



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

[REDACTED]  
Sierra P.,<sup>1</sup>  
Complainant,

v.

Mark Averill,  
Acting Secretary,  
Department of the Army,  
Agency.

Appeal No. 2023001901

Hearing No. 420-2022-00168X

Agency No. ARANAD21JUL02462

**DECISION**

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's February 2, 2023, final order concerning her 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, the Commission AFFIRMS the Agency's final order.

At the time of events giving rise to this complaint, Complainant worked as a Heavy Mobile Equipment Repairer at the Agency's Turbine Drive Train Division in Anniston, Alabama.

On December 15, 2021, Complainant filed an EEO complaint alleging that the Agency subjected her to discrimination and a hostile work environment on the bases of race (African American), color (Dark Complexion), and

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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.

disability (mental and physical), and in reprisal for prior protected EEO activity, when:

1. on April 26, 2021, a Mechanic Supervisor gave Complainant a Denial of Accommodation Request based on her restrictions resulting from an on-the-job injury;
2. on or about May 24, 2021, Complainant received a letter from an Injury Compensation Program Advisor stating that her current medical documentation in her compensation files indicated her ability to return to work in a light duty capacity to perform modified duties, although her request for reasonable accommodation was denied. The suspense for Complainant's response was no later than June 1, 2021;
3. on June 1, 2021, Complainant was required by the Injury Compensation Program Advisor to accept a job she could not perform in order to remain employed;
4. the Agency submitted conflicting statements and job offers that were contradictory to the Industrial Hygiene's Assessment Report, with a required response of no later than June 1, 2021; and
5. Complainant was harassed and forced to perform duties beyond her work restrictions and told to use her right hand (due to an injury to her neck and left shoulder) by a supervisor.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing.

The Agency filed a motion for summary judgment. As an initial matter, the Agency asserted that claim 5 should be dismissed because it is included in a pending civil action in the U.S. District Court for the Northern District of Alabama in Case Number 1:22-cv-00036-CLM. In addition, the Agency notes that claims 2, 3, and 4 should be dismissed as a collateral attack on the workers' compensation process. For claim 1, Complainant's restrictions prevented her from performing any of the duties of her Heavy Mobile Equipment Repairer position. As an accommodation, Complainant requested a reassignment to a Process Improvement Specialist position, which she previously held as a temporary promotion.

The Agency determined that it was not required to promote an employee as a reasonable accommodation, and it searched for vacant, funded positions that could accommodate Complainant's restrictions. The Agency's search was unsuccessful, and it denied Complainant's reasonable accommodation request.

When Complainant did not object, the AJ granted the Agency's motion and issued a decision without a hearing on January 20, 2023. 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 she 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 offers general contentions that management officials conspired, manipulated, and created false documents. However, she provides no details or supporting evidence.

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 her 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.

We find that claims 2, 3, and 4 were properly dismissed as collateral attacks. A claim that can be characterized as a collateral attack, by definition, involves a challenge to another forum's proceeding, such as the grievance process, the workers' compensation process, an internal agency investigation, or state or federal litigation. See Fisher v. Dep't of Defense, EEOC Request No. 05931059 (July 15, 1994). The Commission has held that an employee cannot use the EEO complaint process to lodge a collateral attack on another proceeding. See Wills v. Dep't of Defense, EEOC Request No. 05970596 (July 30, 1998); Kleinman v. U.S. Postal Serv., EEOC Request No. 05940585 (Sept. 22, 1994); Lingad v. U.S. Postal Serv., EEOC Request No. 05930106 (June 25, 1993). Here, the complained of actions were related to the workers' compensation process. The Injury Compensation Program Advisor relied upon the medical documentation in Complainant's compensation file and determined that she was able to work in a light duty capacity. If Complainant declined, the Office of Workers' Compensation Program (OWCP) would determine which duties she could perform and determine any eligible benefits. ROI at 31-2. The Injury Compensation Program Advisor attested that she issued the Light Duty Memo/Job Offer with OWCP guidelines, and that she was required to notify the Department of Labor if there was no response. ROI at 363.

