



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

[REDACTED]
Aline A.,¹
Complainant,

v.

Janet L. Yellen,
Secretary,
Department of the Treasury
(Internal Revenue Service),
Agency.

Appeal No. 2023003151

Agency No. IRS-22-0850-F

DECISION

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 May 3, 2023, final decision concerning her 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. For the following reasons, the Commission AFFIRMS the Agency's final decision.

ISSUE PRESENTED

The issue presented is whether the Agency properly found that Complainant did not establish discrimination as alleged.

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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Contact Representative at the Agency's Wage and Investment Service Center in Memphis, Tennessee.

On November 4, 2022, Complainant filed an EEO complaint alleging that the Agency discriminated against her based on her disability (mental and physical), and in reprisal for prior protected EEO activity, when:

1. on September 6, 2022, Complainant's reasonable accommodation request for fulltime telework was denied; and
2. on November 23, 2022, Complainant was informed that she would be charged leave without pay (LWOP) while she was waiting for her computer to be fixed by Information Technology (IT) personnel.²

The EEO investigation revealed that Complainant submitted a request for a reasonable accommodation on June 27, 2022, to work from home and waive the requirement to report to the office twice per pay period. She submitted a medical document dated August 10, 2022, noting her diagnosis of generalized anxiety disorder, and that she required frequent breaks after certain job functions for one year. However, Complainant's doctor provided that Complainant was "within normal limits" of all major life activities. Report of Investigation (ROI) at 226, 229-30.

On September 6, 2022, the Field Director issued the decision on Complainant's reasonable accommodation request. She relied upon Complainant's doctor's attestation that Complainant was not limited in any major life activity. The Field Director denied Complainant's request for 100% telework but approved her manager's ability to grant additional five-minute breaks beyond Complainant's authorized breaks. Complainant requested a reconsideration of the denial on September 19, 2022. The Field Director declined to reverse her decision and explained that Complainant did not show a nexus between her medical condition and her essential duties. ROI at 107-10, 250-1.

² Complainant also alleged discrimination when her permanent hardship request was ignored on August 4, 2022, but she withdrew this claim during the investigation. Report of Investigation at 69.

Complainant stated that she had computer issues since October and contacted IT on November 9, 2022. On November 17, 2022, Complainant texted her first-line supervisor ("Supervisor") to ask that she complete Complainant's timesheet. The Supervisor replied, "[s]ince the rule is if you can't perform your full duty from home you should report to the building and no decision has been made about you[r] time, your time is being reported as LWOP I suggest you get to the building or get on the phone with IT and remain." Complainant claimed that she was charged LWOP since November 22, 2022. ROI at 78, 112.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the ROI and notice of her right to request a hearing before an EEOC Administrative Judge. In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b).

The Agency assumed, for the purposes of analysis, that Complainant was an individual with a disability and that she was qualified for her position. The Agency then found that management did not deny Complainant a reasonable accommodation when it authorized breaks after calls, but it properly denied her request for fulltime telework because she had no medical documentation to support telework. For claim 2, the Supervisor articulated legitimate, nondiscriminatory reasons for the action. The Supervisor testified that she instructed Complainant to report to the office, and she was charged LWOP because she failed to do so. The Agency found that Complainant did not proffer persuasive evidence to demonstrate pretext for discrimination. The Agency concluded that Complainant failed to prove that she was subjected to discrimination as alleged.

The instant appeal followed.

CONTENTIONS ON APPEAL

Complainant did not submit any arguments in support of her appeal.

The Agency opposes Complainant's appeal. It asserts that Complainant was provided with appropriate accommodations, and management officials set forth legitimate nondiscriminatory reasons for its actions. The Agency requests that the Commission affirm its final decision.

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

Reasonable Accommodation (Claim 1)

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), (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, EEOC Notice No. 915.002 (Oct. 17, 2002) (Enforcement Guidance).

An individual with a disability is one who: (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such impairment; or (3) is regarded as having such an impairment. 29 C.F.R. § 1630.2(g). Major life activities include such functions as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. 29 C.F.R. § 1630.2(i). An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to the ability of most people in the general population. 29 C.F.R. § 1630.2(j)(ii).

Here, Complainant disclosed that she was diagnosed with diabetes, anxiety, depression, high blood pressure, and asthma.

Complainant averred that her medical impairments substantially limited her life, but she did not describe any substantial limitation to a major life activity. ROI at 64. In support of her reasonable accommodation request, Complainant submitted medical documentation which only noted that she has generalized anxiety disorder and required frequent breaks, without further explanation. In addition, Complainant's doctor responded that Complainant was "within normal limits" of every listed major life activity, such as breathing; thinking; or concentrating. ROI at 229-30.

The record contains a document from an Occupational Medicine Consultant dated October 19, 2021, for a previous reasonable accommodation request,³ in which it was noted that Complainant experienced panic attacks; excess sweating; and rapid breathing from an exacerbation of her redacted medical conditions. ROI 165-6.

Complainant averred that she was able to perform all her duties, and the Field Director confirmed that Complainant was able to perform her duties. ROI at 65, 198. For the purposes of this decision, we will credit that Complainant is an individual with a disability and qualified for her position.

The Field Director responded that she denied Complainant's request for fulltime telework because she did not establish a nexus between the accommodation and essential functions of her job and was granted an alternative accommodation of additional breaks to care for any personal needs. ROI at 200. A review of Complainant's submitted medical document revealed that it only supported additional breaks, and there was no reference to telework. ROI at 229-30. While the Rehabilitation Act provides that qualified individuals with a disability be granted an effective reasonable accommodation, it does not entitle them to the accommodation of their choice. See Castaneda v. U.S. Postal Serv., EEOC Appeal No. 01931005 (Feb. 17, 1994); see also Enforcement Guidance at Question 9. Complainant did not dispute the effectiveness of the alternative accommodation. Accordingly, we find that the Agency did not violate the Rehabilitation Act when it denied Complainant's requested accommodation of fulltime telework with a waiver of the reporting requirement and granted an alternative accommodation of additional breaks, as needed.

