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

[redacted]
Ileana H.,[1]
Complainant,

v.

Merrick B. Garland,
Attorney General,
Department of Justice
(Federal Bureau of Prisons),
Agency.

Appeal No. 2022005081

Hearing No. 410-2019-00273X

Agency No. BOP-2018-0527

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 26, 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.

ISSUE PRESENTED

The issue presented is whether the Administrative Judge properly issued a decision without a hearing finding that Complainant did not establish discrimination or harassment as alleged.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Human Resources Specialist at the Agency's United States Penitentiary (USP) in Atlanta, Georgia.

[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 April 10, 2018, Complainant filed an EEO complaint alleging that the Agency discriminated against her based on her disability (mental), and in reprisal for prior protected EEO activity, when:

1. from July 2017, through April 10, 2018, Complainant was subjected to a hostile work environment and retaliation when her first-line supervisor ("Supervisor") abused her authority; overworked Complainant; sabotaged Complainant's ability to complete her work assignments; and set her up for failure by setting unrealistic goals on assignment completion;
2. on February 23, 2018, the Supervisor assigned Complainant the task of updating the staffing report but refused to provide updated shared information pertaining to staffing;
3. on March 22, 2018, Complainant was issued an "8-point letter" and a Cease and Desist letter upon her return from extended leave;[2]
4. on March 22, 2018, Complainant was issued a Fit-For-Duty (FFD) letter, and management failed to offer a reasonable accommodation. Complainant alleged that she was subjected to multiple FFD exams; and
5. in April 2018, Complainant was issued an unfavorable yearly evaluation.

The EEO investigation revealed that Complainant complained that the Supervisor abused her authority by setting unrealistic goals and overworking and sabotaging Complainant. For example, seven payroll reports are mandatory, but the Supervisor made Complainant do 24 reports. Complainant also recalled a time when the Supervisor rejected her time and attendance card when Complainant took annual leave. Other examples of the Supervisor's alleged abuse of authority and overworking and sabotaging Complainant include the Supervisor holding onto submitted work; instructing Complainant to use a new format when she used the same format as the Supervisor; and assigning work without providing information needed to complete the task. Report of Investigation (ROI) 80, 85, 118-22.

In February 2018, the Supervisor tasked Complainant with updating a staffing report, but Complainant did not have the updated information. She overheard the Supervisor tell one of Complainant's coworkers ("Coworker") that the Supervisor would send the Coworker the updated staffing report. Complainant requested the same information from the Supervisor, who declined. ROI at 92-4.

Complainant submitted medical documentation to excuse her absence from work from February 28, 2018, to March 21, 2018, for Complainant to undergo intensive therapy and modifications to her treatment regimen. Complainant's doctor stated that Complainant experienced "a decline in her overall mental and physical functioning in her personal, social and occupational life," and the time would afford her the opportunity to focus on her mental rehabilitation recovery. ROI at 837. Upon her return to work, Complainant received the Cease and Desist and FFD letters.

[2] Complainant clarified that the "8 point letter" was the Fit-For-Duty letter referenced in claim 4. Report of Investigation at 98.

The Associate Warden issued the Cease and Desist Notification based on information implying that Complainant was involved in an incident of alleged unprofessional conduct with the Supervisor. He instructed Complainant to refrain from negative or confrontational communication with the Supervisor. ROI at 825. The Warden also commissioned a Threat Assessment Committee into allegations of workplace violence from Complainant and the Supervisor. On March 30, 2018, the Warden received the report from the Workplace Violence Threat Assessment committee concluding that there was no risk of a current danger or threat of violence. However, the team made some recommendations, such as developing strategies to resolve issues and improve the workplace environment. ROI at 826-32.

In the FFD letter, the Associate Warden notified Complainant that there was a need to assess her physical ability and/or psychological status to perform her duties. The notice stated that all positions at the USP Atlanta are hazardous law enforcement officer positions and require that individuals to be physically/mentally able to safely perform correctional work. Complainant was asked to submit questions to her medical provider, such as Complainant's diagnosis; an explanation of the impact of the medical condition on life activities, both on and off the job; and an explanation of the likelihood of incapacitation as a result of the medical condition. ROI at 838-40. Complainant's doctor completed a response, stating that Complainant was diagnosed with major depressive disorder and anxiety disorder. Complainant shared that she experienced overwhelming stress and anxiety due to the Supervisor, and Complainant's doctor reported that Complainant would continue to have frequent episodes of anxiety associated with her current work environment. However, Complainant posed no threat or risk of harm to herself or others in carrying out her job duties. ROI at 844.

