



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Eugenia C.,¹
Complainant,

v.

Merrick B. Garland,
Attorney General,
Department of Justice
(Federal Bureau of Prisons),
Agency.

Appeal No. 2023002027

Hearing No. 541-2020-00109X

Agency No. BOP-2019-01284

DECISION

Concurrent with issuance of its final order, the Agency filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) pursuant to 29 C.F.R. §1614.403(a) challenging the decision of the EEOC Administrative Judge (AJ) to impose monetary sanctions against the Agency for its delay in issuing the report of investigation (ROI). On appeal, the Agency argues that the doctrine of sovereign immunity bars the Commission from imposing monetary sanctions against the Agency and emphasizes that the AJ found in favor of the Agency on all claims. The Agency also argues that there was no legal basis for the AJ to impose sanctions given that the AJ expressly found that Complainant was not prejudiced by the delay in issuing the ROI. Complainant filed a separate cross-appeal challenging only the finding of no discrimination. For the following reasons, we AFFIRM 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

The issues presented are: (1) whether the AJ properly granted Complainant's motion for sanctions against the Agency for its delayed issuance of the ROI; and (2) whether the Agency's final order properly found that Complainant was not subjected to discrimination based on disability when it failed to provide her with a reasonable accommodation.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Budget Analyst, GS-09, at the Agency's Federal Correctional Complex (FCC) Florence facility in Florence, Colorado. Complainant was directly supervised by the Budget and Accounting Officer (BAO).

On October 18, 2019, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the basis of disability (physical).² The Agency framed the incidents as follows:

1. On June 20, 2019, Complainant was "violently physically and mentally assaulted" by fellow staff members during a mock drill, despite being aware of her pregnancy. Additionally, Complainant alleged being denied a reasonable accommodation.
2. On July 22, 2019, Complainant was notified that her request for a Workplace Violence Threat Assessment was denied. Additionally, Complainant alleged being notified that she would be reassigned during the investigation into the events that occurred on June 20, 2019.

The investigation into the complaint revealed that on or about June 18, 2019, Complainant allegedly spoke with the BAO about her pregnancy and informed the BAO that she was 13 weeks pregnant and had been diagnosed with subchorionic hematoma. While Complainant acknowledged that she did not formally ask for a reasonable accommodation because at the time of the mock exercise, she was still seeing her doctor to see what was happening with the bleeding, she indicated that the BAO responded to news of her pregnancy by advising Complainant not to run or respond to emergencies. See ROI at 105-106.

² Complainant withdrew the additional bases of sex (female) and reprisal.

Approximately two days later, on June 20, 2019, the Agency conducted a mock hostage taking training exercise run by members of the Special Operations Response Team (SORT). According to Complainant, the SORT members, in relevant part, used a stink bomb during the exercise and pepper sprayed the staff. Complainant alleged that the SORT members failed to stop when she and others repeatedly yelled "out of role," which was the phrase historically used to stop a mock exercise. Following the exercise, Complainant and another employee were taken to the hospital for an assessment of their injuries. Complainant accused the Agency of violating her pregnancy-related medical restrictions, namely, no running and responding to emergencies, and asserted that she had to take time off due to the mental and physical injuries that she sustained. ROI at 7 and 129.

While the BAO acknowledged that she became aware of Complainant's pregnancy on or about June 18, 2019, after Complainant informed her, the BAO emphasized that Complainant specifically asked her not to tell anyone. The BAO recalled that she responded to Complainant's request by asking Complainant to refrain from responding to emergencies and encouraging Complainant to let others know to ensure her safety. The BAO stated that she was unaware of Complainant's pregnancy limiting her ability to perform any major life activities and emphasized that Complainant did not have any reasonable accommodations in place. The BAO also asserted that Complainant willingly participated in the mock exercise. However, she conceded that the deployment of pepper spray and weapons during the mock exercise was not expected. ROI at 151-156.

After more than 180 days had passed from the date when she filed her formal complaint, Complainant filed a request for a hearing on April 15, 2020. In filing her request, Complainant moved for sanctions against the Agency for its failure to timely investigate the formal complaint of discrimination. She sought sanctions ranging from an adverse inference, exclusion of evidence, attorney's fees for discovery, to default judgment. In a notice dated April 17, 2020, the Agency informed Complainant that the investigation was incomplete with the expectation that it would be complete within 30 days of the notice.

