



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

[REDACTED]
Gabriele G.,¹
Complainant,

v.

Leland Dudek,
Acting Commissioner,
Social Security Administration,
Agency.

Appeal No. 2023000517

Hearing No. 530-2018-00136X

Agency Nos. PHI-16-0954-SSA, PHI-17-0513-SSA, PHI-18-0511-SSA

DECISION

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403, from the Agency's October 6, 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. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 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 GS-12, Operations Supervisor (later as a Management Support Specialist) at the Agency's Philadelphia Downtown field office in Philadelphia, Pennsylvania.

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 15, 2016, July 3, 2017, and June 22, 2018, Complainant filed three formal complaints, identified above, alleging that:

1. The Agency subjected her to disparate treatment on the bases of race (Black) and in reprisal for prior EEO activity when:
 - a. On August 10, 2016, she was not selected for Human Resources Specialist position under Vacancy Announcement number SA-1704185-16-279.
 - b. Beginning August 30, 2016, and ongoing when management continually undermined her authority, micromanaged her and provided contradictory instructions regarding her assignments.
 - c. On October 27, 2016, she received a lower Performance Assessment Communications System (PACS) appraisal.
 - d. On October 27, 2016, she was reassigned from an Operations Supervisor to a Management Support Specialist.
2. The Agency discriminated against her based on her disability (post traumatic stress disorder, anxiety, and major depression), when:
 - a. It failed to provide her with reasonable accommodation between August 16, 2016, and March 20, 2017.
 - b. It unduly delayed implementation of a reasonable accommodation, which she requested on August 16, 2017.
 - c. It failed to provide her with reasonable accommodation, beginning in or around December 29, 2017, through February 20, 2018, and continuing.
 - d. It shared her medical information with Regional Office staff on January 6, 2017.
3. The Agency subjected her to harassment based on her race, disability, and in reprisal for prior EEO activity when:
 - a. Beginning January 26, 2017, and ongoing in terms of her working conditions.
 - b. On February 20, 2018, her reasonable accommodation was denied.
4. The Agency subjected her to disparate treatment based on race, disability, and in reprisal for prior EEO activity when:
 - a. On February 3, 2017, her request for official time was denied.

- b. On February 13, 2017, her request for leave under the Family Medical Leave Act (FMLA) was denied.
- c. In February 2017, she received an overpayment, which later subjected her to a wage garnishment.
- d. On May 22, 2017, she was suspended for two days for alleged failure to safeguard Personal Identifiable Information (PII).
- e. On August 25, 2017, she was denied a hardship transfer from a GS-12 to GS-11 Workload Support Unit.
- f. On September 18, 2017, her request for leave under FMLA was denied.
- g. On September 11, 2018, her request to work credit time was denied.

After its investigation into the complaints, 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. Complainant responded. On September 28, 2022, the AJ issued a decision without a hearing finding no discrimination as alleged.

Regarding claim 1a, Complainant applied for the Human Resources Specialist, GS-11/12, position at issue. There were 20 candidates on four certificates for the vacancy and only those candidates who were highly recommended by their supervisor were interviewed. Complainant made the best qualified list and was interviewed by two interview panelists. The interview panelists indicated that Complainant performed poorly in her interview in that she was unable to articulate her responses to match the level of experiences she annotated on her application. Thus, Complainant was not recommended and was not selected for the position.

The Agency selected Selectee A (African American, female) and Selectee B (White, female) for the position. The interview panelists stated that Selectee A's supervisor described her as "a highly regarded resource person who produces error free work for the most complex cases." The panel indicated that Selectee A served as a Union Committee Chairperson for the airline union, was in law school, and was a certified mediator for the State of New Jersey. The interview panelists indicated that Selectee A did a nice job during the interview.

Regarding Selectee B, the interview panelists noted that her supervisor described her as "a researcher who has excellent oral communication skills"

and having skills in resolving issues and ability to handle challenging situations. The interview panelists indicated that Selectee B's application was well written and her responses to interview questions "effortless." Selectee B had a master's degree in business administration from Penn State University and was in law school.

The AJ stated that Selectee A had significant prior experience in labor and employee relations and Selectee B established herself to be a good fit for the role. The AJ determined that while Complainant had prior interactions with Human Resources in her managerial roles, she failed to establish that she was a plainly superior applicant. The AJ found that Complainant failed to establish that the Agency's action was based on discriminatory animus.

Regarding claim 1b, the AJ indicated that despite Complainant's claims, management's routine oversight of general workplace disputes, as here, did not qualify as discrimination without evidence of discriminatory animus. The AJ stated that the record clearly demonstrated that Complainant regularly conflicted with management, violated Agency policy, and failed to comply with managerial policies in preparing appraisals for her employees, opting to copy and paste employees' self-assessments without focusing on the employees' consistent and well-documented performance.

