



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Fernanda H.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Appeal No. 2023003877

Agency No. 4E-900-0238-22

DECISION

On June 23, 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 May 22, 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.

ISSUES PRESENTED

Whether the Agency discriminated against Complainant based on disability when she was allegedly instructed to perform work outside her medical restrictions, denied work accommodations, sent home, and not allowed to work.

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 City Carrier at the Agency's Bellflower Post Office facility in Bellflower, California.

On October 18, 2022, Complainant filed an EEO complaint alleging discrimination on the basis of disability (physical, amputee) when:

1. On July 24, 2022, Complainant was instructed to perform work outside of her medical restrictions. When Complainant refused to perform the work, Complainant was denied work accommodations and sent home; and
2. On July 27, 2022, through August 3, 2022, Complainant was not provided work accommodations and not allowed to work.

The Agency accepted the foregoing claims for investigation. The investigation showed that Complainant was working for the Agency as a City Carrier Assistant (CCA) at the time of the events in question. Complainant suffered a severe non-work-related injury in February 2018 requiring a right leg above the knee amputation (as a result of which Complainant now uses a protheses) and a left leg tibia graft. Complainant requested a reasonable accommodation on October 12, 2019, and eventually after Complainant had partially recovered from the injury, the Agency granted Complainant a temporary light duty work assignment from October 15, 2020 to November 20, 2020. Complainant was advised that this light duty assignment would expire on December 10, 2020, unless Complainant provided updated medical documentation to support the need for continuation of light duty prior to that date. Complainant's light duty assignment involved casing assigned routes at the Bellflower Post Office.

Complainant testified that as a result of Complainant's medical condition, Complainant cannot lift more than 25 pounds and is limited in the hours Complainant can spend on her prosthetic leg. It is not clear from the record what happened regarding Complainant's light duty assignment when it expired. However, Complainant testified that as of July 24, 2022, Complainant was working Monday through Thursday delivering mail to apartments only, and then working as a supervisor on Sundays. Complainant indicated that Complainant worked 8 hours per day performing these duties. Complainant testified Complainant's work restrictions changed slightly in July 2022 to no lifting over 25 pounds and no stairs.

Postmaster testified that she was not aware of whether Complainant suffers from any physical medical conditions or impairments, but Postmaster was aware that Complainant had bio-medical work restrictions. She testified she became aware of this when Complainant submitted a light duty request on December 24, 2019. When asked to describe Complainant's job duties, Postmaster indicated that Complainant was provided work that was within Complainant's restrictions and that did not contractually cross over into another craft, and that Complainant's duties included casing and Sunday Hub Overseer. However, she noted that Complainant's restrictions did not meet the requirements of a full-time City Carrier.

The functional purpose of a City Carrier, as explained in the job description for the position, "[d]elivers and collects mail on foot or by vehicle under varying road and weather conditions in a prescribed area;...May be required to carry mail weighing up to 35 pounds in shoulder satchels or other equipment and to load or unload container of mail weighing up to 70 pounds."

Claim 1 – Asked to Perform Work Outside Restrictions

Complainant testified that on Sunday, July 24, 2022, Postmaster instructed Complainant to perform duties outside of Complainant's medical restrictions. Complainant stated that Postmaster made explicitly clear via phone conversation that Complainant was to receive and unload and move heavy equipment from an Amazon truck and distribute parcels. Complainant stated this is outside her medical restrictions and Postmaster is fully aware of this.

Postmaster testified that on July 24, 2022, Complainant was working as a Sunday Hub leader and was tasked with opening the building to allow Amazon to drop off the Sunday shipment because the employee who would normally open called out. Postmaster stated Complainant would need to arrive at work at 5:00 a.m. Complainant would then oversee delivery operations of Sunday Amazon and send an all-clear when the last carrier returned. Postmaster testified that the Amazon truck never arrived, and Complainant was never instructed to unload it and/or to move heavy equipment. Postmaster denied ever having such a conversation with Complainant. Postmaster further testified that Complainant worked for 11.07 hours on July 24, 2022 and that Complainant was not sent home early on that day.