The Associate Warden directed Complainant to report for FFD evaluations on May 30, 2018, and June 18, 2018. Complainant was informed that the previously submitted medical documentation would be forwarded to the medical examiners, and she may submit additional medical documentation for consideration. ROI at 847, 849. Complainant stated that she underwent a FFD exam with her own doctor, the Agency's designated doctor, and the Agency's Psychiatrist. ROI at 104. The Agency's doctor and Psychiatrist completed FFD examinations and concluded that Complainant was fit for duty to perform all essential functions. ROI at 857-68.

On or about April 1, 2018, the Supervisor issued Complainant a performance rating of Excellent. ROI at 917-38. Complainant stated that even though she was rated Excellent, her evaluation contained information that was not true. For example, it noted that Complainant did not participate in an Operational Review because she was on leave, but she was out on sick leave and should not be penalized for being on sick leave. ROI at 112.

On April 10, 2018, Complainant emailed the Warden and stated that she had asked for a reasonable accommodation since April 27, 2017, but had not received a response. Complainant also asked to be moved to the Regional Office. The Warden replied that he did not see a need to remove Complainant from her department at this time, and he asked for additional information about her reasonable accommodation request. Complainant informed the Warden that her prior reasonable accommodation request was for a compressed work schedule. ROI at 493-4.

On May 23, 2018, Complainant submitted a reasonable accommodation request for a compressed work schedule and to have her worksite moved to the Southwest Regional Office to avoid triggering her anxiety because of the "hostile work environment" caused by the Supervisor. ROI at 486. On September 25, 2018, the Warden issued Complainant a decision on her reasonable accommodation request. He found that her requested accommodations were not needed based on Complainant's medical documentation that she "is able to perform all of the essential functions listed in her job description." ROI at 853-5.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the ROI and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). Complainant timely requested a hearing. The AJ assigned to the case determined *sua sponte* that the complaint did not warrant a hearing and issued an unopposed decision without a hearing on August 22, 2022. The AJ determined that summary judgment was appropriate because Complainant did not present evidence of disability discrimination or retaliation, or that the Agency's articulated reasons were pretextual.

The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged. The instant appeal followed.

CONTENTIONS ON APPEAL

Neither party filed any contentions on appeal.

STANDARD OF REVIEW

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). This essentially means that we should look at this case with fresh eyes. In other words, we are free to accept (if accurate) or reject (if erroneous) the AJ's, and the Agency's, factual conclusions and legal analysis – including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. See id. at Chap. 9, § VI.A. (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

Decision without a Hearing

We determine whether the AJ appropriately issued the decision without a hearing. The Commission's regulations allow an AJ to issue a decision without a hearing upon finding that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). EEOC's decision without a hearing regulation follows the summary judgment procedure from federal court. Fed. R. Civ. P. 56. The U.S. Supreme Court held summary judgment is appropriate where a judge determines no genuine issue of material fact exists under the legal and evidentiary standards. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a summary judgment motion, the judge is to determine whether there are genuine issues for trial, as opposed to weighing the evidence. Id. at 249. At the summary judgment stage, the judge must believe the non-moving party's evidence and must draw justifiable inferences in the non-moving party's favor. Id. at 255. A "genuine issue of fact" is one that a reasonable judge could find in favor for 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 "material" fact has the potential to affect the outcome of a case.

An AJ may issue a decision without a hearing only after determining that the record has been adequately developed. See Petty v. Dep't of Def., EEOC Appeal No. 01A24206 (July 11, 2003). We carefully reviewed the record and find that it is adequately developed. To successfully oppose a decision without a hearing, Complainant must identify material facts of record that are in dispute or present further material evidence establishing facts in dispute. Here, Complainant provided no arguments on appeal, and a review of the record does not reveal any genuine disputes of material facts. Therefore, the AJ's issuance of a decision without a hearing was appropriate.

Harassment (Claim 1)

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); 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 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.

Complainant belongs to protected classes based on her disability and prior protected EEO activity and she was subjected to unwanted conduct, but she offers no connection between any of her bases and the complained of actions. Complainant claims harassment due to the Supervisor's alleged abuse of authority in overworking her and sabotaging her ability to complete her work. However, the evidence shows that the Supervisor treated other employees in a similar manner, and there is no evidence to prove that the actions were due to Complainant's disability or protected EEO activity.

