



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

[REDACTED]
Don F.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Capital Metro Area),
Agency.

Appeal No. 2023001823

Hearing No. 531-2021-00196X

Agency No. 1k-206-0037-20

DECISION

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's January 5, 2023, final order concerning his 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, the Commission AFFIRMS the Agency's final order.

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

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 August 27, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (African American), sex (male), religion (Christian), disability (right shoulder), and age (YOB: 1955) when:

1. since June 8, 2020, Complainant has been instructed to perform duties outside of his medical restrictions; and
2. on July 21, 2020, Complainant has been denied overtime.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. Over Complainant's objections, the AJ granted the Agency's motion and issued a decision without a hearing on December 21, 2022.

The AJ noted that Complainant submitted a medical document to the Agency dated July 13, 2020, listing his medical restrictions such as intermittent lifting/carrying ten (10) pounds and intermittent standing and walking for two (2) hours per day. On July 21, 2021, Complainant was informed that he could no longer work overtime based on his standing restriction. He was offered overtime in the Flat Sorter operation but declined it because he wanted to work overtime in the "055" operation.

The AJ observed that claim 1 was more appropriately analyzed as a denial of a disability accommodation. The AJ assumed that Complainant was an individual with a disability and qualified for his position, and that the Agency acted reasonably after Complainant refused work that caused him pain. The Acting Supervisor was unaware of Complainant's restrictions and requested supporting medical documentation. While awaiting the document, the Acting Supervisor allowed Complainant to perform light duty, and upon its receipt, Complainant was offered a modified job assignment that was within his physical restrictions. Complainant accepted the offer.

Regarding the overtime claim, the AJ determined that it was not unlawful discrimination to deny Complainant overtime in the 055 operation because it would have violated his medical restrictions. The AJ highlighted that Complainant offered nothing to even attempt to challenge the Agency's legitimate, nondiscriminatory reason to demonstrate pretext. The AJ concluded by granting summary judgment in the Agency's favor.

The Agency subsequently issued a final order fully implementing the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged. 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. (as revised, August 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*).

Upon review, we find the record in the present case was fully developed. 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 he 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.

On appeal, Complainant argues that the AJ erred in failing to address the sufficiency of the medical documentation submitted, and he cites to Reeves v. Social Security Administration, EEOC Appeal Number 0720060061 (December 10, 2008). However, Complainant offers no explanation for his contention. A review of Reeves shows that the AJ relied upon medical documentation the complainant filed for the first time in response to a notice of intent to issue a summary judgment decision. The Commission found a genuine dispute over whether the complainant had presented sufficient medical documentation to the agency to show a nexus between his disability and accommodation. Here, there is no new medical evidence offered during the hearing process or a genuine dispute regarding Complainant's medical document submitted to the Agency for his accommodation.

For claim 2, Complainant asserts that he provided some comparator information, but more discovery is needed. However, this is not material because the AJ noted that a showing of a prima facie case of discrimination need not be followed in cases where an agency has articulated a legitimate, nondiscriminatory reason. Complainant further contends that the Agency relied heavily on affidavits and the word of management officials, but that a hearing was needed to determine credibility of the Acting Supervisor. However, Complainant provides no evidence to discredit any management official's testimony to warrant credibility assessments. Mere allegations, speculations, and conclusory statements, without more, are insufficient to create a genuine issue of material fact. See Lee v. Dep't of Homeland Security, EEOC Appeal No 0520110581 (Jan. 12, 2012), citing to Baker v. U.S. Postal Serv., EEOC Appeal No. 01981962 (June 26, 2001), request for recon. denied, EEOC Request No. 05A10914 (Oct. 1, 2001).

Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable factfinder could not find in his 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 by the Agency as alleged.

Complainant averred that his medical restrictions included lifting no more than ten (10) pounds. On June 8, 2020, the Acting Supervisor instructed him to work on trays weighing approximately forty (40) pounds, and when it began causing pain, Complainant refused the work. ROI at 57, 59. The Acting Supervisor responded that Complainant was immediately placed into a modified job assignment pending his medical documentation. ROI at 153. On or about July 13, 2020, Complainant provided a medical document substantiating his limitations of standing up to two (2) hours per day and lifting no more than ten (10) pounds. ROI at 96. On August 13, 2020, the Acting Supervisor provided an offer of a Limited Duty Assignment containing Complainant's medical restrictions, which Complainant accepted. ROI at 107.

Complainant contends that it was wrong for the Agency to ask for medical documentation because it was aware of his disability from a 2015 workplace injury.² Even if Complainant previously provided documentation for his restrictions from his 2015 injury, it was appropriate for the Agency to

² Complainant cites to the Agency's Exhibit 12 at 22-23, which is the notice from the Office of Workers' Compensation Programs accepting his claim based on conditions related to his shoulder, but it does not list restrictions.

request updated documentation in 2020 after he complained of work outside his restrictions. The Commission has found that an agency may request updated medical information when a complainant had not provided medical information for over one year. See Diaz v. U.S. Postal Serv., EEOC Appeal No. 0120112548 (Jun. 7, 2012).

Complainant also argues that the Agency failed to engage in the interactive process by not discussing alternate accommodations, such as the ability to sit while performing his duties, and that the Agency is liable if the parties could have found a reasonable accommodation following an interactive process. However, Complainant does not dispute that he accepted the Agency's offered accommodation of a Light Duty assignment. Further, the Acting Supervisor noted that Complainant was allowed a stool for his current duties. ROI at 155. While the Rehabilitation Act provides that qualified individuals with a disability be granted an effective reasonable accommodation, it does not entitle them to the accommodation of their choice. See Castaneda v. U.S. Postal Serv., EEOC Appeal No. 01931005 (Feb. 17, 1994); see also Enforcement Guidance at Question 9. Complainant did not show that the accepted Light Duty assignment was not effective.

Regarding claim 2, the Acting Supervisor explained that Complainant wanted overtime in a section that was not permitted by his medical restrictions. Specifically, work in the 055 section involved lifting, standing, and twisting. Complainant was allowed the use of a stool for his modified job duties, but he could not use a stool in the 055 because it would be unsafe in an environment where employees walked around pitching mail. The Acting Supervisor added that he offered Complainant overtime in his current job, but he refused. ROI at 155, 159. Complainant did not show that the proffered reasons are not worthy of belief, and his bare assertions that management officials discriminated against him are insufficient to prove pretext or that their actions were discriminatory.

Accordingly, we AFFIRM the Agency's final order fully 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

February 26, 2025
Date