



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

[REDACTED]
Caitlyn H.,¹
Complainant,

v.

Alejandro N. Mayorkas,
Secretary,
Department of Homeland Security
(Customs and Border Protection),
Agency.

Appeal No. 2023000552

Agency No. CBP-01787-2020

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 October 3, 2022, final decision 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 decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Paralegal Specialist, GS-0950-09, at the Agency's Office of the Associate Counsel (OAC) within the Office of the Chief Counsel (OCC) at One World Trade Center in New York, New York.

On September 28, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the basis of disability (Eye Impairment) when, from approximately

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.

May 1, 2020, to September 17, 2020, management did not grant her reasonable accommodation request.²

Complainant was employed as a Paralegal Specialist from December 8, 2019, to September 17, 2020. Her first line supervisor (S1) was a Deputy Associate Chief Counsel in the OAC. Her second-line supervisor was the Associate Chief Counsel (S2). Investigative File (IF) at 85, 114-115.

Complainant has an eye impairment. S1 was aware of Complainant's eye impairment because Complainant had informed her. S1 was not aware of Complainant having any medical limitations.

On April 17, 2020, S1 conducted Complainant's mid-year performance progress review. IF at 71, 84. S1 informed Complainant of her performance deficiencies. After the mid-year review, S1 instructed Complainant to submit draft emails for review prior to sending the emails.

Thereafter, in the first week of May 2020, Complainant verbally asked S1 for a reasonable accommodation. Complainant claimed that she verbally requested an additional computer monitor to take home for teleworking and clear, written instructions as a learning aid. Complainant stated she was provided an extra monitor for home use. Complainant stated that the New York Field Office did not have a Supervisory Paralegal Special or Office Manager who provided instructions to the Paralegal Specialist and that assignments and expectations are often unclear. S1 informed Complainant that providing her with written instructions was not practical in the fast-paced office. IF at 119.

On July 8, 2020, Complainant submitted a formal reasonable accommodation request. IF at 79. She requested additional time to complete certain assignments and again requested written instructions for certain assignments that require more attention to detail. On July 15, 2020, S1, a second Deputy Associate Chief Counsel (DACC), and an individual from the Privacy and Diversity Office met with Complainant regarding her reasonable accommodation request. IF at 85, 123. The parties then engaged in the interactive process. In August 2020, her medical provider stated Complainant's vision is 80 percent compromised, but he did not identify any accommodations that would be required to allow Complainant to perform the essential functions of her position. IF at 259. Instead, the doctor responded, "Depends on what she can do with very limited vision." IF at 260. The medical provider was also asked if he believed that Complainant would present a risk of harm or injury to herself or others. He responded, "If she cannot see well, the answer is possibly yes." IF at 260.

² The Agency dismissed an additional claim (removal) for alleging the same matter raised before the Merit Systems Protection Board (MSPB). On September 18, 2020, Complainant filed an appeal with the MSPB regarding a proposed removal and the removal. On September 28, 2020, Complainant filed the instant EEO complaint. Thus, Complainant's appeal with the MSPB predated the instant EEO complaint. The Commission can find no basis to disturb the Agency's dismissal decision.

Meanwhile, on July 14, 2020, S2 proposed Complainant's removal from federal service because she failed to perform the duties of the Paralegal Specialist position and failed to follow instructions. IF at 138-142. The notice included numerous specifications detailing Complainant's performance deficiencies and failure to follow instructions.

By letter dated July 23, 2020, S2 informed Complainant that interim accommodations were being provided, pending the outcome of Complainant's reasonable accommodation request. Complainant acknowledged receiving the interim accommodation letter on July 27, 2020. IF at 86, 92-93. The record does not show that Complainant ever received a formal denial of her request for a reasonable accommodation, but Complainant averred that the Agency only partially granted her request, because it failed to provide her written instructions for the tasks, as she requested. The record shows that Complainant was provided interim accommodations of a printer with paper and ink, a second monitor from the office supply, and continued flexibility to structure her telework day.

