



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

[REDACTED]
Stefany D.,¹
Complainant,

v.

Todd Hunter,
Acting Secretary,
Department of Veterans Affairs
(Veterans Health Administration),
Agency.

Appeal No. 2022005032

Hearing No. 460-2020-00194X

Agency No. 2003-0502-2020100022

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 September 27, 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. and 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

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.

Whether the Agency's final order properly found that Complainant was not subjected to discrimination on the bases of race, color, disability, and in reprisal for prior protected EEO activity.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Medical Support Assistant, GS-0679-06, at the Agency's VA Medical Center - Community Care in Alexandria, Louisiana.

On January 9, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against her and subjected her to a hostile work environment on the bases of race (African American), color (light skin), disability (mental), and reprisal (prior protected EEO activity in 2019) when:

1. on September 20, 2019, management failed to provide Complainant's accommodation request for a private office;
2. on December 4, 2019, December 8, 2019 and in January 2020, Complainant's first-line supervisor (Supervisor1) (African American) attempted to move Complainant to the Yellow Team, told Complainant she could not get along with anybody, implied because of Complainant's disability she was a problem, and accused Complainant of being difficult to work with; and
3. in January 2020, Supervisor1 and the Acting Chief (Chief) (Caucasian), moved another employee (Coworker2) in Complainant's office without prior notification.

Complainant experiences complications from several conditions, including bipolar disorder. This condition causes Complainant to experience difficulties adjusting to changes in her work environment, concentration, and attention to detail. In approximately May 2019, Complainant requested a reasonable accommodation consisting of being placed in a private office because her medical condition makes it difficult for her to work in an open area around other employees. The reasonable accommodation was granted in part in that Complainant was moved to a semi-private office.² Supervisor1 and other management officials explained that their reason for not providing Complainant with a private office was lack of space, especially in light of the fact that additional staff had been assigned to the office due to the Mission Act, and the heavy workload associated with that assignment.

² Complainant previously worked in an office with approximately seven other employees.

Initially, Complainant was the only employee in the semi-private office, but in September 2019, another employee (Coworker1) needed to be moved into the office with Complainant due to lack of space.

Complainant objected to Coworker1 moving into her office because Complainant felt Coworker1 was "a busy body" with numerous visitors and because Coworker1 was "a very social person." Complainant wanted a "quiet place" and expressed that she did not want to be in the semi-private office with Coworker1. On September 30, 2019, Complainant moved out of the semi-private office and back to her former office where seven other employees worked. Complainant did not have permission from management for this move, nor did she inform management that she had moved.

On December 4, 2019, management attempted to move Complainant to the Yellow Team because sharing the semi-private office with Coworker1 was not working well for Complainant. On December 6, 2019, further accommodations were made in that Complainant was provided a quiet area in the office with the Yellow Team, and a refrigerator and microwave were removed to accommodate Complainant's requests. After these changes were made to suit her, Complainant changed her mind and decided to stay in the semi-private office. At some point, Coworker1 was moved out of the office. Later in December 2019, a registered nurse (Coworker2) was moved into the semi-private office with Complainant because Coworker2 was displaced from her office due to a new Call Center that was opened in that location.

Complainant claimed that Supervisor1 tried to "make it seem like [Complainant] was a problem and couldn't get along with anyone else." Complainant claimed that during this time, Supervisor1 "went off" on Complainant. Supervisor1's alleged conduct occurred during the events related to Complainant moving from the semi-private office to the larger office with seven employees in it and almost moving to the Yellow Team office with the refrigerator and microwave being moved to suit her only for her to decide not to move there after all. Management explained to Complainant via email that Supervisor1 had never presented Complainant as a "problem" to management, and that the emotion Complainant was feeling from Supervisor1 was "[Supervisor1's] own frustration over how to allocate teams when space options are so few." After receiving this email, Complainant responded via email saying, "I fully understand [Supervisor1's] frustrations...".

Complainant asserted that the Agency created a work environment where she had to "deal with bullying." In her affidavit, Complainant makes several vague and conclusory statements which she claims are facts showing her hostile work environment.

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 AJ. Complainant timely requested a hearing. The AJ issued a summary judgment decision in favor of the Agency.

In the decision, the AJ determined that Complainant failed to show that the alleged incidents were based on discriminatory or retaliatory animus. Further, the AJ found that the alleged conduct was insufficiently severe or pervasive to establish a hostile work environment. The AJ concluded that this case was based on Complainant's beliefs, personality conflicts, gossip, and rumors. Thus, the AJ found that Complainant was not subjected to discrimination, reprisal, or a hostile work environment as alleged.

Further, the AJ determined that the Agency reasonably accommodated Complainant. The record established that Complainant requested a reasonable accommodation consisting of being placed in a private office because her disability made it difficult for her to work in an open area with other employees. On July 3, 2019, the reasonable accommodation was granted, in part, when Complainant was moved to a semi-private office. Specifically, there were no private offices available due to a lack of space, especially since additional staff had been assigned to the office by reason of the Mission Act. As such, the Agency was unable to offer Complainant the office space she requested. Complainant occupied the semi-private office alone until September 2019, when another employee was moved into the office. Complainant felt that her reasonable accommodation was no longer effective because she felt Coworker1 was "a busy body" with numerous visitors. Complainant wanted a "quiet place". On September 30, 2019, Complainant moved out of the semi-private office and into a large office where seven other employees worked. Complainant neither obtained permission from nor informed management that she had moved. On December 4, 2019, management attempted to move Complainant to the Yellow Team office as an alternate accommodation. On December 6, 2019, management removed a refrigerator and microwave from the Yellow Team office, per Complainant's request. After these changes were made, in compliance with Complainant's request, she changed her mind and decided to return to the semi-private office. Thus, Complainant declined the alternate accommodation that was offered.

