



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

[REDACTED]
Jermaine H.,¹
Complainant,

v.

Douglas A. Collins,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2022005131

Hearing No. 510-2020-00300X

Agency Nos. 200I-0005-2020100227
200I-0005-2020106383

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 August 31, 2022, final order concerning his 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission AFFIRMS the Agency's final order finding no discrimination.

At the time of events giving rise to this complaint, Complainant worked as an Information Technology Specialist, GS 11, at the Agency's Medical Center facility in Orlando, Florida.

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 December 16, 2019, Complainant filed an EEO complaint alleging that the Agency subjected him to a hostile work environment based on disability (posttraumatic stress disorder, insomnia) and in reprisal for prior protected EEO activity when:

1. In March 2019, OI&T Assistant Area Manager – S1A - attempted to remove Complainant’s Compressed Work Schedule.
2. In October 2019, during a staff meeting, Complainant’s receipt of two letters of appreciation that were received in September 2019, was not mentioned.
3. On October 9, 2019, Complainant was placed on sick leave certification.
4. On November 4, 2019, S1A required Complainant to request from his physician a handwritten signature on a doctor’s note instead of an electronic signature.
5. On February 28, 2020, Complainant was informed his doctor’s note on VA Form 0857e was not sufficient to meet the requirement of the leave certification program for his absence on February 24-27, 2020; and on March 4, 2020, he was charged 32 hours of absent without leave (AWOL) for the absence.²
6. On April 23, 2020, S1A failed to identify Complainant as the subject matter expert (SME) for RightFax.³

Complainant also alleged that the following incidents of harassment:

- a. In February 2019, Complainant received an email stating his leave request that was verbally approved the previous day was going to be denied; and on February 20, 2019, his leave request was denied.

² Claim 5 was added pursuant to Complainant’s March 5, 2020, amendment request.

³ Claim 6 was added pursuant to Complainant’s May 6, 2020, amendment request.

- b. In May 2019, Complainant's request for nine hours of annual leave was denied and he was charged AWOL.⁴

On October 12, 2020, Complainant filed an additional EEO complaint alleging that the Agency subjected him to a hostile work environment based on age (year of birth: 1972), race (Black & White), disability, and reprisal when:

7. On September 1, 2020, Supervisory Information Technology Specialist – S1B – issued complainant a written counseling dated August 19, 2020.
8. On December 22, 2020, Complainant became aware he had not been selected for the position of IT Specialist, GS-2210-12, Vacancy Announcement Number CBTC-10939510-20-MB.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing. Over Complainant's objections, the AJ granted the Agency's January 22, 2022, motion for a decision without a hearing and issued a decision without a hearing on August 19, 2022. The AJ concluded that based on the undisputed facts of the record, there was no evidence to show that the events of the complaint were based on Complainant's race, age, disability, or prior EEO activity – or that he was subjected to harassment.

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

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

⁴ Claims (a) and (b) were part of Complainant's initial complaint as claims (1) and (3). The Agency dismissed the claims as untimely discrete acts pursuant to 29 C.F.R. §1614.107(a)(2) but included them as part of Complainant's harassment claim. Complainant had not disputed the dismissal. The claims are framed as (a) and (b) here to maintain numeric consistency with the AJ's recitation of the claims.

F.2d 13, 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).

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.

Upon careful review of the AJ's decision and the evidence of record, as well as the parties' arguments on appeal, we conclude that the AJ correctly determined that the preponderance of the evidence did not establish that Complainant was discriminated against by the Agency as alleged.

Agency officials articulated legitimate, nondiscriminatory reasons for its actions, which Complainant failed to dispute.

Regarding Claim 1, Complainant's then first line supervisor (S1A) indicated that he attempted to remove Complainant's compressed work schedule for productivity reasons. Specifically, IT was required to respond to tickets within 24 hours of being assigned and then follow up with the customer to ensure that the issue was resolved to their satisfaction. S1A reported that a review of Complainant's tickets around March 2019, indicated he was not following that protocol. Ultimately, Complainant's compressed schedule was not removed.

Regarding Claim 2, S1A indicated that when management receives letters of appreciation from customers, he reads them at the monthly staff meetings. He admits that during the October 2019 meeting he did not read a letter received by Complainant in September 2019, but he did read it during the November 2019 meeting.

Regarding Claim 3, S1A stated Complainant was placed on sick leave certification because over nine months, Complainant called out sick for two and a half workdays per month and quite a few of the call-outs were either before or after a weekend, before or after a day off, or before or after a holiday. S1A consulted upper management and Employee Labor Relations (ELR) prior to issuing the certification.

Regarding Claim 4, S1A stated that on November 4, 2019, he required Complainant to get a handwritten note because on the letter he provided there was no signed electronic signature – just a signature block that stated the provider’s name. The sick leave certification form and ELR required a “wet” (non-digital) signature.

Regarding Claim 5, Complainant’s new first line supervisor⁵ - S1B – stated Complainant’s initial leave request was received on February 26, 2020, for February 24, 25, and for five hours on February 26. Complainant later resubmitted the leave request on March 10, for February 24, 25, and for partial time on February 26th and 27th. S1B stated that when he received the request and the doctor’s note, he sought guidance from ELR to see if it was sufficient under the requirements of the sick leave certification. Complainant was informed that the note was insufficient and was provided an opportunity to make corrections before the timekeepers close the pay week. Per the terms of the sick leave certification, he was charged with AWOL.

Regarding Claim 6, S1A noted that Complainant is not a RightFax SME. He noted that Complainant assisted the previous SME with a RightFax server upgrade, and once the previous SME left the Agency in late 2019, he designated two of the GS 12 leads as SMEs.

Regarding Claim (a), S1A stated that he informed Complainant he was denying a leave request that he had approved verbally because between the time he approved the request and the time Complainant actually put his request into the system he did some additional analysis of his team’s tickets and had concerns about productivity.

Regarding Claim (b), S1A stated that on Thursday, May 30, 2019, he had verbally approved Complainant’s request to take a few hours of leave for an appointment. When S1A checked the time keeping system, Complainant

⁵ S1A was promoted on September 30, 2019, and became Complainant’s second line supervisor.

had put in leave for the full day. During the weekend, S1A emailed and texted Complainant numerous times informing him that he did not approve his leave for Monday, June 3, 2019, due to mission requirements. Complainant did not respond or report to work on Monday. Ultimately, although he initially told Complainant he would be charged with AWOL, on June 5, 2019, S1A notified Complainant that he retroactively approved his leave request even though he failed to follow established leave reporting procedures.

Regarding Claim 7, the record indicates S1A issued Complainant the written counseling because he left work without notifying management or requesting approval of his leave request. On August 18, 2020, Complainant left work in the middle of a scheduled tour and although he submitted a leave request in the time-keeping system, he failed to inform his supervisor he was requesting leave. In addition, on August 24, 2020, Complainant submitted an email saying he was leaving at 1300 hours and left at approximately 12:45 pm. Complainant later explained he considered 12:30 pm – 1:00 pm to be his lunch break, but it was not included in his leave request.

Regarding Claim 8, HR Specialist indicated that nine candidates – including Complainant – were found to be promotion-eligible for the vacancy. He organized a Promotion Panel of three individuals who reviewed the redacted resumes and scored them according to a scoring matrix. Ultimately the five candidates with the highest resume scores were referred for an interview, Complainant was not referred for an interview.

Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable factfinder could not find in Complainant's favor. There is no indication that any Agency action raised in this complaint was motivated by discrimination.

Accordingly, we AFFIRM the Agency's final order implementing the AJ's decision.

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 19, 2025
Date