



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

[REDACTED]  
Lauren F.,<sup>1</sup>  
Complainant,

v.

Douglas A. Collins,  
Secretary,  
Department of Veterans Affairs,  
Agency.

Appeal No. 2023002849

Agency No. 2004-0517-2021104353

**DECISION**

On April 20, 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 June 22, 2022, final decision concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

**ISSUES PRESENTED**

Whether the Agency properly determined that Complainant was not subjected to discrimination as alleged.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Boiler Plant Operator, WG-10 at the Agency's facility in Beckley, West Virginia.

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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 July 8, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the basis of mental and physical disability (PTSD, osteoarthritis, back, knee and hip impairments)<sup>2</sup> when:

1. On an unspecified date in 2017, following his return from the emergency room, Complainant was told that he needed a doctor's note in order to use a heating pad while working;
2. On an unspecified date in 2018, his request for 16 hours of annual leave was denied;
3. on April 23, 2021, his supervisor denied Complainant's request for one hour of leave;
4. on June 7, 2021, he was issued a letter of reprimand;
5. on June 7, 2021, he was reassigned from the boiler plant to the file room pending the outcome of a fact-finding investigation;
6. on September 7, 2021, Complainant was terminated from his employment with the Agency, effective September 8, 2021.

As an initial matter, we note that on August 9, 2021, the Agency issued a Notice of Partial Acceptance decision regarding the instant complaint. Therein, the Agency determined that claims 1 and 2 were untimely filed. The Agency dismissed the matters in accordance with EEOC Regulation 29 C.F.R. § 1614.107(a)(2), which states that the Agency shall dismiss a complaint for failure to comply with the applicable time limits. We concur with the Agency's determination that claims 1 and 2 occurring in 2017 and 2018 respectively, were not timely filed and properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(2). Following its dismissal of claims 1 and 2, the Agency accepted the remaining claims for investigation.

Following an 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).

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<sup>2</sup> For purposes of this decision, we assume without finding that Complainant is a qualified individual with a disability.

Complainant timely requested a hearing but subsequently withdrew his request. Consequently, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

This appeal followed.

### CONTENTIONS ON APPEAL

Complainant did not submit any arguments in support of his appeal. The Agency filed a brief in opposition to Complainant's appeal, arguing that its dismissal should be affirmed.

### STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), 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").

### ANALYSIS

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), 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 (EEO MD-110), Chap. 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").

To prevail in a disparate treatment claim such as this, 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 Complainant was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Construction Co. 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. Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981).

This established order of analysis in discrimination cases, in which the first step normally consists of determining the existence of a prima facie case, need not be followed in all cases. Where the Agency has articulated a legitimate, nondiscriminatory reason for the personnel action at issue, the factual inquiry can proceed directly to the third step of the McDonnell Douglas analysis, the ultimate issue of whether Complainant has shown by a preponderance of the evidence that the Agency's actions were motivated by discrimination. See U.S. Postal Serv. Board of Governors v. Aikens, 460 U.S. 711, 713-714 (1983); Hernandez v. Dep't of Transportation, EEOC Request No. 05900159 (June 28, 1990); Peterson v. Dep't of Health and Human Serv., EEOC Request No. 05900467 (June 8, 1990); Washington v. Dep't of the Navy, EEOC Petition No.03900056 (May 31, 1990).

The Rehabilitation Act of 1973 prohibits discrimination against qualified disabled individuals. See 29 C.F.R. § 1630. In order to establish that a complainant was denied a reasonable accommodation, the 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 a qualified individual with a disability pursuant to 29 C.F.R. § 1630.2(m); and (3) the agency failed to provide a reasonable accommodation. See Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, No. 915.002, Question 9 (as revised Oct. 17, 2002) (Enforcement Guidance). Under the Commission's regulations, an Agency is required to make reasonable accommodation to the known physical and mental limitations of a qualified individual with a disability unless the Agency can show that accommodation would cause an undue hardship.

In the instant case, assuming arguendo that Complainant established a prima facie case of discrimination, we find that the Agency articulated legitimate, nondiscriminatory reasons for its actions.

In claim 3, Complainant challenges the Agency's denial of his leave request. The record discloses that on April 20, 2021, Complainant left work without authorization from his supervisor and without following proper Agency procedure for requesting leave. As a result, Complainant's supervisor denied his same-day leave request. As a result of Complainant's failure to follow Agency procedure regarding requesting leave, Complainant was issued a Letter of Reprimand as indicated in claim 4.

In claim 5, Complainant challenges his reassignment from the boiler room to the file room on June 7, 2021. According to the Agency, Complainant engaged in unprofessional and disrespectful behavior during a verbal altercation with his supervisor, which Complainant acknowledges. The Agency reassigned Complainant to the file room pending the results of fact-finding regarding the incident on June 7, 2021. The Agency determined that in the altercation, Complainant threatened his supervisor saying that he would "kill him" and that he "would f him up." As a result of Complainant's threatening behavior towards his supervisor, he was issued a notice of termination effective September 8, 2021.

A careful review of the record demonstrates that Complainant failed to prove by a preponderance of the evidence, that the reasons proffered by the Agency for the alleged claims of discrimination are pretext for discrimination. In that regard, we find that Complainant failed to demonstrate that the Agency acted with animus toward Complainant's protected classes.

### 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 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

February 26, 2025  
Date