



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Albert P.,¹
Complainant,

v.

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

Appeal No. 2023001943

Hearing No. 550-2022-00200X

Agency No. 4E-940-0032-21

DECISION

On February 14, 2023, 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 January 12, 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. 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.

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.

ISSUES PRESENTED

Whether the AJ's grant of summary judgment in favor of the Agency was appropriate, or whether genuine disputes of material fact exist that require a hearing.

Whether the Agency's final order properly found that Complainant was not subjected to discrimination on the bases of race, national origin, disability, or in reprisal for prior protected EEO activity.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier at the Agency's Millbrae Post Office in Millbrae, California.

On September 11, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against him and subjected him to a hostile work environment on the bases of race/national origin (Hispanic/Latino)², disability (back condition), and in reprisal for prior protected EEO activity when:

1. Beginning on or about May 2, 2021, and continuing, management has not accommodated, or complied with, Complainant's medical work restrictions; and
2. On May 20, 2021, Complainant was told his non-scheduled day off from work would only be Wednesday, which violates his medical restriction to only work 32 hours per week.³

² Although Complainant designated his race as "Hispanic," the Commission recognizes this term as an indication of national origin rather than race.

³ The Agency dismissed two additional claims for untimely EEO Counselor contact and for failure to state a claim. Complainant did not raise any challenges regarding those claims on appeal. The Commission exercises its discretion to address only those issues specifically raised on appeal and declines to address these procedural dismissals. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110) at Chap. 9, § IV.A (Aug. 5, 2015).

Claim 1 – Denial of Reasonable Accommodation

In December 2020, Complainant experienced a work-related injury. Complainant was given a modified job offer for his restrictions that included no more than 32 hours a week, a 10-minute break each hour; walking and weight-carrying limitations; and having assistance on his delivery route. Beginning in May 2021, the Officer-in-Charge (OIC) requested that Complainant provide medical updates on the status of his medical condition and any ongoing restrictions or limitations following the expiration of the December 2020 restrictions. Complainant initially refused to submit updated medical documentation, but Complainant subsequently provided the requested documentation.

Additionally, OIC stated that in May 2021, he discussed with Complainant that his scheduled days of the week would be changing based on the operational needs of the office. OIC affirmed that Complainant refused the offer on the basis that he would have to work Wednesdays. OIC noted that Complainant never provided him with medical documentation indicating that he could not work on Wednesdays. Further, OIC averred he complied with Complainant's medical restrictions. Report of Investigation (ROI) at 192. OIC stated that Complainant never worked beyond 32 hours per week or more than four days per week. ROI at 193. Another supervisor similarly stated that Complainant was permitted to work within his medical restrictions of 32 hours per week and a medical rest break every hour. ROI at 217.

Claim 2 – Change in Schedule

In May 2021, Human Resources Management (HRM) office provided OIC with a new modified duty job offer for Complainant that he offered to Complainant. As mentioned above, Complainant refused to accept the job offer because the offer required that he work on Wednesdays. ROI at 193. Complainant believed his restrictions included a "no-work-on-Wednesday" provision. Complainant never provided medical documentation to OIC indicating work restrictions of not working on Wednesday. ROI at 193. OIC explained to Complainant that his work restrictions did not include having Wednesdays off. ROI at 193. Nevertheless, Complainant's schedule remained the same.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. The AJ issued a summary judgment decision in favor of the Agency.

In the decision, the AJ initially determined the record was adequately developed and no questions of credibility exist. The AJ concluded that there was no evidence that Complainant's restrictions were not adhered to, including the 32-hour work week and hourly breaks, because Complainant did not identify any specific week where he worked over 32 hours of regular work hours. Furthermore, the record reflects that "not working on Wednesdays," was not then a part of Complainant's restrictions. Complainant's earlier restrictions had expired and OIC indicated that Complainant refused at the time to provide medical documentation prescribing that not working on Wednesdays was an element of any of complainant's alleged restrictions. Ultimately, Complainant's schedule did not change. As a result, the AJ found that Complainant was not denied reasonable accommodation.

Finally, the AJ determined that there was no evidence that any of the Agency's actions were based on discriminatory animus. Likewise, the AJ found that there was no evidence demonstrating that the conduct at issue was sufficiently severe or pervasive to establish a hostile work environment. As a result, the AJ found that Complainant was not subjected to discrimination, reprisal, or a hostile work environment as alleged.

The Agency subsequently issued a final order fully adopting the AJ's decision. Complainant filed the instant appeal without submitting any arguments or contentions in support.

STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, 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").

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*).

ANALYSIS

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 or retaliatory 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.