For example, Complainant contends that the Supervisor overworks her by making her do 24 payroll reports when only seven are mandatory. ROI at 80. However, the Coworker averred that the Supervisor overworks all her staff, including running approximately 20 payroll reports; and another witness, who was Complainant's backup for the payroll reports, corroborated that she also had to run all these reports. ROI at 230, 238. The Supervisor responded that Complainant received detailed training and explanations regarding the purpose and reasoning for each payroll report. ROI at 194. The Warden added that the Supervisor was operating within the scope of her duties because the mandatory reports are the minimum requirements, and the other reports ensure that the department functions at a high level. The Warden also stated that he reviewed each of Complainant's complaints and found that the Supervisor was assigning her work in the same manner as other specialists, and while Complainant felt that her workload was too much, others had similar workloads, and there was no evidence that she was singled out. ROI at 141-2, 145. The Associate Warden averred that, due to Complainant's frequent complaints about the Supervisor, he regularly made rounds in the department and attended as many meetings as possible, and he has not observed any preferential treatment with the staff. ROI at 182.

Complainant also alleged harassment when the Supervisor rejected her time and attendance card when she used annual leave. The Supervisor explained that Complainant only requested sick leave. ROI 199. Complainant complained to the Warden, who noted that the Supervisor was questioning the leave prior to certifying it because she was responsible if it was inaccurate. ROI at 147. The Associate Warden stated that once Complainant's leave form was amended, the Supervisor certified Complainant's time and attendance. ROI at 182.

The other incidents of alleged harassment are work-related, such as passing along work that was assigned to the Supervisor; assigning tasks when Complainant is not at work; and holding up work that was submitted for the Supervisor's approval. However, the Commission has held that routine work assignments, instructions, and admonishments do not rise to the level of harassment because they are common workplace occurrences. See Gray v. U.S. Postal Serv., EEOC Appeal No. 0120091101 (May 13, 2010).

Unless it is reasonably established that the common workplace occurrence was somehow abusive or offensive, and that it was taken in order to harass Complainant on the basis of her protected class, we do not find such common workplace occurrences sufficiently severe or pervasive to rise to the level of a hostile work environment or harassment as Complainant alleges. See Complainant v. Dep't of Veterans Affairs, EEOC Appeal No. 0120130465 (Sept. 12, 2014). There is no evidence that these work-related incidents were abusive or offensive, or taken in order to harass Complainant on the basis of a protected class.

Further, to prevail in a retaliatory harassment claim, a complainant must show that a reasonable person would have found the challenged action materially adverse, i.e., an action that might well have dissuaded a reasonable worker from making or supporting a charge of discrimination in the future. Burlington Northern & Santa Fe Railway Co. v. White, 548 U.S. 53 (2006). We do not find that these work-related actions would reasonably chill protected EEO activity. Accordingly, we find that Complainant did not establish that the Agency subjected her to harassment based on her disability, or in reprisal for prior protected EEO activity.

Disparate Treatment (Claims 2, 3, and 6)

Generally, claims of disparate treatment are examined under the analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Hochstadt v. Worcester Found. for Experimental Biology, Inc., 425 F. Supp. 318, 324 (D. Mass.), aff'd, 545 F.2d 222 (1st Cir. 1976). For Complainant to prevail, she must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978); McDonnell Douglas, 411 U.S. at 802 n.13. Once Complainant has established a prima facie case, the burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). If the Agency is successful, the burden reverts back to Complainant to demonstrate by a preponderance of the evidence that the Agency's reason(s) for its action was a pretext for discrimination. At all times, Complainant retains the burden of persuasion, and it is her obligation to show by a preponderance of the evidence that the Agency acted on the basis of a prohibited reason. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993); U.S. Postal Service v. Aikens, 460 U.S. 711, 715-716 (1983).

To establish a prima facie case of disparate treatment discrimination based on disability, a complainant generally must prove the following elements: (1) they are an individual with a disability as defined in 29 C.F.R. §§ 1614.203(a) and 1630.2(g); (2) they are "qualified" as defined in 29 C.F.R. §§1614.203(a) and 1630.2(m); (3) the agency took an adverse action against them; and (4) there was a causal relationship between their disability and the agency's actions. See Annamarie F. v. Dep't of the Air Force, EEOC Appeal No. 2021004533 (August 17, 2023).

An individual with a disability is one who: (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such impairment; or (3) is regarded as having such an impairment. 29 C.F.R. § 1630.2(g).

Major life activities include such functions as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. 29 C.F.R. § 1630.2(i). An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to the ability of most people in the general population. 29 C.F.R. § 1630.2(j)(ii). The record contains a medical document, dated March 27, 2018, disclosing that Complainant has major depressive disorder and anxiety disorder, which result in various limitations, including sleep disturbances, shortness of breath, and poor focus and concentration. ROI at 844. As such, we find that Complainant is an individual with a disability.

