



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

[REDACTED]  
Jade B.,<sup>1</sup>  
Complainant,

v.

Kilolo Kijakazi,  
Acting Commissioner,  
Social Security Administration,  
Agency.

Appeal No. 2023003875

Hearing No. 410-2023-00164

Agency No. ATL-22-0509-SSA

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 30, 2023 final order 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 REVERSES the Agency's final order.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Claims Specialist, GS-0105-11, at the Agency's St. Petersburg Field Office in St. Petersburg, Florida.

On August 15, 2022, Complainant filed an EEO complaint alleging that she discriminated against her on the basis of disability (Physical) when, beginning July 1, 2022, and continuing to present management disclosed her medical condition to co-workers.

On July 1, 2022, at around 7:32 a.m., Complainant called in to the St. Petersburg office to report that she would be unable to come to work that day.

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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.

An Operations Supervisor, who was the supervisor of the Customer Service Representative (CSR) Unit (OS), answered. Report of Investigation (ROI) at 80, 84, 90, 98. She was not Complainant's immediate supervisor. Complainant informed OS that she could not report to the office that day because she needed to be hospitalized for stomach pain. Because Complainant had a work appointment scheduled for later that day, she requested that OS reassign the appointment.

OS approached Complainant's mentor, the Claims Technician Expert (CTE), to reassign Complainant's appointment. During this discussion, OS mentioned to CTE that Complainant could not take the claim herself, because Complainant was in the hospital for stomach pain. OS testified that she shared the information with the person she understood to be Complainant's first line supervisor. OS also informed another supervisor in the office that day of Complainant's absence and the reason for her absence. OS denied informing any other member of the staff of the nature of Complainant's absence. OS testified if other employees in the office heard her tell CTE of the reason for Complainant's absence, the disclosure was inadvertent.

CTE told two co-workers, Coworker 1, and Coworker 2, about her conversation with OS. Coworker 1 subsequently shared this information with another co-worker, Coworker 3. Both Coworker 1 and Coworker 2 then also contacted Complainant to inform her about the conversation between OS and CTE that day.

Complainant later informed her second-level supervisor (S2) about OS's actions and expressed anger about what she viewed as a privacy breach. S2 interviewed Complainant, OS, CTE, and the coworkers. No one indicated that OS informed anyone else. On July 19, 2022, S2 issued a counseling memorandum to OS on properly safeguarding the privacy of bargaining unit employees. Complainant's co-workers indicated that OS had previously engaged in similar incidents involving disclosing employee's medical conditions or information.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before a United States Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. The AJ assigned to the case issued a summary judgment decision finding that Complainant was not subjected to discrimination as alleged. The Agency subsequently issued a final order fully adopting the AJ's decision.

### ANALYSIS AND FINDINGS

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. (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*).

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.

#### *Disclosure of Confidential Medical Information*

As an initial matter, we find that the Agency and AJ incorrectly framed this complaint as alleging a hostile work environment. A fair reading of the record reveals that Complainant is alleging a claim of unlawful disclosure of her confidential medical information in violation of the Rehabilitation Act. The Commission's regulations implementing the Rehabilitation Act provide for the confidentiality of medical information. Specifically, 29 C.F.R. § 1630.14(c)(1) provides, in pertinent part, that: "Information obtained... regarding the medical condition or history of any employee shall . . . be treated as a confidential medical record, except that: (i) [s]upervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodation." Although not all medically-related information falls within this provision, documentation or information of an individual's diagnosis is without question medical information that must be treated as confidential except in those circumstances described in 29 C.F.R. Part 1630.

We note that information about an individual's diagnosis or symptoms is viewed as confidential medical information. See Becki P. v. Dep't of Veterans Affairs EEOC Appeal No. 2019004451 (Sept. 29, 2020). As such, improper disclosure would constitute a violation. *Id.* The Agency does not dispute that OS included "stomach pain" in her statement to CTE. Further, CTE was not in Complainant's supervisory chain and was not on a need-to-know basis regarding Complainant's condition. OS only needed to advise CTE that Complainant would not be in and that her appointment needed to be reassigned. Additionally, the record demonstrates that the co-workers, who were not in Complainant's supervisory chain, learned of Complainant's condition due to OS's disclosure. The fact that she included information about Complainant's condition to a person who did not have a need-to-know made this a violation of the Rehabilitation Act. We acknowledge that Complainant's co-workers testified that OS has acted similarly regarding other employees' confidential medical information in the past. Thus, we find that the Agency disclosed Complainant's confidential medical information in violation of the Rehabilitation Act.

### CONCLUSION

Based on our thorough review of the record, we REVERSE the Agency's final order and REMAND the matter for compliance with our Order below.

### ORDER (C0618)

The Agency is ordered to take the following remedial action:

1. Within 60 days of the date this decision is issued, the Agency shall conduct a supplemental investigation with respect to Complainant's claim of compensatory damages. The Agency shall allow Complainant to present evidence in support of her compensatory damages claim. See Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993). Complainant shall cooperate with the Agency in this regard, including by responding to Agency requests for information and by completing any Agency forms. Complainant shall provide all relevant information requested by the Agency within 30 calendar days of receiving any Agency requests for information. Within 30 calendar days of the completion of the supplemental investigation, the Agency shall issue a final decision, with appeal rights to the Commission, addressing the issues of compensatory damages. Within 30 calendar days of determining the amount of compensatory damages due Complainant, the Agency shall issue a check to Complainant for the undisputed amount. The Agency shall submit a copy of the final decision to the Compliance Officer at the address set forth herein.
2. Within 90 days of the date this decision is issued, the Agency shall provide four hours of in-person or interactive EEO training to the management official identified as OS regarding her responsibilities under the Rehabilitation Act, with special emphasis on avoiding disclosures of confidential medical information.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation that the corrective action has been implemented.

### POSTING ORDER (G0617)

The Agency is ordered to post at its St. Petersburg Field Office facility copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material.

The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

#### ATTORNEY'S FEES (H0124)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), they are entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of receipt of this decision. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

#### IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and §1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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.

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0124)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency or filed your appeal with the Commission.

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. **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

January 31, 2024

Date