Coworker2 was moved into the semi-private office with Complainant because the RN was displaced from her office when a Call Center was opened in her previous work location. Accordingly, the AJ found that the Agency did not deny Complainant 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

On appeal, Complainant argues that the Agency falsified documents, and questions the credibility and integrity of the AJ. 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

As a preliminary matter, we first address Complainant's arguments regarding the manner in which the AJ managed her case. The Commission notes that EEOC regulations and Commission precedent provide AJs with broad discretion in the conduct of a hearing and related proceedings. See 29 C.F.R. § 1614.109; see also Equal Employment Opportunity Management Directive 110 for 29 C.F.R. Part 1614 (EEO MD-110), at Ch. 7 (Aug. 5, 2015). The Commission has reviewed all documentary evidence in the record and is otherwise unable to find evidence of bias, or other reversible error, resulting from the manner in which the AJ managed and adjudicated this case.

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 or retaliatory 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 Agency does not dispute the finding that Complainant is an individual with a disability, within the meaning of the Rehabilitation Act. The Agency also does not dispute that Complainant is qualified for her position, with or without a reasonable accommodation. The undisputed record shows that in May 2019, Complainant requested a reasonable accommodation consisting of being placed in a private office because her disability makes it difficult for her to work in an open area with other employees. On July 3, 2019, the reasonable accommodation was granted, in part, when Complainant was moved to a semi-private office. The undisputed record establishes that there were no private offices available due to a lack of space. As such, the Agency was unable to offer Complainant a private office as requested. Complainant occupied the semi-private office alone until September 2019, when another employee was moved into the office.

Complainant felt that her reasonable accommodation was no longer effective when Coworker1 was moved into the semi-private office because she felt Coworker1 was "a busy body" with numerous visitors. Complainant wanted a "quiet place." On September 30, 2019, Complainant moved out of the semi-private office and into a large office where seven other employees worked. Complainant neither obtained permission from nor informed management that she had moved. On December 4, 2019, management attempted to move Complainant to the Yellow Team office as an alternate accommodation. On December 6, 2019, management removed a refrigerator and microwave from the Yellow Team office, pursuant to Complainant's request. After these changes were made, in compliance with Complainant's request, she changed her mind and decided to return to the semi-private office. Thus, Complainant declined the alternate accommodation that was offered. In late December of 2019, shortly after Coworker1 was moved out of the semi-private office that she shared with Complainant, Coworker2 (a registered nurse) moved into the semi-private office because a new Call Center was opened in her previous work location.

We agree with the AJ in finding that the record establishes that the Agency met its burden of engaging in the interactive process and by offering Complainant a reasonable accommodation of a semi-private office and subsequently, an alternate reasonable accommodation, which she declined. The record is devoid of evidence that either accommodation was ineffective.

Hostile Work Environment

In order to establish a prima facie case of harassment, Complainant must prove, by a preponderance of the evidence, the existence of five elements: (1) that she is a member of a statutorily protected class; (2) that she was subjected to unwelcome conduct related to her protected class; (3) that the harassment complained of was based on her protected class; (4) that the harassment had the purpose or effect of unreasonably interfering with her work performance and/or creating an intimidating, hostile, or offensive work environment; and (5) that there is a basis for imputing liability to the employer. See Celine B. v. Dep't of Navy, EEOC Appeal No. 2019001961 (Sept. 21, 2020); Humphrey v. U.S. Postal Serv., EEOC Appeal No. 01965238 (Oct. 16, 1998). See also Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982), approved in Meritor Savings Bank v. Vinson, 477 U.S. 57, 66-67 (1986); see generally Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (April 29, 2024).; Flowers v. Southern Reg'l Physician Serv. Inc., 247 F.3d 229 (5th Cir. 2001). The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the victim's circumstances. Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (April 29, 2024).

In other words, to prove her hostile work environment claim, Complainant must establish that she was subjected to conduct that was either so severe or so pervasive that a "reasonable person" in Complainant's position would have found the conduct to be hostile or abusive. Complainant must also prove that the conduct was taken because of a protected basis; in this case, her race, color, disability, or engagement in prior EEO activity. Only if Complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself.

In this case, we find that the totality of the alleged conduct was not sufficiently severe or pervasive to establish a hostile work environment. Even assuming that the alleged conduct was sufficiently severe or pervasive to create a hostile work environment, the Commission finds that Complainant failed to show that the Agency's actions were based on discriminatory or retaliatory animus.

The record reflects that the alleged incidents were more likely the result of routine supervision and general workplace disputes and tribulations as more fully discussed above.

Moreover, to the extent that Complainant is alleging disparate treatment regarding her claims, Complainant has not proffered any evidence demonstrating that the Agency's explanation for its actions was pretext for discrimination or reprisal. Accordingly, the Commission finds that Complainant was not subjected to discrimination, reprisal, or a hostile work environment as alleged.

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 order.

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 3, 2025

Date