



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

[REDACTED]  
Marvella B.,<sup>1</sup>  
Complainant,

v.

Louis DeJoy,  
Postmaster General,  
United States Postal Service  
(Field Areas and Regions),  
Agency.

Appeal No. 2023000166

Hearing No. 410-2021-00367X

Agency No. 4G-320-0321-20

DECISION

Complainant appeals to the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's September 15, 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Sales/Service/Distribution Associate at the Brunswick/St. Simons Island Post Office in St. Simons Island, Georgia.

On December 18, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against her based on of disability (lumbar) and in reprisal for prior protected EEO activity when:

---

<sup>1</sup> 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.

1. On September 14, 2020 through a date to be specified in November 2020, Complainant was charged Absent-Without-Leave (AWOL); and
2. On a date to be specified in November 2020 and ongoing, Complainant was assigned work outside of her driving restriction.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). Complainant requested a hearing. On August 15, 2022, the Agency motioned for a decision without a hearing. When Complainant did not object, the AJ granted the Agency's motion and issued a decision without a hearing on September 7, 2022.

Finding that the Agency's motion accurately stated the relevant facts, the AJ incorporated the Agency's motion into his decision. The AJ's decision found that the Agency had legitimate, nondiscriminatory reasons for charging Complainant AWOL, namely that Complainant failed to update her medical information and stopped reporting for duty. The AJ further found that the Agency's offer of modified assignment did not actually violate Complainant's medical driving restriction. Ultimately, the AJ found that Complainant had not proven her claims of discrimination or reprisal.

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.

#### STANDARD OF REVIEW

The Commission's regulations allow an AJ to grant summary judgment when they find 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 factfinder 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 implementing 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. (as revised, August 5, 2015) (providing that an AJ's determination to issue a decision without a hearing, and the decision itself, will both be reviewed *de novo*).

In order to successfully oppose a decision by summary judgment, a complainant must identify, with specificity, facts in dispute either within the record or by producing further supporting evidence and must further establish that such facts are material under applicable law. Such a dispute would indicate that a hearing is necessary to produce evidence to support a finding that the agency was motivated by discriminatory animus.

### ANALYSIS AND FINDINGS

After careful review of the record, we find that Complainant failed to raise a genuine issue of material fact on her claims of discrimination and reprisal. Regarding Claim 1, the record shows that on February 2, 2020, Complainant injured her back while lifting a package at work. She continued to work (with occasional light duty and assistance from coworkers) until September 11, 2020, when she suffered a re-injury of her back. Complainant stated that her symptoms worsened and she was not able to work. Though Complainant submitted medical documentation supporting the fact that she was injured, management determined that Complainant had not proven medical inability to work on a modified assignment. Complainant stopped reporting for duty and was charged AWOL on September 12-26, October 9-10, and October 23-December 18, 2020. Complainant does not deny that she failed to report for duty without approval; nor does she present any evidence that the Agency's stated reasons for charging her AWOL are pretext for discrimination or reprisal. We find no evidence that the Agency's actions were motivated by discriminatory or retaliatory animus.

Regarding Claim 2, the record shows that the Agency offered Complainant a modified assignment to allow her to perform sedentary duties that would not aggravate her back injury. Complainant objected to the modified assignment because it required her to commute 45 minutes to an hour, which she alleged violated her medical driving restriction. The record shows that when asked to specify how long her driving restriction was for, Complainant responded: "length not specified just cant drive for over an hr a day..." We agree with the AJ that Complainant did not show she had a medical driving restriction that would prevent her from commuting 45 minutes to an hour. Likewise, we agree with the AJ that Complainant did not show that the Agency's offer of a modified assignment required Complainant to drive at all. Though Complainant claims the commute was part of her modified assignment, the Agency noted that many employees commute to work using public transportation, getting rides, or finding other alternatives to driving.

The ultimate burden of proving discrimination remains at all times with the Complainant. Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). Complainant has failed to produce evidence sufficient to support her claims.

### CONCLUSION

Accordingly, we AFFIRM the Agency's final decision finding no discrimination or reprisal.

### 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

January 22, 2024

Date