



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

[REDACTED]  
Diane W.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2023000210

Hearing No. 550-2020-00454X

Agency No. 4F-945-0028-20

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 action 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 action.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier at the Walnut Creek Post Office in Walnut Creek, California.

On March 16, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against her based on race (Black), sex (female), disability (syncope), and in reprisal for prior protected EEO activity when:

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<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 December 5, 2019 (and other dates), her medical information was discussed and disclosed on the workroom floor;
2. On November 5, 2019, she was excluded from work when work was available; and
3. On or about December 18, 2019, she was sent home for over a week even though she had no medical restrictions.

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 June 3, 2021, 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.

The AJ found that the Agency's motion accurately stated the relevant facts and incorporated the Agency's motion into his decision. The AJ found no evidence that any other employees were similarly situated to Complainant and received more favorable treatment from the Agency. The Agency's stated reason for its actions was that documentation from Complainant's medical providers indicated that Complainant should not drive. The AJ found this to be a legitimate, nondiscriminatory reason. Finally, the AJ found no evidence that the Agency's reasoning was pretext for discrimination, and no evidence that the Agency acted with discriminatory or retaliatory motives.

The Agency subsequently issued a final action 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 action 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 any of her claims of discrimination and reprisal. Regarding Claim 1, we find no evidence that Complainant's first-line supervisor (S1) disclosed her confidential medical information on the workroom floor. The Commission has repeatedly held that general statements about an employee's work status or their medical disqualification from performing certain duties is not "confidential medical information." See, e.g., Sheryl S. v. USPS, EEOC No. 2022002854 (May 16, 2023). When asked to describe the incident, Complainant alleges that S1 revealed to coworkers that she could not drive. This led coworkers to question Complainant about why she could not drive. There is no allegation or evidence that S1 revealed any confidential medical information related to Complainant's driving restriction.

Regarding Claims 2 and 3, we find that the Agency stated legitimate, nondiscriminatory reasons for excluding Complainant from work and for sending her home. The record shows that the Agency had reason to believe that Complainant was unable to drive. On October 31, 2019, Complainant suffered a loss of consciousness. Shortly thereafter, her physician diagnosed her with syncope and advised her not to drive until evaluated by the state Department of Motor Vehicles (DMV). Complainant submitted medical documentation to management on November 5, 2019 and advised them she was unable to drive. On November 8, 2019, Complainant submitted written requests for light/modified duty, stating, "I am able to case, sit, stand, but unable to operate a moving vehicle" and "I am unable to carry my route."

On November 13, 2019, Complainant was sent on a route with another employee to "tag team" delivery of the mail. Complainant's second-line supervisor (S2) stated this method was inefficient, as the combined hours it took two employees to complete the mail route was more than the number of hours normally taken by a single employee. For this reason, S2 decided to discontinue sending Complainant to deliver mail with other employees. S2 denied Complainant's request for light duty and requested additional information on her biomechanical limitations. However, despite S2's written denial, Complainant was permitted to "case" mail for limited hours.

On December 6, 2019, the DMV issued a document stating that "no action is warranted at this time" regarding Complainant's driving privileges. S1 appears to have misunderstood this document, as he was expecting affirmative confirmation that Complainant was medically/legally permitted to drive. On December 16, 2019, Complainant obtained her driver license information report from the DMV showing that she had a valid driver license with no restrictions (other than requiring corrective lenses when driving).

Complainant also obtained a note from her physician stating “No restrictions for physical activity or driving. Limit duration of work to 8 hours/day as preventive measure.” The Agency requested additional information on what “preventive measure” meant and what duties Complainant was able to perform. After discussion among management, Complainant was allowed to return to work on December 21, 2019, subject to the eight-hour per day restriction.

Though the Agency may have been meticulously cautious in its interpretation of Complainant’s medical documentation, we find no evidence that their actions were motivated by discrimination or retaliation. Indeed, we find that caution was warranted in light of Complainant’s statement to S2 that the DMV may suspend her license if she was deemed “medically a danger to the road.” The record contains no evidence that the Agency’s stated reasons for its actions are pretext for discrimination or retaliation.

Complainant argued that other employees were placed on driving restrictions but treated more favorably as they were granted limited duty work. However, the record shows that the other employees were not similarly situated to Complainant as each of them were injured while on the job. Agency policy required that employees who suffer injuries while at work be given limited duty assignments. Conversely, Agency policy does not guarantee light duty assignments for employees who suffer injuries unrelated to their job. Complainant submitted no evidence of any employee who was given a medical driving restriction for a diagnosis unrelated to a work injury.

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. Complainant did not allege and did not argue before the AJ or on appeal, that she was denied a reasonable accommodation.

### CONCLUSION

Accordingly, we AFFIRM the Agency’s final action 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

January 29, 2024

Date