Regarding claim 1c, Complainant received PACS performance appraisal rating of "Successful Contribution" (highest to lowest ratings were Outstanding Contribution, Successful Contribution, and Not Successful) for fiscal year 2016. Complainant's then Supervisor A noted in the appraisal that Complainant, in part, failed to respond to attempts to resolve the communication challenges and continued to respond in an unacceptable tone and manner to workload directives from her supervisor and manager. The record indicates that Complainant also received her PACS performance appraisal rating of "Successful Contribution" for fiscal year 2015 from then Supervisor B. The AJ stated that considering Complainant's conflict with management, violation of Agency policy, and failure to execute her duties, the Agency's issuance of the alleged appraisal rating was not based on discrimination.

Regarding claim 1d, the AJ stated that the Agency reassigned Complainant from her Operations Supervisor position laterally to the Management Support Specialist position with the same GS-12 level after observing that she was not a good fit in the Operations Supervisor role and that she was resistant to feedback, failed to collaborate with management, and was defensive about office management.

The AJ noted that the record clearly reflected that Complainant had a demonstrated history of using disrespectful language and tone in email communications with Supervisor A and had a concerning approach to performance appraisals for her employees since she began her role as Operations Supervisor in August 2013. The AJ determined that the Agency offered legitimate, nondiscriminatory reasons for its decision for Complainant's reassignment.

Regarding claims 2a, 2b, and 2c, Complainant claimed that she was denied a reasonable accommodation. Complainant indicated that in August 2016, she told her then Supervisor B about her Employee Assistance Program appointment and the anxiety and stress she experienced. The AJ stated that Complainant argued that she was denied a reasonable accommodation when the Agency did not offer her the preferred reasonable accommodation (i.e., reassignment to a Claims Specialist position in the Workload Support Unit) in 2017 and 2018.

The record indicates that the Agency approved Complainant's extended leave from October 31, 2016, to January 18, 2017, and since her returning to work on January 18, 2017, the Agency modified her work duties (i.e., removing the Customer Service Representative Unit) based on her medical documentation. The AJ stated that the Agency engaged in good faith efforts with Complainant to accommodate her in the interim while her reasonable accommodation request was being processed. The AJ noted that Complainant requested she be reassigned to a Claims Specialist position in Workload Support Unit.

Specifically, the AJ indicated that Complainant's doctor recommended that Complainant be reassigned to a position that involved flexibility and control over the level of social interaction; and she should avoid fast-paced environment and face-to-face and telephone public contact. The doctor stated that Complainant was unable to complete more than 300 hours of training for a position. The doctor recommended Complainant be reassigned to a Claims Specialist position in Workload Support Unit. The Agency did not reassign her to the requested position.

The AJ stated that the Agency did not offer Complainant a Claims Specialist in Workload Support Unit as she requested because she would be required to, in part, conduct interviews with the public and telephonic interactions, and undergo approximately 1,180 hours of training if she were to be reassigned to that position.

The AJ indicated that based on her medical documentation, the Agency offered Complainant other positions in the Nicetown field office, the Germantown field office, the Norristown field office, or the Downtown Philadelphia field office, including modification of work duties to accommodate her medical conditions. Specifically, the AJ noted that the Agency's offer to transfer Complainant to the Germantown field office would have been a particularly effective accommodation for her because in that office, she would have had a much shorter commute, significantly less interaction with other employees and the public, a calmer work environment, flexibility in her training and work schedule, and no interaction with her current Supervisor A. The AJ stated that Complainant refused each of the Agency's offered reassignments until she ultimately accepted the GS-4 Mail Clerk position in the Computer Operations Mailroom Unit in the Philadelphia region on July 10, 2018. Complainant started the position on July 16, 2018. Complainant's reassignment to the GS-4 Mail Clerk position is not at issue.

The AJ indicated that the Agency did more than what the Rehabilitation required by offering multiple reassignments to Complainant over several iterations of reasonable accommodation requests, but she refused to accept any other accommodations which would have been significantly less drastic reassignments. Based on the foregoing, the AJ found that the Agency did not unlawfully deny Complainant a reasonable accommodation.