While Complainant contests her Excellent performance rating, this substantiates that she is qualified for her position. ROI at 871. However, crediting that the staffing report assignment; the issuance of the Cease and Desist Letter; and the "unfavorable" performance rating were adverse, Complainant did not show a causal relationship with her disabilities. As such, we find that Complainant did not establish a prima facie case of disability discrimination.

Complainants may establish a prima facie case of reprisal by showing that: (1) they engaged in a protected activity; (2) the agency was aware of the protected activity; (3) subsequently, they were subjected to adverse treatment by the agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000). Complainant alleged reprisal based on her prior EEO complaints filed in 2014 and 2016. ROI at 73. The Supervisor, the Associate Warden, and the Warden stated that they were unaware of her prior EEO activity. ROI at 192, 172, 138. Complainant challenges their denials. ROI at 126.

However, even if they were aware, the incidents at issue occurred in 2018, approximately two years after Complainant's latest EEO complaint in 2016. A causal link can be inferred where there is temporal proximity between the protected activity and the adverse treatment. The proximity must be "very close" and a period of more than a few months may be too attenuated. Clark County School District v. Breeden, 532 U.S. 268, 273-4 (2001). Where there is a gap between the protected activity and the adverse treatment, "the complainant must show additional proof of causality." Archibald v. Dep't of Housing and Urban Dev., EEOC Appeal No. 01A54280 (Sept. 22, 2005). Complainant did not provide any evidence to show a nexus between her protected EEO activity and claims 2, 3, or 6. As such, we find that Complainant did not establish a prima facie case of reprisal.

Regardless, the Agency proffered legitimate, nondiscriminatory reasons for its actions. For claim 2, the Supervisor responded that the information she had about staffing were her own notes and may not have been accurate. The Supervisor gave it to the Coworker, who would be acting in the Supervisor's absence, to use as a guide and instructed the Coworker to not share it due to the possibility of the information being inaccurate. ROI at 200.

Regarding claim 3, the Associate Warden issued Complainant the Cease and Desist Letter because he determined that it was reasonable to issue a letter to both parties when there is a situation where two staff members may both be at fault or acting inappropriately. ROI at 186.

The Warden stated that Complainant and the Supervisor made allegations about the other's behavior, and they were put on notice pending the assessment by a Workplace Violence Committee. ROI at 150.

The Supervisor stated that she was the Rating Official for Complainant's April 2018 performance evaluation (claim 6). While Complainant was on scheduled leave at the time of the Operational Review, it was not held against her. Complainant was credited with the timely completion of her work and rated as "Exceeds."[3] ROI at 201-2. The Associate Warden, who was the Reviewing Official, confirmed that Complainant was not penalized for not being present for the Operational Review, and she received an above-average evaluation. ROI at 187.

We find that Complainant has not shown that the proffered reasons were pretexts for discrimination. Pretext can be demonstrated by showing such weaknesses, inconsistencies, or contradictions in the Agency's proffered legitimate reasons for its action that a reasonable fact finder could rationally find them unworthy of credence. See Opare-Addo v. U.S. Postal Serv., EEOC Appeal No. 0120060802 (Nov. 20, 2007) (finding that the agency's explanations were confusing, contradictory, and lacking credibility, which were then successfully rebutted by the complainant), request for recon. denied, EEOC Request No. 0520080211 (May 30, 2008). Complainant provided no evidence to show that the proffered reasons are not worthy of belief and, her bare assertions that management officials discriminated against her are insufficient to prove pretext or that their actions were discriminatory. Accordingly, we find that Complainant did not establish disability discrimination or reprisal for claims 2, 3, or 6.

Fitness for Duty Examination (Claims 3 and 4)

The Rehabilitation Act places certain limitations on an employer's ability to make disability-related inquires or require medical examinations of employees only if it is job related and consistent with business necessity. 29 C.F.R. §§ 1630.13(b),14(c). Generally, a disability related inquiry or medical examination of an employee may be "job related and consistent with business necessity" when an employer "has a reasonable belief, based on objective evidence, that: (1) an employee's ability to perform essential job functions will be impaired by a medical condition; or (2) an employee will pose a direct threat clue to a medical condition." Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA) EEOC No. 915.002 (July 27, 2000) at 15-16. It is the burden of the employer to show that its disability related inquiries and requests for examination are job related and consistent with business necessity. Id. at 15-23.

