



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

[REDACTED]  
Jess P,<sup>1</sup>  
Complainant,

v.

Douglas A. Collins,  
Secretary,  
Department of Veterans Affairs  
(Veterans Health Administration),  
Agency.

Appeal No. 2023002126

Hearing No. 480-2022-00471X

Agency No. 200P-593-2022-143852

DECISION

On February 25, 2023, Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's August 26, 2022 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 reasons discussed below, we AFFIRM the Agency's final order.

During the relevant time, Complainant worked as a Licensed Practical Nurse (LPN), Grade GS-6, at the Agency's Northwest Clinic in Las Vegas, Nevada.

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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 February 3, 2022, Complainant filed a formal complaint alleging that the Agency discriminated against him based on sex (Male, LGBT), race (Caucasian), and disability (prostate cancer) when:

1. On January 10, 2020, his Supervisor during a meeting became angry, yelled at Complainant and stated, "you don't raise your voice to me," or words to that effect.
2. On January 18, 2022, Supervisor called and screamed at Complainant on the phone and told Complainant to stay up at the desk in the clinic, or words to that effect.
3. On January 21, 2022, Complainant knocked on Supervisor's door three times without a response before cracking the door open, then RW yelled, "I am on a meeting," or words to that effect.
4. On January 21, 2022, Supervisor yelled at Complainant, "Why did you do that!" or words to that effect.
5. On January 26, 2022, a co-worker informed Complainant that Supervisor spoke to the other LPNs, to write statements about the January 21, 2022 event referenced in claims 3 and 4.
6. In or about January 2022, Complainant requested to cancel his medical health insurance with the facility, and the insurance was not cancelled as requested.
7. Since on or about March 2022, Complainant has requested assistance with the facility on his health insurance cancellation request and related issues, with no response provided.
8. Event 1: On September 1, 2021, Complainant declined the reasonable accommodation requested.
9. Event 2: In January 2022, Complainant was placed on 8-hour sick leave when Complainant was on duty working a 10-hour shift.
10. Event 3: On January 21, 2022, Complainant was forced to retire (constructive discharge).

11. Event 4: On or about January 25, 2022, Complainant discovered that he was paid approximately \$10,000 less per year than his counterparts.

After its investigation, the Agency provided Complainant with a copy of the report of investigation and notice of right to request a hearing before an Equal Employment Opportunity Commission (EEOC or Commission) Administrative Judge (AJ). Complainant timely requested a hearing. The Agency submitted a motion for a decision without a hearing. Complainant opposed the motion. On January 24, 2023, after dismissing the reasonable accommodation claim as untimely, the AJ issued a decision by summary judgment in favor of the Agency. The Agency issued a final order adopting finding that Complainant failed to prove discrimination as alleged.<sup>2</sup>

The instant appeal followed on February 25, 2023. On appeal, Complainant argues that although the AJ determined that Complainant's verbal altercation with Supervisor was mutual, Complainant contends that the record showed that Supervisor developed a reputation for being unprofessional. Regarding his reasonable accommodation, Complainant maintained that the Agency had intercepted and withheld his emails to the Secretary of Veterans Affairs which showed that he had been improperly denied reasonable accommodation while he was being treated for prostate cancer.

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.

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<sup>2</sup> We note that the Agency previously issued a final decision dated August 26, 2022. We discern nothing in the AJ's subsequent decision addressing this decision. Without seeing any further evidence of record, we will presume that this Agency final decision was superseded by the January 2023 summary judgment decision, and will therefore address solely the AJ's decision in this appeal.

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. 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).

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

As an initial matter, we concur with the AJ that Claim 8, was untimely raised with an EEO Counselor. Specifically, the Agency *offered* Complainant an accommodation. However, Complainant found the offer undesirable in September 2021, but Complainant did not contact an EEO Counselor until January 2022, which was more than 45 calendar days after the underlying event in Claim 8. We also concur with the AJ that Complainant's personality conflict with Supervisor was not one-sided as Complainant purported. Complainant admitted to verbally kicking Supervisor out of his office in addition addressing Supervisor "robustly." Moreover, co-workers recounted how Complainant would loudly curse "bullshit" and "fuck" about his problems in the workplace. In any event, we find as did the AJ that Complainant failed to evidence that the Supervisor's conduct from Claims 1 through 5 was based on his protected characteristics.

Regarding his difficulties withdrawal from Agency health insurance, Claims 6 and 7, the Agency explained that as a result of his decision to retire on disability, matters of his health insurance were no longer handled by his former employing organization.

As to Claim 9, Complainant acknowledged that his placement on sick leave was an error and he did not know who in management was responsible.

Regarding Complainant's constructive discharge accusation, Claim 10, Complainant described isolated incidents but failed to articulate a workplace that was so permeated with harassment that an objective reasonable employee would have also felt compelled to resign.

Regarding Claim 11, we observed that Complainant had successfully advocated for an \$10,000 increase for himself and fellow LPNs at his facility. Although, Complainant sought an additional \$10,000 pay increase to match LPNs at Los Angeles, California and Reno, Nevada, employees at other facilities are not similarly situated for purposes of disparate treatment.

After a review of the record in its entirety, including consideration of all statements submitted on appeal, it is the decision of the Equal Employment Opportunity Commission to affirm the Agency's final order, because the Equal Employment Opportunity Commission Administrative Judge's issuance of a decision without a hearing was appropriate and a preponderance of the record evidence does not establish that discrimination occurred.

Accordingly, we AFFIRM the Agency's final order and the AJ's decision without a hearing.

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).

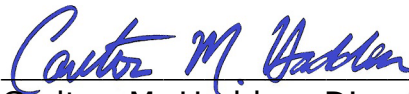
#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0124)

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

March 6, 2025

Date