On April 27, 2020, the Agency provided Complainant with a copy of the ROI and informed Complainant that the complaint file had been sent to the Phoenix District Office in accordance with Complainant's request for a hearing.

Over the Agency's objections, the AJ granted Complainant's motion for sanctions on June 14, 2021, for the Agency's delayed issuance of the ROI.

In granting the motion, the AJ noted that the Agency appeared to concede that no legally sufficient reason existed for its failure to complete the investigation within the requisite timeframe. While the AJ found that the extent of the Agency's non-compliance was not severe because the Agency transmitted the ROI to Complainant two weeks after the regulatory deadline and there was no evidence of bad faith, contumacious conduct, or prejudice, the AJ nevertheless determined that sanctions were warranted because the delay negatively affected the integrity of the EEO process. As the Agency had an overall downward trend in the number of cases violating the regulatory timeframe, the AJ decided against imposing a severe sanction and ultimately concluded that the appropriate sanction was to 1) compensate Complainant for reasonable attorney's fees incurred while filing the motion for sanctions; and 2) order the posting of a notice that the Agency failed to complete an investigation within the relevant timeframes.

On December 6, 2021, the AJ granted in part and denied in part the Agency's motion for summary judgment and set a schedule to move the case to hearing. Specifically, the AJ determined that Complainant could not establish disparate treatment on any of her protected bases, but a hearing was warranted for the question of whether Complainant was denied a reasonable accommodation. The AJ held a hearing on October 24 and 25, 2022.

Following the hearing, the AJ issued a decision finding that the Agency was not liable for a failure to accommodate because Complainant's disability was unknown. Specifically, the AJ determined that Complainant established that she had a pregnancy-related condition that constituted a disability. However, Complainant did not establish by preponderant evidence that management was aware of that disability. In reaching this conclusion, the AJ acknowledged that Complainant alleged during the hearing that she specifically informed management about the subchorionic hematoma associated with her pregnancy. However, the AJ did not find Complainant's hearing testimony to be credible. The AJ ultimately concluded that because Complainant did not establish by preponderant evidence that management was aware of her disability, she failed to establish that the Agency was obligated to provide her with a reasonable accommodation or even start the interactive process.

The Agency subsequently issued a final order implementing the AJ's finding of no discrimination. However, the Agency rejected the AJ's decision to impose sanctions against the Agency and simultaneously filed an appeal with the Commission regarding that issue. Complainant, in turn, filed a cross appeal challenging the finding of no discrimination.

CONTENTIONS ON APPEAL

In its appeal, the Agency argues that sanctions are inappropriate in this case because Complainant failed to show prejudice or an unconscionable delay. The Agency adds that monetary sanctions are not an available option because the Commission cannot order a monetary sanction because of sovereign immunity. Regarding the merits of the complaint, the Agency asserts that the AJ correctly held that Complainant failed to prove, by a preponderance of the evidence, that she informed any management official about her pregnancy-related disability.

Complainant argues that the AJ erred in finding no discrimination and maintains that the Agency failed to fulfill its obligation to provide her with a reasonable accommodation when she was not precluded from “extensive activities” and “responding to emergencies” during the June 20, 2019, mock exercise. According to Complainant, the AJ erred in finding that the Agency was unaware of Complainant’s disability and under no obligation to provide a reasonable accommodation or even start the interactive process. Complainant maintains that the Agency had actual knowledge of her disability because she discussed her pregnancy with her supervisor, who agreed to not have Complainant run or respond to institutional emergencies as a reasonable accommodation. Complainant argues that by granting her request, her supervisor foreclosed Complainant’s need to engage in the interactive process and foreclosed the Agency from obtaining any additional evidence which would have improved its knowledge of Complainant’s disability.³

STANDARD OF REVIEW

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477 (1951) (citation omitted).

³ As Complainant’s contentions on appeal relate solely to the alleged denial of her request for reasonable accommodation, we limit our review to that issue only. The claims adjudicated in the summary judgment decision are not at issue on appeal. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chapter 9, § IV.A.3 (Aug. 5, 2015) (noting that the Commission has the discretion to review only those issues specifically raised in an appeal).

A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held.

An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony, or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See EEOC Management Directive 110, Chapter 9, at § VI.B. (Aug. 5, 2015).