Regarding claim 2d, Complainant's then Supervisor C stated that she did not have access to Complainant's medical information and did not share the same. As a supervisor and acting as a timekeeper at that time, Supervisor C worked on Complainant's requested amendment to include FMLA (self/serious traumatic), annual leave, sick leave, and advanced sick leave to her timesheets from October 31, 2016, to December 15, 2016. Supervisor C indicated that she was not able to amend Complainant's leave as she requested, and Supervisor C thus sent an email to a then team lead of the Pay and Benefits section seeking advice. Supervisor C stated that her email did not contain any medical information. The record shows no diagnosis was disclosed. The AJ stated that the alleged incident occurred only to effectively accommodate Complainant's request for her extended absence, including FMLA leave. The AJ found the Agency did not violate the Rehabilitation Act as alleged.

Regarding claim 4a, Supervisor A indicated that Complainant was granted three hours of official time to talk to her EEO Counselor by phone. Complainant however took three hours of annual leave.

The AJ stated that Supervisor A approved more than 60 hours of official time for Complainant to work on her EEO matters during duty hours from February to October 2017. The AJ found no discriminatory motive for the alleged action.

Regarding claim 4b, Complainant requested FMLA Foster Care to stay home with her children and her foster children on a snow day. The AJ stated that although Supervisor A, based on a Human Resources Specialist's advice, denied Complainant's request, she later discovered that information was incorrect and reversed her decision and asked Complainant to resubmit her request to amend her leave to reflect FMLA Foster Care. Complainant did not submit the request. The AJ did not find the Agency's action discriminatory.

Regarding claim 4c, Complainant had a 45-day period of Continuation of Pay (COP) in October and November 2016, but the Department of Labor denied her workers' compensation claim. Complainant requested to use a combination of FMLA and annual leave to cover the COP following which the Agency promptly altered her timesheet per her request. The AJ stated that the Agency further, in its discretion, approved Complainant's request for advanced sick leave, reducing her overpayment. The AJ found that Complainant proffered no evidence to show that the Agency's actions complying with her requests were based on discrimination.

Regarding claim 4d, on April 12, 2017, Complainant sent notes to her personal email address and to her union representative's personal email address that included a claimant's social security number. Supervisor A issued Complainant a two-day suspension for violating the Agency's policy for handling PII. The AJ, noting the fact that Complainant was given a warning seven months ago for failure to safeguard PII in a similar fashion, found that the alleged action was not based on discrimination.

Regarding claim 4e, Complainant requested a hardship transfer to a GS-11 Claims Specialist position at the Workload Support Unit in Spring Garden, Philadelphia, due to her stress in her current position. The Philadelphia Region Hardship Coordinator denied Complainant's request because her situation did not qualify as a hardship. The AJ noted that the Agency's hardship transfers were reserved for circumstances outside of an employee's control which were sufficiently severe that they jeopardize her or her family's health or financial security.

The AJ determined that here, Complainant's request was denied by an independent office within the Agency, i.e., the Philadelphia Region Hardship Coordinator, and the Agency properly applied its policies with respect to hardship transfers. The AJ found that Complainant failed to provide any comparative evidence demonstrating that employees outside of her protected classes were granted hardship transfers under similar circumstances.

Regarding claim 4f, Complainant's then Supervisor D, who was on detail in that position, stated that in September 2017, Complainant requested FMLA foster care assistance. After consulting subject matter experts at the Philadelphia Regional Office and Headquarters, Supervisor D requested that Complainant submit additional medical documents for his approval of Leave Without Pay (LWOP) or LWOP under FMLA. Complainant failed to do so. Supervisor D denied Complainant's request for FMLA LWOP for foster care. The AJ found that the Agency did not discriminate against Complainant as alleged when she failed to comply with request protocols directed by the Philadelphia Regional Office and Headquarters.

Regarding claim 4g, the AJ stated that Complainant's requested work credit hours on September 11, 2018, were denied because the facility had insufficient work available for her to do for work credit.

Claims 3a and 3b include many of the other claims in the complaint but are characterized in these claims as harassment. With regard to her harassment claim, in claims 3a and 3b, the AJ found that considering the finding of no discrimination regarding the Agency's actions, Complainant was not subjected to unlawful harassment or denial of a reasonable accommodation as alleged. Regarding the denial of a reasonable accommodation, the AJ found that Complainant requested a calmer work environment, and that Complainant was offered reassignment to the Claim Specialist position in either Germantown or downtown Philadelphia, but Complainant rejected those offers. Complainant has not shown why that accommodation was effective, or what other options there were for her that could be considered a calm work environment.

Based on the foregoing, the AJ found that Complainant failed to demonstrate that the Agency's actions were based on discrimination or 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.

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 harassed by the Agency as alleged. Furthermore, we find that Complainant was provided a reasonable amount of official time to work on her EEO complaint.

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 5, 2025
Date