



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Jeannie T.,¹
Complainant,

v.

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

Appeal No. 2022005132

Hearing No. 490-2021-00165X

Agency No. 200I-0626-2021100738

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 30, 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., 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 a Patient Support Assistant (PSA), GS 6, at the Agency's Medical Center in Nashville, Tennessee.

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.

At all relevant times during the events of the complaint, Complainant was on light duty assignment due to her Office of Workers' Compensation claim (OWCP), which assignment consisted of managing the lost and found, processing dental claims, taking mail to and from the mail room, and managing the lodging program until it was transferred to Social Work Services. Report of Investigation (ROI) at 125.

On January 24, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (African American), sex (female), disability (carpal tunnel, shoulder injury, cervical/lumbar stenosis), age (year of birth: 1956), and in reprisal for prior protected EEO activity when:

1. On October 20, 2020, Lead PSA sent an email to Complainant telling her not to talk to anyone about ID cards.
2. On October 20, 2020, Lead PSA growled at Complainant twice as he passed by her.
3. On October 21, 2020, Complainant's first line supervisor (S1) told complainant Lead PSA was not happy that Complainant finished her work early.
4. On October 21, 2020, S1 returned a document to Complainant that S1 had submitted to Lead PSA.
5. From October 26, 2020, and ongoing, management failed to provide and denied Complainant's reasonable accommodation.
6. On November 2, 2020, S1 told Complainant Lead PSA did not want Complainant talking to new employees.
7. On November 19, 2020, S1 told Complainant she needs to watch her voice, as she spoke with another employee.
8. On November 25, 2020, S1 told Complainant she needed to stay out of Cardiology.

9. On January 12, 2021, S1 told Complainant she did not have her mask on while she was at the counter.
10. On January 13, 2021, management accused Complainant of talking politics in the workplace.

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 Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing. Over Complainant's objections, the AJ granted the Agency's March 8, 2022, motion for a decision without a hearing and issued a decision without a hearing on August 27, 2022.

The AJ concluded that summary judgment was proper because Complainant cannot establish a prima facie case of harassment and failed to establish that she was denied a reasonable accommodation as her claim was a collateral attack on the OWCP process. 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. 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 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. Complainant failed to establish that she was subjected to harassment or discrimination based on her protected classes.

Regarding Claims 1 and 2, Complainant asserts she was attempting to help a Veteran get an ID card when Lead PSA sent her an email telling her not to talk to anyone about ID cards. The record indicates Lead PSA had no supervisory relationship over Complainant. The record indicates Lead PSA asked Complainant to, "please discontinue intercommunicating information regarding ID cards to employees, as the veteran needs a photo ID to verify [their] identity." ROI at 116. Lead PSA denied growling at Complainant and expressed that Complainant was upset because he did not say "good morning" to her. ROI at 214.

Regarding Claim 3, Complainant asserts her first line supervisor (S1) told her that Lead PSA was not happy that she completed her work early. Lead PSA denied this.²

Regarding Claim 4, Complainant asserts she was looking for a missing document and later discovered Lead PSA had submitted it to S1. Lead PSA indicated he did turn in a document left on the front desk to S1, but he did not know it was Complainant's. Complainant asserts the incident made it seem as if she wasn't following the privacy policy because she left paperwork on her desk. She asserts the incident was harassing because other employees left paperwork on their desks. The Agency did not discipline Complainant for the incident. ROI at 91.

² S1 did not submit an affidavit as requested by the investigator.

Regarding Claim 5, Complainant asserts she was moved to a nonergonomic desk in violation of her reasonable accommodation. The record indicates that in 2010, Complainant underwent an ergonomic evaluation and was provided an ergonomic workstation by OWCP. ROI at 172. At some point her chair was changed and she requested it back. The record indicates that on November 10, 2020, Lead PSA emailed S1 and the EEO manager expressing that Complainant wanted her workstation back and while he was not responsible for moving her to a desk that did not accommodate her needs, he suggested that Complainant be placed back at the desk she requested.

The record further indicates that Complainant's light duty assignment and ergonomic setup were a result of Complainant's Workers' Compensation Claim (OWCP) and she never filed a reasonable accommodation request with the Agency's Reasonable Accommodation Coordinator. ROI at 241, 251. Notably, Complainant stated her set up was through OWCP and that she did not need to request a reasonable accommodation from the Agency.

Regarding Claim 6, Complainant asserts S1 told her Lead PSA did not want her talking to new employees. Lead PSA stated he did not recall saying this. ROI at 219. He further stated that based on his knowledge and experience, Complainant has always verbally interacted with other staff.

Regarding Claim 9, Complainant asserts she was sitting at the front counter eating her lunch when S1 told her she did not have her mask on. The record indicates S1 provided the same directive to other employees noting that the front desk person should always have their mask on and there was a break room for eating. ROI at 263.

Complainant has not identified any evidence that persuasively suggests the Agency's actions were motivated by her protected classes. She further has not shown she was denied a reasonable accommodation. 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. Furthermore, we note that even if true, these incidents are not sufficiently severe or pervasive so as to constitute a hostile work environment.

Accordingly, we AFFIRM the Agency's final order implementing the AJ's decision finding no discrimination.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0124.1)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration**. A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

Complainant should submit their request for reconsideration, and any statement or brief in support of their request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>. Alternatively, Complainant can submit their request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files their request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the request for reconsideration.** The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(f).

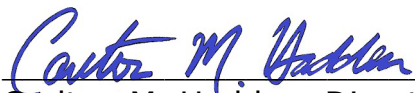
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0124)

You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by their full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

March 4, 2025

Date