³ Complainant was approved an accommodation on November 22, 2021, to combine her 15-minute breaks and use in increments of five minutes after a call. If Complainant used more than the allotted time, she was required to take leave (annual leave, sick leave, or LWOP). ROI at 207.

Disparate Treatment (Claim 2)

Generally, claims of disparate treatment are examined under the analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Hochstadt v. Worcester Found. for Experimental Biology, Inc., 425 F. Supp. 318, 324 (D. Mass.), aff'd, 545 F.2d 222 (1st Cir. 1976). For Complainant to prevail, she must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978); McDonnell Douglas, 411 U.S. at 802 n.13. Once Complainant has established a prima facie case, 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). If the Agency is successful, the burden reverts back to Complainant to demonstrate by a preponderance of the evidence that the Agency's reason(s) for its action was a pretext for discrimination. At all times, Complainant retains the burden of persuasion, and it is her obligation to show by a preponderance of the evidence that the Agency acted on the basis of a prohibited reason. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993); U.S. Postal Service v. Aikens, 460 U.S. 711, 715-716 (1983).

To establish a prima facie case of disparate treatment discrimination based on disability, a complainant generally must prove the following elements: (1) they are an individual with a disability as defined in 29 C.F.R. §§ 1614.203(a) and 1630.2(g); (2) they are "qualified" as defined in 29 C.F.R. §§1614.203(a) and 1630.2(m); (3) the agency took an adverse action against them; and (4) there was a causal relationship between their disability and the agency's actions. See Annamarie F. v. Department of the Air Force, EEOC Appeal No. 2021004533 (August 17, 2023). As discussed above, we consider Complainant to be an individual with a disability and qualified for her position. However, we find that Complainant did not show that the LWOP charges were related to her disability.

Complainant also claimed that another Contract Representative was not charged LWOP while waiting for equipment to be fixed. Complainants may establish a prima facie case of discrimination by providing evidence that: (1) they are a member of a protected class; (2) they suffered an adverse employment action; and (3) either that similarly situated individuals outside their protected class were treated differently, or other circumstances surrounding the adverse employment action give rise to an inference of discrimination.

McDonnell Douglas, 411 U.S. at 802 n.13; Reeves v. Sanderson Plumbing, 530 U.S. 133, 142 (2000); Bodett v. CoxCom, Inc., 366 F.3d 736, 743-44 (9th Cir.2004) (internal quotation marks omitted). However, Complainant noted that this Contract Representative also had a disability, and as such, she was not outside of Complainant's protected class. ROI at 82.

In addition, Complainant did not show that the Contract Representative was similarly situated. Among other things, to be considered "similarly situated," the comparator must be similar in substantially all aspects, so that it would be expected that they would be treated in the same manner. See Grappone v. Dep't of the Navy, EEOC No. 01A10667 (Sept. 7, 2001), reconsideration denied, EEOC Request No. 05A20020 (Jan. 28, 2002). The Supervisor responded that the Contract Representative's time was "within the guidelines," and that no other employee had a problem reporting to the building when their equipment was not operating correctly. ROI at 156. We find that Complainant did not establish a prima facie case of disability discrimination when she was charged LWOP.

Complainants may establish a prima facie case of reprisal by showing that: (1) they engaged in a protected activity; (2) the agency was aware of the protected activity; (3) subsequently, they were subjected to adverse treatment by the agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000). Complainant based her reprisal claim on a complaint filed against "a manager." However, Complainant did not allege that this management official was involved in claim 2, and only stipulated that the Supervisor worked with this manager. ROI at 65-6. The Supervisor averred that she was not aware of Complainant's prior protected EEO activity. ROI at 150. As such, Complainant did not establish a prima facie case of reprisal.

The Agency still provided legitimate, nondiscriminatory reasons for this action. The Supervisor explained that if an employee cannot perform duties beyond two to four hours, the protocol is to report to the building for other assignments, and she instructed Complainant to report in for other duties. The Supervisor suggested that Complainant either come into the office or call IT and remain until she gets an appointment or resolution. Complainant did not report in while her computer was being repaired, and she was charged LWOP. ROI at 154-5, 161.

We find that Complainant has not shown that the proffered reasons were pretexts for discrimination. Pretext can be demonstrated by showing such weaknesses, inconsistencies, or contradictions in the Agency's proffered legitimate reasons for its action that a reasonable fact finder could rationally find them unworthy of credence. See Opare-Addo v. U.S. Postal Serv., EEOC Appeal No. 0120060802 (Nov. 20, 2007) (finding that the agency's explanations were confusing, contradictory, and lacking credibility, which were then successfully rebutted by the complainant), request for recon. denied, EEOC Request No. 0520080211 (May 30, 2008). Complainant did not dispute that she failed to report in for other duties while her computer was being repaired in her rebuttal, and she did not show that the proffered reasons are not worthy of belief. ROI at 93-4.

Further, the Agency's telework policy confirms the Supervisor's explanations. It specifies that an employee may be required to bring in equipment for repairs, and if repairs are extensive and replacement equipment is not available, the employee may be required to report to the office until usable equipment is available. ROI at 403. Complainant's bare assertions that management officials discriminated against her are insufficient to prove pretext or that their actions were discriminatory. Accordingly, we find that Complainant did not establish disability discrimination or reprisal for prior protected EEO activity.

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 as alleged.

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

December 11, 2024
Date