We also affirm the dismissal of claim 5 based on Complainant's civil action. In her complaint filed with the U.S. District Court for the Northern District of Alabama on January 7, 2022, Complainant alleged unlawful discrimination and harassment and specified that her then supervisor stated that Complainant should lift kits with her right side, which was heavier than her restrictions allowed. While the U.S. District Court dismissed her case for failure to prosecute, the U.S. Court of Appeals for the Eleventh Circuit granted Complainant's motion to reinstate on May 19, 2023.

The filing of a civil action under §1614.407 or §1614.408 terminates the Commission's processing of the appeal. 29 C.F.R. §1614.409.

Regarding the denial of Complainant's request for a reasonable accommodation (claim 1), she states on appeal that she informed the Mechanic Supervisor that she was unable to perform her duties due to a work-related injury, and the Mechanic Supervisor subsequently denied her reasonable accommodation request.

The record shows that Complainant attested to a work injury affecting her left shoulder and resulting in bulging discs. ROI at 293. Complainant's medical documentation noted that her restrictions included no lifting more than eight (8) pounds; no repetitive use of left shoulder and neck; no overhead lifting; no overhead reaching; lifting limited from floor to waist of twenty (20) pounds; and occasional lifting limited to shoulder of ten (10) pounds. ROI at 165. Complainant is substantially limited in major life functions of lifting and reaching, and she is an individual with a disability. While Complainant was not rated in two of the four critical elements of her Heavy Mobile Equipment Repairer position, she received a Fully Successful performance rating for 2021. ROI at 162. This supports that she was qualified for her position.

On February 19, 2021, Complainant initiated her reasonable accommodation request. ROI at 183. On March 2, 2021, a supervisor met with Complainant to confirm that she was willing to accept a reassignment to a vacant funded position at various locations. ROI at 24. On May 17, 2021, the Mechanic Supervisor informed Complainant that the reassignment search was unsuccessful. ROI at 265. He followed up with a denial of Complainant's reasonable accommodation request on May 20, 2021. ROI at 398.

The Commission has long held that reassignment is the reasonable accommodation of last resort and is required only after it has been determined that there are no effective accommodations that will enable Complainant to perform the essential functions of her current position, or all other reasonable accommodations would impose an undue hardship. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, EEOC Notice No. 915.002 (Oct. 17, 2002).

The Mechanic Supervisor explained that the physical requirements of Complainant's position included constant lifting of items weighing 15-25 pounds, and occasional lifting of items over 45 pounds.<sup>2</sup> ROI at 341. He developed temporary tasks, primarily weighing rotor blades less than 100 grams, but these tasks did not constitute a fulltime job and were not intended to be a permanent adjustment to Complainant's duties. Mechanic Supervisor Declaration dated September 6, 2022. There is no dispute that Complainant was unable to perform the essential functions of her Heavy Mobile Equipment Repairer position due to her medical restrictions. As such, the Agency initiated a reassignment search to a vacant, funded position.

We find that the Agency did not violate the Rehabilitation Act when it found no available positions within Complainant's restrictions. The record contains the management officials' requests to other facilities to accommodate Complainant and the negative responses. ROI at 192-6, 220-4, 243-58. The Disability Program Manager confirmed that they were unable to locate a position within Complainant's restrictions. ROI at 383. The Commission has found that an agency has fulfilled its obligation when it sought to reassign a complainant but could not locate any vacant, funded positions at the complainant's grade level, within the geographic locations specified by the complainant, for which the complainant was qualified and within their medical restrictions. See Emmett W. v. Dep't of the Navy; EEOC Petition No. 2023002692 (Aug. 7, 2024); Myung S. v. U.S. Postal Serv., EEOC Petition No. 2024001404 (Jun. 26, 2024).

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

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<sup>2</sup> Complainant took a fulltime role with the local union on March 29, 2021, but her official position did not change. Mechanic Supervisor Declaration dated September 6, 2022.

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 6, 2025  
Date