On September 17, 2020, the OCC Chief of Staff issued Complainant a letter removing her from federal service.

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). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b).

In the decision, the Agency noted that Complainant's allegation centered around her not receiving detailed written instructions to perform each job assignment; however, the record reflected that management provided Complainant with an interim accommodation. The DACC asserted Complainant informed management that she could not understand the functions of her position unless they were written in detail. S2 averred Complainant had difficulty multitasking and with "the flow of the office." Nevertheless, S2 asserted management made an effort to familiarize Complainant with her assignments and her new position. S2 contended Complainant's duties were too diverse to provide written instruction for each assignment. S2 further attested that as an alternative management offered to demonstrate and explain what actions Complainant needed to perform. Additionally, S2 maintained management offered to obtain special equipment or software to assist Complainant with her vision; however, Complainant did not accept the offer. Even assuming Complainant was qualified to perform the essential functions of the Paralegal Specialist position, the Agency noted that Complainant was not entitled to her accommodation of choice. Additionally, Complainant acknowledged that as part of her accommodation, management assigned her duties that she could perform without written instructions. Accordingly, the Agency found that Complainant failed to show that the Agency denied her an effective accommodation in violation of the Rehabilitation Act.

This appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant requests that the Agency's decision be reversed and asks that we find that the Agency did in fact discriminate against her by failing to provide her with a reasonable accommodation while still employed. Complainant stated that she was performing some duties well and did not require written instructions for some tasks and that it would not have been an undue hardship for the Agency to provide the written instructions as she had requested.

ANALYSIS AND FINDINGS

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review “requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker,” and that EEOC “review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission’s own assessment of the record and its interpretation of the law”).

Denial of Reasonable Accommodation

Under the Commission's regulations, a federal agency may not discriminate against a qualified individual on the basis of disability and is required to make reasonable accommodations to the known physical and mental limitations of an otherwise qualified individual with a disability, unless the Agency can show that reasonable accommodation would cause an undue hardship. See 29 C.F.R. § 1630.2(o), (p). To establish that she was denied a reasonable accommodation, Complainant must show that: (1) she is an individual with a disability, as defined by 29 C.F.R. § 1630.2(g); (2) she is a “qualified” individual with a disability pursuant to 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide him with a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC Notice No. 915.002 (Oct. 17, 2002) (Enforcement Guidance on Reasonable Accommodation).

Here, Complainant's own testimony and the statement of her medical provider undercut her contention that she was denied a necessary reasonable accommodation to perform the essential functions of her job. Her doctor did not state that she needed written instructions. Further, Complainant stated that she could perform her duties without an accommodation. We further note that Complainant had not submitted a reasonable accommodation request prior to April 2020, when S1 conducted Complainant's mid-year performance progress review and informed Complainant of her performance deficiencies. She made a verbal reasonable accommodation request on May 1, 2020, and submitted a formal reasonable accommodation request on July 8, 2020. Further, we find that the Agency granted her a reasonable accommodation, although it did not include her preferred accommodation.

She acknowledged that she received a letter, on July 27, 2020, that granted her accommodations, including her receipt of a second monitor, a printer with paper and ink, and more flexibility in terms of her time to get the assignments done. Additionally, while management officials stated that written instructions for every task was not feasible, they did agree to take the time to show and explain to her what she needed to do in any given situation

Here, the Agency provided accommodations, albeit not Complainant's preferred accommodations. A qualified individual is not entitled to his or her preferred accommodation. Lynette B. v. Dep't of Justice, EEOC Appeal No. 0720140010 (Dec. 3, 2015). Complainant has presented no evidence demonstrating that the provided accommodations were ineffective. Accordingly, we find that Complainant was not denied reasonable accommodation in violation of the Rehabilitation Act.

CONCLUSION

Based on a thorough review of the record, and for the reasons stated herein, we AFFIRM the Agency's Final Decision.

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 31, 2024
Date