The record reflects that Complainant sent a text message to Postmaster at 7:25 a.m. stating that Complainant was still waiting on the Amazon truck to arrive. Postmaster asked at 9:08 a.m. if the Amazon truck had arrived yet and Complainant said it had not, but that Complainant had scanned the UPS and that was ready to go. Postmaster advised Complainant to send the carriers out with UPS for now while Postmaster checked with Amazon. After Complainant indicated the three carriers that were there had been sent out, Postmaster also stated that Complainant could "also send them out with oversized packages by the Notice left shelves." (Complaint File, p. 162).

The record also reflects that Postmaster contacted Amazon on July 24, 2022 at 10:57 a.m. to inform Amazon that the Bellflower Post Office had not received their Amazon delivery that day. However, on July 26, 2022, External Customer Liaison Specialist informed Postmaster that the Amazon delivery truck had in fact arrived at the Bellflower Post Office at 5:17 a.m. Subsequent emails indicated that the scheduled delivery did not occur because the Bellflower Post Office was not open when the Amazon truck arrived. Postmaster then notified Supervisor Customer Service that there was a candor issue involving Complainant because Complainant had texted Postmaster on July 24, 2022, stating that Complainant arrived at the Bellflower Post Office at 5:00 a.m. that day, but Complainant's clock rings indicated Complainant arrived at 05.97 (just before 6:00 a.m.). (Complaint File, pp. 170-187). Supervisor Customer Service conducted an investigative interview with Complainant about this issue on July 28, 2022. However, Complainant stated she did not remember what time she was scheduled to clock in on Sunday July 24, 2022, nor what time she clocked in that day. (Complaint File, p. 217-219).

Claim 2 – Not Provided Work Accommodations and Not Allowed to Work

Complainant testified that after she refused to work outside her restrictions on Sunday, July 24, 2022, Complainant then continued to work through Tuesday, but on Wednesday, July 27, 2022, at 12:00 pm Complainant was sent home. Complainant testified that she was told no work was available, but Complainant testified she disagreed with this reason and Complainant believes work was available as Complainant had previously been working 8 hours every shift for the past two years. Complainant testified Complainant was sent home because Postmaster was angry that Complainant would not violate her medical restrictions on July 24, 2022.

Complainant testified that she reported to work each day during July 27, 2022 to August 3, 2022 and was sent home. However, on August 4, 2022, Complainant was given 8 hours of work and Complainant has been given 8 hours ever since. Complainant states this indicates work was available for her to perform from July 27, 2022 to August 3, 2022. Complainant testified she should have been given accommodations during this time doing Avus, E360s, casing, helping management when needed, and supervising on Sundays as Complainant had been doing.

Supervisor Customer Service indicated he was the one who sent Complainant home on July 27, 2022. Supervisor Customer Service further testified that there was not 8 hours of work available during the period of July 27, 2022 through August 3, 2022 within Complainant's restrictions. He stated that work is not always available and, in this case, it was not available due to return of the work force. He stated that he needs to follow the "pecking order" in the bargaining agreement and Complainant had an off-duty injury. (The record indicates that off-duty injuries do not qualify for guaranteed hours).² He testified that Complainant was working apartments when he had that work available. Supervisor Customer Service denied that Postmaster instructed him to send Complainant home.

The record reflects Complainant worked the following hours:

Pay Period	Date	Day	Hours Worked by Complainant
16-2	24-Jul	Sunday	11.07
16-2	25-Jul	Monday	8.26
16-2	26-Jul	Tuesday	8.00
16-2	27-Jul	Wednesday	5.11
16-2	28-Jul	Thursday	0.79
16-2	29-Jul	Friday	N/A
16-2	30-Jul	Saturday	N/A

² "In general, employees injured on-the-job whose claims are pending or open with OWCP are assigned to limited-duty positions and guaranteed eight hours of work, whereas employees with medical restrictions due to non-work related conditions or injuries are assigned to light-duty work, if available, but not guaranteed eight hours of work each day. See Miller v U.S. Postal Serv., EEOC Request No. 05A40871 (June 26, 2006). Assignment to limited or light duty does not have an effect on the determination of whether an employee is an individual with a disability under the Rehabilitation Act." Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120064521 (Feb. 9, 2008).

