report to duty by March 8, 2021. On March 9, 2021, Complainant declined the offered accommodation. On May 10, 2021, Complainant submitted a new request for accommodation to work from home and provided medical documentation. The medical documentation indicated that Complainant had major depressive disorder, generalized anxiety disorder, and panic disorder. The medical provider indicated Complainant's limitations were thinking, social interaction, and concentration with a moderate impact.

On May 25, 2021, LRAC provided Complainant with VA Form 0857B Written Confirmation of Request for Accommodation. In June 2021, management informed LRAC that they were unable to grant Complainant's request to telework because it would remove essential functions from her position and cause a hardship for the service. On June 17, 2021, an MSA supervisor (Supervisor3), granted Complainant's request for reasonable accommodation and provided an alternative accommodation of dividers for her work area, environmental sound maker, modified break schedule with a five-minute break every hour, cocoon glasses for lights, and allowance for the lights over her desk to be off. Supervisor3 indicated that they would meet and reevaluate the accommodation in three months. On or about June 17, 2021, Supervisor3 met with Complainant, and she declined the accommodations that were offered to her.

In late July 2021, Complainant reached out to the Section Chief (Chief) and requested to meet about her health conditions. Complainant informed her that she was having a difficult time coping with emotional issues and asked if she could go home. Chief empathized with Complainant and granted a temporary hardship telework approval that allowed Complainant time to get herself together. Chief exempted Complainant from performing the core functions of her position while teleworking based on her hardship.²

² Complainant was provided a hardship accommodation until approximately, June 1, 2022.

Complainant acknowledges that management informed her that she could not receive the requested accommodation because it would remove an essential function from her position. Assistant Chief testified that severely immunocompromised employees were the only employees permitted to continue to telework after March 8, 2021. Assistant Chief testified that she did not have any employees that were teleworking under the reasonable accommodation program.

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 timely requested a hearing. Over Complainant's objections, the AJ assigned to the case granted the Agency's June 17, 2022 motion and issued a summary judgment decision in favor of the Agency.

In the decision, the AJ found that the Agency offered Complainant an effective accommodation. Full-time telework was not available for Complainant's role as MSA because it involved significant interaction with patients and medical staff, which Complainant acknowledged. Rather than grant Complainant's request for telework, the Agency addressed her doctor's concerns that she needed to be in a quiet environment that minimized social volume. The Agency allowed Complainant to work from an isolated desk when feasible (i.e. when she was not interacting with patients and/or staff to carry out her duties) and offered her noise-cancelling headphones. Later, in response to a renewed request for accommodation that Complainant submitted in May 2021, the Agency increased its accommodation measures to include: a divider for Complainant's work area to block out potential distractions; an environmental sound-maker; modified break schedule; cocoon glasses for lights; and the ability for Complainant to control the amount of light in her work area. These accommodations addressed, to the greatest extent possible, the doctor's concerns that Complainant have a quiet environment that minimized social volume. Once Complainant twice declined these effective accommodations, the Agency had no further obligation under the Rehabilitation Act. As a result, the AJ found that Complainant was not denied reasonable accommodation in violation of the Rehabilitation Act.

The Agency subsequently issued a final order fully adopting the AJ's decision. The instant appeal followed.

CONTENTIONS ON APPEAL

Complainant asserts that telework was a reasonable accommodation that allowed her to carry out the essential functions of her position and that the AJ erred in denying a hearing on this issue. Accordingly, Complainant requests that the Commission reverse the final order.

STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, 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").

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*).

ANALYSIS

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.

Denial of 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 she was denied a reasonable accommodation, Complainant must show that: (1) she is an individual with a disability as defined by 29 C.F.R. § 1630.2(g); (2) she 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.

The record shows that Complainant is an individual with a disability within the meaning of the Rehabilitation Act. In addition, Complainant is qualified for her position when at work. However, we agree with the AJ's decision in concluding that Complainant has not established that the Agency failed to provide her with a reasonable accommodation. A protected individual is entitled to a reasonable accommodation; she is not necessarily entitled to the accommodation of choice. See Castaneda v. U.S. Postal Serv., EEOC Appeal No. 01931005 (Feb. 17, 1994). The employer may choose among reasonable accommodations so long as the chosen accommodation is effective. U.S. Airways v. Barnett, 533 U.S. 391, 400 (2002).

Here, Complainant has presented no evidence that the provided accommodations were ineffective. The record shows that Complainant failed to provide a reasonable explanation as to why the offered accommodations would not be effective. We note that the record establishes that Complainant could not perform the essential functions of her position from home as the vast majority of her job duties could only be performed at the worksite, including checking patients in and out and scanning insurance documents. Accordingly, telework was not an effective accommodation. Consequently, the Commission finds that Complainant failed to prove that the Agency denied her reasonable accommodation in violation of the Rehabilitation Act. see Eugenia C. v. Environmental Protection Agency, EEOC Appeal No. 0120151806 (Sept. 7, 2017).

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the AJ's decision without a hearing finding that Complainant failed to support her claim as alleged.

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 17, 2024
Date