



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

[REDACTED]  
Verdie A.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2023001602

Hearing No. 440-2022-00010X

Agency No. 4J-606-0031-20

DECISION

On January 21, 2023, Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's November 30, 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. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission AFFIRMS the Agency's final order.

At the time of events giving rise to this complaint, Complainant worked as a City Carrier at the Agency's Otis Grant Collins Station facility in Chicago, Illinois.

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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 March 23, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of disability (physical), age (born in July 1958), and reprisal for prior protected EEO activity (2015 EEO complaint) when, since on or around October 29, 2019, and continuing, Complainant was not accommodated per her medical restrictions when she was not permitted to work eight hours.

Complainant's disability is bilateral plantar fasciitis and total replacement of the left knee, and her workers' compensation claim was accepted in 2006. Complainant was unable to perform the essential functions of her City Carrier position.

On January 5, 2019, Complainant accepted an Offer of Modified Assignment with the following duties: lobby assistant up to eight hours, answering phone up to eight hours, cleaning carriers up to three hours, and picking up express mail up to one hour. The work hours were 10 a.m. to 6:30 p.m. Monday through Friday. The physical requirements of the assignment were no lifting more than 50 pounds up to eight hours, walking and standing 30 minutes intermittently, and sitting.

On October 2, 2019, Complainant provided medical documentation with the following medical restrictions: indoor only, no lifting, 15 minutes standing/walking, no kneeling, no bending/stooping, no pulling/pushing, no simple grasping, no reaching above the shoulders, four to five hours driving a vehicle, no operating machinery, no extreme temperatures, no high humidity, no chemicals or solvents, no fumes or dust, and no noise. On October 29, 2019, the Manager (born in October 1954) offered Complainant an Offer of Modified Assignment of answering phones up to four hours Monday through Friday.

The Agency initially processed the matter as a mixed case complaint alleging that the hours and duties of Complainant's limited duty position were improperly reduced, thereby violating her rights to restoration after she partially recovered from an on-the-job injury. Complainant appealed the Agency's final decision finding no discrimination to the Merit Systems Protection Board (MSPB), but the MSPB dismissed Complainant's appeal for lack of jurisdiction.

In accordance with 29 C.F.R. § 1614.302(b), the Agency provided Complainant notice of her right to request before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing.

The AJ assigned to the case issued a summary judgment decision in favor of the Agency finding that Complainant was not subjected to discrimination or reprisal.

The Agency issued a final order adopting the AJ's finding that Complainant failed to prove discrimination as alleged. The instant appeal followed.<sup>2</sup>

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.

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<sup>2</sup> The Agency challenges the timeliness of the appeal, asserting that USPS tracking shows the final order was delivered to Complainant's attorney on December 6, 2023. The tracking information indicates the item was "DELIVERED, FRONT DOOR/PORCH" at 12:34 p.m. on December 6, 2022, but the unit number for the attorney's address of record is missing from the tracking information. On appeal, Complainant's attorney states that she did not receive the final order until December 23, 2022, when she found it at the bottom of a pile of junk mail in the common area of her building. We find that Complainant timely filed her appeal within 30 days of the date her attorney received the final order.

Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable finder of fact could not find in Complainant's favor.

Complainant did not establish a prima facie case of discrimination based on age, disability, and/or reprisal. Complainant characterized the modified job assignment as adverse treatment, but she could not identify any similarly situated employees outside of her protected classes who were treated more favorably or otherwise establish an inference of discrimination. The Manager who offered Complainant the new modified job assignment was older than Complainant. Moreover, the Agency's legitimate, nondiscriminatory explanation for offering Complainant the new Offer of Modified Assignment was based on her updated medical restrictions. It is undisputed that Complainant's October 2, 2019, medical restrictions stated no lifting and 15 minutes standing/walking. It is also undisputed that the physical requirements of the January 5, 2019, Offer of Modified Assignment included no lifting more than 50 pounds up to eight hours and walking and standing 30 minutes intermittently. Accordingly, Complainant's existing modified assignment conflicted with her updated medical restrictions. We find that Complainant did not provide evidence that the Agency's legitimate, nondiscriminatory reason was a pretext for discrimination based on age, disability, and/or reprisal.

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 by the Agency as alleged.

Accordingly, we AFFIRM the Agency's final order implementing the AJ's 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

February 26, 2025  
Date