17-1	31-Jul	Sunday	11.78
17-1	1-Aug	Monday	5.62
17-1	2-Aug	Tuesday	3.58
17-1	3-Aug	Wednesday	5.54
17-1	4-Aug	Thursday	0.77
17-1	5-Aug	Friday	N/A
17-1	6-Aug	Saturday	N/A
17-2	7-Aug	Sunday	11.26
17-2	8-Aug	Monday	3.22
17-2	9-Aug	Tuesday	2.18
17-2	10-Aug	Wednesday	6.92
17-2	11-Aug	Thursday	8.2
17-2	12-Aug	Friday	N/A
17-2	13-Aug	Saturday	N/A

The record also reflects that on August 4, 2022, Complainant requested “any and all light duty work within [Complainant’s] restrictions based on [Complainant’s] physician’s notes.” Complainant included a statement from her physician dated August 4, 2022, which stated that Complainant “[m]ay return to work with the following restrictions: No lifting over 40 lbs, no walking more than 2-4 hours, clerical work only; may work apartments and deliver packages, 8 hours only a day 40 hours a week except Sundays when supervising.” (Complaint File, p. 198).³ This represents an increase in Complainant’s previous lifting restriction of 25 pounds.

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 an Equal Employment Opportunity Commission Administrative Judge (AJ). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), 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 Complainant to discrimination as alleged. The decision found that Complainant could not perform the essential functions of the City Carrier position with or without accommodation and while the Agency was permitted to accommodate Complainant, the Agency was not required to accommodate

³ On September 23, 2022, Complainant submitted a new physician letter stating that Complainant “[m]ay return to work with the following restrictions: May work 8 hours delivering to apartments or office work. May work 40 hours per week plus 2 days off during the week. May take 10 minute breaks every 2 hours.” (Complaint File, p. 199).

Complainant. The Agency found that Complainant presented no plausible accommodations that would enable Complainant to perform the duties of the City Carrier position. The decision stated that the evidence did not establish a failure to accommodate, and Complainant had not provided evidence that management was motivated by discriminatory animus.

Complainant then filed the instant appeal.

CONTENTIONS ON APPEAL

On appeal, Complainant contends it is clear the Agency discriminated against Complainant based on her disability when Complainant was accommodated with full-time work for over two years, but then refused Postmaster's instructions to perform work outside Complainant's restrictions and was subsequently told there was no work for her from July 27, 2022 to August 3, 2022 before work again became available beginning August 4, 2022. In Complainant's appeal brief, Complainant admits she was not sent home early on July 24, 2022, but Complainant states she was sent home early and/or not given a regular amount of work during the period from July 24, 2022 to August 3, 2022 (except for Sunday July 31, 2022). Complainant asserts this shows that Complainant was punished for refusing to violate her medical restrictions.

The Agency did not file a brief or statement in connection with this appeal.

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

The instant complaint gives rise to claims of both failure to accommodate and disparate treatment based on disability. Under the Commission's regulations, 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) Complainant is an individual with a disability as defined by 29 C.F.R. § 1630.2(g); (2) Complainant 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).

A claim of disparate treatment is examined under the three-part analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). For Complainant to prevail, Complainant 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. McDonnell Douglas, 411 U.S. at 802, n. 13; Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978). The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the agency has met its burden, Complainant bears the ultimate responsibility to persuade the fact finder 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).

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. 2021004539 (August 17, 2023).

Here, Complainant has not established a prima face case of failure to accommodate nor disparate treatment based on disability because Complainant has not established that the alleged discriminatory incidents occurred as alleged or that Complainant was subjected to an adverse action or denied a reasonable accommodation.

With respect to Claim 1, Complainant admitted on appeal that Complainant was not sent home early on July 24, 2022, and Complainant's official time from that day indicates Complainant worked just over 11 hours. Although Complainant testified that Postmaster instructed Complainant to perform work exceeding Complainant's medical restrictions (unloading an Amazon truck and heavy equipment), Postmaster testified this did not happen. Additionally, both Complainant and Postmaster stated that the Amazon truck did not arrive that day.