The Associate Warden notified Complainant that the medical document submitted for her absence from February 28, 2018, through March 21, 2018, supported a need for an assessment regarding her physical and/or psychological ability to perform her duties. ROI at 838.

[3] The record shows that Complainant was also rated Excellent in 2016 and 2017 by a different supervisor. ROI at 871-916.

The Associate Warden explained that Complainant was requested to undergo FFD examinations based on the information in her medical documentation, and that it was not uncommon to be subjected to multiple exams. The Associate Warden noted that incumbents of positions in correctional institutions are considered law enforcement officials and must be able to recognize and respond effectively to emergencies, and their inability to do so may jeopardize the security and safety of the institution. ROI at 184-5. The Warden added that he requested the FFD because Complainant's doctor placed her out of work for approximately 30 days and this was Complainant's second extended absence based on the same medical information. ROI at 149-50.

We find that Complainant's doctor provided objective evidence that there was "a decline in [Complainant's] overall mental and physical functioning in her…occupational life." ROI at 461. As such, management officials had a reasonable belief that there was a possibility that Complainant could not adequately perform her duties. During the FFD examination on May 30, 2018, Complainant revealed that there are times when she is asked to respond to emergencies and body alarms, and she may stand in for an officer during augmentation and perform shakedowns. ROI at 858. While Complainant took issue with having to undergo multiple FFD examinations, her doctor provided limited information in response to the Agency's FFD inquiry. ROI at 538. The initial Agency doctor found that Complainant was physically stable without limitations, but he could not answer if Complainant was able to perform her duties from a psychological perspective due to his limited expertise. ROI at 860-1. Complainant was then evaluated by the Psychiatrist. ROI at 863-7. We find that the Agency met its burden to show that the FFD examinations to assess Complainant's physical and mental abilities to perform her duties were job related and consistent with business necessity, and that the Agency did not violate the Rehabilitation Act.

Reasonable Accommodation (Claim 4)

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), (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 a "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, EEOC Notice No. 915.002 (Oct. 17, 2002). The term "reasonable accommodation" means, in pertinent part, modifications or adjustments to the work environment, or to the manner or circumstances under which the position held is customarily performed that enable a qualified individual with a disability to perform the essential functions of the position in question. See 29 C.F.R. §1630.2(o)(1)(ii).

As discussed above, we found that Complainant is an individual with a disability and qualified for her position. However, the Agency did not fail to provide a reasonable accommodation. On May 23, 2018, Complainant submitted a request for a compressed work schedule and a move to the Southwest Regional Office as reasonable accommodations. ROI at 850.

On September 25, 2018, the Warden issued a decision denying Complainant's requests, finding that her medical documentation supported that she was able to perform the essential functions of her position. Therefore, no accommodation was needed. ROI at 499.

Complainant has the burden of establishing that there is a nexus between her disability and her need for accommodation, in order to be entitled to a reasonable accommodation. See Struthers v. Dep't of the Navy, EEOC Appeal No. 07A40043 (Jun. 29, 2006); Ricco v. U.S. Postal Serv., EEOC Appeal No. 07A10007 (Feb. 21, 2002); Nelson v. U.S. Postal Serv., EEOC Appeal No. 01981981 (Aug. 9, 2001). While Complainant is an individual with a disability, she has not shown a need for an accommodation. There is no indication that Complainant provided any medical documentation to support her requests. The Psychiatrist assessed that Complainant was able to perform all the essential functions of her position, and Complainant reported to the Psychiatrist that she had been performing her duties without any problem. ROI at 863-7. Complainant offered no evidence to establish a nexus between her disability and her reasonable accommodation requests.

Complainant also alleged that she requested a compressed/flexible work schedule on April 27, 2017, but it was delayed, and that the Warden denied her request to move her workstation as a reasonable accommodation on April 11, 2018. ROI at 126. In her April 10th email to the Warden, Complainant complained that she had not received a response to her reasonable accommodation request since April 27, 2017, and she asked for a move to the Regional Office. When the Warden asked for more information about her reasonable accommodation, Complainant stated that it was for a compressed work schedule. ROI at 493-4. However, the record shows that Complainant was previously granted a compressed work schedule, effective May 28, 2017. ROI at 474. Further, we find that a fair reading of Complainant's emails does not show that she asked the Warden for the move as a reasonable accommodation in April 2018. Accordingly, we find that the Agency did not fail to accommodate Complainant.

CONCLUSION

Based on a thorough review of the record, we AFFIRM the Agency's final order adopting the AJ's decision without a hearing.

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

June 25, 2024
Date