ANALYSIS AND FINDINGS

Attorney's Fees as a Sanction

The Commission's regulations confer upon its AJs very broad responsibility for adjudicating an EEO complaint once a complainant's hearing request has been granted, and that responsibility gives the AJs wide latitude in directing the terms, conduct, or course of EEO administrative hearings. Chere S. v. Gen. Serv. Admin., EEOC Appeal No. 0720180012 (Nov. 30, 2018). The AJ's discretionary authority includes the power to impose sanctions upon a party that fails to comply with his orders. Id.

Sanctions serve a dual purpose. On the one hand, they aim to deter the underlying conduct of the non-complying party and prevent similar misconduct in the future. Barbour v. U.S. Postal Serv., EEOC Appeal No. 07A30133 (June 16, 2005). On the other hand, they are corrective and provide equitable remedies to the opposing party. Given these dual purposes, sanctions must be tailored to each situation by applying the least severe sanction necessary to respond to a party's failure to show good cause for its actions and to equitably remedy the opposing party. Royal v. Dep't of Vet. Aff., EEOC Request No. 0520080052 (Sept. 25, 2009).

Factors pertinent to "tailoring" a sanction, or determining whether a sanction is even warranted, include: (1) the extent and nature of the non-compliance, including the justification presented by the non-complying party; (2) the prejudicial effect of the non-compliance on the opposing party; (3) the consequences resulting from the delay injustice, if any; (4) the number of times the party has engaged in such conduct; and (5) the effect on the integrity of the EEO process as a whole. See Gray v. Dep't of Def., EEOC Appeal No. 07A50030 (Mar. 1, 2007); and Vovsest v. Soc. Sec. Admin., EEOC Appeal No. 01A35340 (Jan. 18, 2005).

Per our regulations, agencies are required to investigate EEO complaints within 180 days of the date of filing of the written complaint, unless the parties agree in writing to extend the period for not more than an additional 90 days. 29 C.F.R. §1614.108(e). Here, Complainant filed the formal complaint on October 17, 2019. Therefore, the Agency was required to complete the investigation by April 15, 2020. The record reveals that the Agency requested an extension, which Complainant did not agree with, and the investigation was not completed until April 27, 2020.

While the AJ largely found, in relevant part, that Complainant suffered no adverse consequences because of the delay, the AJ nevertheless imposed sanctions against the Agency because the AJ determined that the Agency's delay in completing the investigation adversely affected the integrity of the EEO process. We disagree.

Here, we find that the impact of the Agency's untimely submission of the ROI upon the integrity of the EEO process was at best slight and does not warrant the sanction that was imposed. Indeed, we note that even the AJ acknowledged that there was no showing that the Agency attempted to obstruct the process, failed to exercise due diligence, or otherwise engaged in any conduct that would merit a sanction. While we acknowledge that the Agency provided the ROI beyond the regulatory time limit, we do not find that the instant facts justify the imposition of sanctions. See, e.g., Jeannie T. v. Dep't of Vet. Affs., EEOC Appeal No. 2021000144 (April 5, 2022) (declining to sanction the agency for its failure to timely complete the investigation, as the record did not show that the delay was attributable to contumacious conduct or bad faith).

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 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 "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).

While Complainant alleges that the Agency failed to reasonably accommodate her pregnancy related complication, we agree with the AJ that Complainant failed to persuasively show that her limitations were known to management officials. Contrary to Complainant's contention that management officials were aware of her pregnancy and previous high-risk pregnancy, the record reflects that Complainant acknowledged that during the relevant period, she simply told the BAO about her pregnancy and did not ask for a reasonable accommodation because at the time of the mock exercise, she was still seeing her doctor to see what was happening with the bleeding.

To the extent management officials were aware of Complainant's pregnancy, that knowledge only does not suffice as knowledge of Complainant's medical restrictions or need for reasonable accommodation. While Complainant surmises that management had to have known about her need for accommodation because multiple supervisors told her not to run or respond to emergencies when she informed them that she was pregnant, Complainant failed to establish that she had a documented medical need for such accommodations. Furthermore, we find that the Agency's ability to initiate the interactive process was foreclosed by Complainant's explicit request for the BAO to keep private news of her pregnancy.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, 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 12, 2024

Date