



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

[REDACTED]  
Deandrea M.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2023000513

Hearing No. 531-2019-00603X

Agency No. 1K-206-0053-18

DECISION

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403, from the Agency's October 5, 2022 final order concerning an 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, we AFFIRM the Agency's final order finding no discrimination.

At the time of events giving rise to this complaint, Complainant worked as a Mail Processing Clerk, Level 06, at the Agency's Suburban Maryland Processing and Distribution Center in Gaithersburg, Maryland.

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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.

On September 18, 2018, Complainant filed a formal complaint, which was amended, alleging that:

A. Complainant was subjected to harassment based on race (African American), sex (female), age (over 40), disability (cervical lumbar surgery and fusion, asthma, carpal tunnel, shoulder contusion, high blood pressure, generalized anxiety, panic disorder, dysthymia), and in reprisal for prior EEO activity when:

1. On or about May 17, 2018, June 2, 2018, and June 5, 2018, the Agency provided her a modified job offer she believed exceeded her medical restrictions.
2. On or about June 2, 2018, the Agency assigned her duties that she believed exceeded her medical restrictions.<sup>2</sup>
3. On June 2, 2018, the Agency did not assign her a timecard.
4. On or about July 23, 2013, the Agency sent her home and did not permit her to work.<sup>3</sup>
5. On or about December 16, 2018, the Agency charged her 32 hours of annual leave without her consent or knowledge.

B. Complainant was discriminated again based on her race, color (black), and disability when:

1. On or about October 4, 2019, the Agency offered her a job that she believed she could not do in light of her medical condition.

After its investigation into the complaint, the Agency provided Complainant with a copy of the report of investigation and notice of right to request a hearing before an Equal Employment Opportunity Commission (EEOC or Commission) Administrative Judge (AJ). Complainant requested a hearing. The Agency submitted a motion for a decision without a hearing.

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<sup>2</sup> Complainant indicted that Claims A1 and A2 are the same issue.

<sup>3</sup> Complainant clearly alleged in her formal complaint and confirmed in her affidavit that the alleged incident in Claim A4 occurred on July 23, **2013** (not June 23, 2018).

Complainant did not file a response to the Agency's motion. On September 27, 2022, the AJ issued a decision without a hearing finding no discrimination.

Complainant started working for the Agency in 1971. On December 17, 1985, Complainant was injured on the job and was paid disability compensation benefits via Department of Labor (DOL), Office of Workers' Compensation Program (OWCP), until July 23, 1990, at which time she returned to work with a modified job assignment within her medical limitations. Later in 1990, Complainant underwent cervical surgery and did not report to work and was paid disability compensation benefits by the DOL until March 12, 1997, at which time she returned to a modified job assignment working at NIXIE operations (i.e., working on finding the correct contact information for pieces of mail that did not have an accurate address) within her medical limitations. On July 23, 2013, Complainant was sent home because there was no "NIXIE" work available (due to abolishment of NIXIE operations) within her medical limitations (Claim A4), and she remained out of work and was paid disability compensation benefits by the DOL.

In November 2017, the DOL requested that Complainant undergo a work capacity evaluation. A doctor determined that Complainant was able to work four hours per day with restrictions sitting four hours, walking/standing two hours, and two hours pulling/lifting/pushing up to 10 pounds. Based on this evaluation and the DOL's instruction, on May 17, 2018, the Agency offered Complainant a modified job offer (i.e., four hours manually casing letters) within her medical limitations. Complainant initially objected to the job offer but accepted it ultimately and returned to work on June 2, 2018. On June 7, 2018, Complainant reported an injury while working in that her right hand became painful and swollen. Complainant has not returned to work since June 7, 2018. On October 15, 2019, as a result of a work capacity evaluation and DOL's instruction, the Agency provided Complainant a modified job offer within her medical limitations (i.e., scanning/sorting priority mail under 10 pounds for four hours per day). Complainant refused to accept this offer.

Regarding Claims A1, A2 (same as A1), and B1, the AJ stated that Complainant claimed that her medical conditions prevented her from completing the modified duties in the Agency's modified job offers. The AJ indicated that the Agency offered these modified job assignments to Complainant directed by DOL based on her medical restrictions.

Thus, the AJ found that Complainant failed to demonstrate that she was subjected to discriminatory harassment regarding the alleged actions or that the Agency failed to accommodate her. The AJ also found that the alleged claims failed to state a claim. The AJ stated that the alleged claims were a collateral attack on the proceedings of another forum, here DOL, OWCP. The AJ noted that Complainant in fact challenged the alleged modified job offers to DOL, OWCP in May and June 2018, and October 2019.

Regarding Claim A3, the Agency stated that on June 2, 2018, Complainant was instructed to use a manual form of timekeeping until her official timecard arrived in the mail. The Agency indicated that Complainant was paid for all hours she worked. Complainant does not dispute this.

Regarding Claim A4 (2013 incident), the AJ dismissed it due to untimely EEO Counselor contact. Complainant contacted an EEO Counselor regarding the matter on June 24, 2018, which was beyond the 45-day time limit after the alleged incident of 2013. The AJ noted that the alleged claim (Complainant's being sent home and not being permitted to work because no NIXIE available) was not like or related to the rest of the claims in the current case (modified job assignments). The AJ also noted that Complainant filed an EEO complaint in 2010, and she had no explanation for the delay in her untimeliness.

Regarding Claim A5, a Senior Manager Distribution Operations acknowledged that he mistakenly charged Complainant with 32 hours of annual leave for the period of November 27, 2018, through November 30, 2018, which was intended for another employee. But he did not realize the error until February 2019, by the Injury Compensation Specialist and he made a pay adjustment to correct the problem. Complainant does not contest this.

Based on the foregoing, the AJ found that Complainant failed to prove that she was subjected to discrimination or discriminatory harassment as alleged. The Agency issued its final order fully implementing the AJ's decision. The instant appeal followed.

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 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 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*).

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. Here, however, Complainant has failed to establish such a dispute. Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable fact-finder could not find in Complainant's favor.

Initially, we find that the AJ properly dismissed Claim A4 for untimeliness. The alleged incident occurred in 2013, but Complainant did not contact an EEO Counselor until June 24, 2018, which was beyond the 45-day time limit. Thus, we find that the AJ properly dismissed Claim A4 due to untimely EEO Counselor contact. 29 C.F.R. § 1614.107(a)(2).

Regarding Claims A1, A2, A3, A5, and B1, 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 or was subjected to harassment by the Agency as alleged. Furthermore, we find no indication that Complainant was denied a reasonable accommodation.

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:



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Carlton M. Hadden, Director  
Office of Federal Operations

March 5, 2025  
Date