Disability: Reasonable Accommodation

An agency is required to make reasonable accommodation to the known physical and mental limitations of an individual with a disability unless the agency can show that accommodation would cause an undue hardship. 29 C.F.R. §§ 1630.2(o) and (p). In order to establish that he was denied a reasonable accommodation, Complainant must show that: (1) he is an individual with a disability as defined by 29 C.F.R. § 1630.2(g); (2) he is "qualified" as defined by 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans

with Disabilities Act (Enforcement Guidance on Reasonable Accommodation), No. 915.002 (Oct. 17, 2002).

The term 'qualified,' with respect to an individual with a disability, means that the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position." 29 C.F.R. § 1630.2(m). The term "position" is not limited to the position held by the employee but may also include positions that the employee could have held as a result of reassignment. Therefore, in determining whether an employee is "qualified," an agency must look beyond the position which the employee presently encumbers. Enforcement Guidance on Reasonable Accommodation.

Here, there is no dispute that Complainant is an individual with a disability. Complainant was given a modified assignment in accordance with his restrictions. Complainant's restrictions in December 2020 included working no more than 32 hours a week, a 10-minute break each hour, assistance on his route, and walking and weight-carrying limitations. Management adhered to those restrictions. Upon the expiration of those restrictions in May 2021, management requested updated documentation. Complainant initially refused to provide the documentation, but subsequently provided the requested documentation. Complainant argued that his restrictions included no work on Wednesday; however, his submitted medical documentation did not support such a restriction and Complainant never provided any documentation indicating that he could not work Wednesdays. Nonetheless, Agency management did not ultimately change his schedule and he did not work Wednesdays.

While Complainant is entitled to an effective reasonable accommodation, he is not entitled to the accommodation of his choice. 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, the Commission finds that the Agency did not deny Complainant reasonable accommodation in violation of the Rehabilitation Act.

Disparate Treatment

To prevail in a disparate treatment claim, Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

Complainant must initially establish a prima facie case by demonstrating that he was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Corp. v. Waters, 438 U.S. 567, 576 (1978). Proof of a prima facie case will vary depending on the facts of the particular case. McDonnell Douglas, 411 U.S. at 804 n.14. The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). To ultimately prevail, Complainant must prove, by a preponderance of the evidence, that the Agency's explanation is pretextual. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 120 S. Ct. 2097 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993).

To establish a prima facie case of discrimination, a complainant must show that: (1) he is a member of a protected group; (2) he suffered an adverse employment action; and (3) the circumstances give rise to an inference of discrimination. We note that, although a complainant bears the burden of establishing a "prima facie" case, Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 252-53 (1981), the requirements are "minimal," St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 506 (1993), and complainant's burden is "not onerous." Burdine, 450 U.S. at 253.

Complainant may establish a prima facie case of reprisal by showing that he (1) engaged in a protected activity; (2) the Agency was aware of his protected activity; (3) Complainant was subjected to adverse treatment by the Agency; and (4) a nexus exists between the protected activity and the adverse action. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2010).

Here, Complainant failed to establish a prima facie case of discrimination or reprisal. Complainant has not identified similarly situated employees outside his protected classes who were treated more favorably. Further, Complainant has provided no evidence demonstrating a nexus between the adverse actions at issue and his protected EEO activity. Complainant has not provided any evidence otherwise raising an inference of discrimination or reprisal.

Notwithstanding, the Commission finds that the Agency articulated a legitimate, nondiscriminatory reason for its actions. As discussed above, the Agency provided him accommodations that permitted him to work no more than four days and 32 hours per week along with all other medical restrictions.

Further, while the matter was discussed, management never changed Complainant's schedule and allowed him to have Wednesdays off despite the lack of support for such a restriction in his medical documentation.

Complainant bears the burden of establishing that the Agency's stated reason is merely a pretext for discrimination. Complainant can do this directly by showing that the Agency's proffered explanation is unworthy of credence. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. at 256.

The Commission finds no persuasive evidence that Complainant's protected classes were a factor in any of the Agency's actions. At all times, the ultimate burden remains with Complainant to demonstrate by a preponderance of the evidence that the Agency's reasons were not the real reasons and that the Agency acted based on discriminatory or retaliatory animus. Complainant failed to carry this burden.

Furthermore, to the extent that Complainant claims that the alleged incidents constitute a claim of harassment, the Commission notes that under the standards set forth in Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993), a claim of hostile work environment must inevitably fail. See Enforcement Guidance on Harris v. Forklift Systems, Inc., EEOC Notice No. 915.002 (Mar. 8, 1994). A finding of a hostile work environment is precluded by our determination that Complainant failed to establish that any of the actions taken by Agency management were motivated by discriminatory or retaliatory animus. See Oakley v. U.S. Postal Serv., EEOC Appeal No. 01982923 (Sept. 21, 2000).

CONCLUSION

Based on a thorough review of the record, we AFFIRM the Agency's final order.

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

November 19, 2024

Date