As to Claim 2, the parties agree that Complainant was sent home early on July 27, 2022. However, they do not agree about the hours of work performed from July 27, 2022 to August 3, 2022 and how that compares to the hours of work performed before and after that time period. Complainant testified that Complainant "reported to work from 7/27 - 8/3 and was sent home", but then on August 4, 2022, Complainant was given eight hours of work each day and has been given eight hours of work ever since. As shown in the table above, Complainant worked at least some every day Complainant was scheduled to between July 24, 2022 and August 4, 2022, and apart from Sundays (when Complainant appears to typically work 11 hours), she did not work eight hours in a day until August 11, 2022. The record also reflects that Complainant submitted new work restrictions on August 4, 2022 and September 23, 2022 which lessened Complainant's medical restrictions and increased the weight Complainant was allowed to lift. Complainant did not provide evidence that Complainant was not allowed to work from July 27, 2022 through August 3, 2022 nor did Complainant provide evidence to establish that the hours worked during this time period were materially different than those worked prior to this time frame. Complainant also failed to establish that Complainant was not provided work accommodation when the record reflects Complainant worked some every day Complainant was scheduled and Supervisor Customer Service and Postmaster testified Complainant was given work within Complainant's medical restrictions. Complainant admits that she was unable to lift 35 pounds as required by the City Carrier position until August 4, 2022.

This case involves conflicting testimony, and since Complainant did not request a hearing before an Administrative Judge, we do not have the benefit of credibility determinations. Complainant did not introduce any evidence beyond Complainant's own testimony to support that these allegations occurred as alleged. Complainant cannot establish a prima facie case because Complainant has not introduced evidence to corroborate Complainant's version of events. Complainant has the burden of proving that the allegedly discriminatory acts occurred. When the evidence is at best in equipoise, Complainant fails to meet that burden. See Lore v. Dep't of Homeland Security, EEOC Appeal No. 0120113283 (Sep. 13, 2013), and Brand v. Dep't of Agriculture, EEOC Appeal No. 0120102187 (Aug. 23, 2012).

Complainant did not establish that Complainant was denied a reasonable accommodation or subjected to an adverse action. Therefore, Complainant has not established a prima facie case for failure to accommodate or disability discrimination based on disparate treatment.

Even if Complainant had proved a prima facie case, the Agency articulated legitimate nondiscriminatory reasons for Complainant working less than 8 days a week from July 27, 2022 through August 3, 2022. Complainant had medical restrictions that prevented Complainant from performing the full duties of a City Carrier. Complainant was provided work within Complainant's medical restrictions, but as Complainant's injury did not occur on the job, Complainant was not guaranteed 8 hours of work. Due to the need to balance hours between employees according to the bargaining agreement and the return of employees to the building, there was not enough work for Complainant within Complainant's restrictions during that time period to provide 8 hours per day. Complainant was accommodated with available work within her medical restrictions.

Complainant has not shown that these articulated reasons were pretext for discriminatory animus. Pretext can be demonstrated by showing such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the Agency's proffered legitimate reasons for its action that a reasonable fact finder could rationally find them unworthy of credence. Opore-Addo v. U.S. Postal Serv., EEOC Appeal No. 0120060802 (Nov. 20, 2007), req. for recon. den'd EEOC Request No. 0520080211 (May 30, 2008).

A complainant's generalized testimony alleging a subjective belief that a particular action was motivated by discrimination is insufficient to show pretext. See Perry v. Dep't of Hous. & Urban Dev., EEOC Appeal No. 01A54957 (Jan. 4, 2006). Mere assertions or conjecture that an agency's explanation is a pretext for intentional discrimination is insufficient because subjective belief, however genuine, does not constitute evidence of pretext. Here, the Agency was not obligated to provide Complainant work, but even if they were, there was not enough work within Complainant's medical restrictions to provide 8 hours of week per day. Further, Complainant even admits her belief that she was given fewer hours because Postmaster was upset about the events of July 24, 2022. Based on the record before us, even if Complainant was purposefully given fewer hours (which Complainant has not demonstrated actually occurred), it more likely relates to Complainant's alleged lack of candor as opposed to Complainant's disability.

At all times the ultimate burden of persuasion remains with Complainant to demonstrate by a preponderance of the evidence that the Agency was motivated by prohibited discrimination." Alameda B. v. Dep't of the Treasury, EEOC Appeal No. 0120181968 (Sept. 24, 2019). Complainant has not done so here.

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.

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)

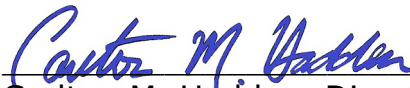
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision.

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

February 4, 2025

Date