



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

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

v.

Denis R. McDonough,  
Secretary,  
Department of Veterans Affairs  
(Veterans Health Administration),  
Agency.

Appeal No. 2023004237

Hearing No. 520-2022-00306X

Agency No. 200H-0523-20211039

DECISION

On July 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 20, 2023, final order concerning her 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 following reasons, the Commission AFFIRMS the Agency's final order.

ISSUES PRESENTED

Whether the AJ correctly denied Complainant's motion to amend her complaint and issued summary judgment in the Agency's favor finding that Complainant

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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.

did not establish that she was denied a reasonable accommodation or was subjected to discrimination based on her sex, disability, and reprisal.

### BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an Advanced Practice Registered Nurse at the Agency's VA Medical Center in Boston, Massachusetts.

On September 3, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of sex (female), disability (breast cancer treatment), and reprisal for prior protected EEO activity under Section 501 of the Rehabilitation Act of 1973 when the Agency subjected her to numerous incidents of alleged harassment including but not limited to: being assigned a full caseload; on July 22, 2021, the accommodation Complainant was provided in the Reasonable Accommodation 2<sup>nd</sup> Final Level Review was not sufficient or appropriate for Complainant's medical condition; and on August 20, 2021, the Associate Director instructed Complainant to order medicine that was out of her scope of practice and did not provide Complainant the policy when requested.<sup>2</sup>

Complainant stated that she had breast cancer for which she underwent two surgeries, in October and November 2020, and for which she required long-term treatment after the surgeries. See Report of Investigation (ROI) at 7. She asserted that she was criticized and ostracized for advocating for veterans, specifically referring to an incident where she spoke out against discharging a veteran because he had a history of suicidal ideation, substance abuse disorder, and was homeless. See ROI at 7. She stated that this incident was her protected activity because she was "intervening to protect veterans from unethical practices and misrepresentations," and that after this incident in April 2020, she was subjected to harassment. See ROI at 238. She asserted that she has been bullied and treated unfairly by being assigned a full caseload even while others have limited caseloads, arguing that the Director of Mental Health (Director) should be providing coverage for her caseload when she was out on leave for her medical treatment without putting Complainant in a position to have to ask for help because it "creates [a] divide amongst providers," and that it showed a "lack of emotional intelligence," to

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<sup>2</sup> The Agency accepted these three incidents as timely raised discrete incidents but found that other discrete incidents were untimely and therefore would only be accepted as part of Complainant's overall harassment claim. See Report of Investigation (ROI) at 73-81.

be so indifferent to her medical needs during her cancer treatment See ROI at 32, 277. She stated that her request for a reasonable accommodation was denied, while the harassment she suffered exacerbated her medical condition. She insisted that the various incidents of harassment have made her "emotionally, psychologically, physically drained, stressed, tearful, traumatized by ... continuing unremitting hostility and attempts to punish [her] and make [her] life and condition worse." See ROI at 252.

The Director stated the management of patient assignments is made within each inpatient unit and decided by the treatment team, including the Attending Psychiatrists and the Advanced Practice Nurses. See ROI at 405. She explained that assignments to different units varies depended on clinical needs and the demands of the service and that this was made clear to Complainant and all nurse practitioners when they began their employment. See ROI at 410-11. She asserted that the leadership team was concerned about continuity of care for the veterans and felt it would be clinically disruptive to the patients to reassign the clinicians who had been assigned to the sub-acute unit during Complainant's absence. See ROI at 411. The Director further explained that at the various times when Complainant was assigned a full caseload, Complainant was the only full-time clinician who was assigned to the sub-acute 2-2-B unit with two part-time clinicians who were splitting their time with other clinical assignments and that as a result, Complainant would be rotating more frequently for admissions to that unit and would appear to have more patients than the other part-time clinicians. See ROI at 438. The Medical Director of the Mental Health Division (Medical Director) explained that it is not uncommon for clinicians to have an uneven distribution of admissions due to variations in schedules and going over cap can occur when there is cross-covering in another clinician's absence or when there is block coverage because of a shortage of clinicians. See ROI at 567.

In seeking a reasonable accommodation for her breast cancer treatments, Complainant requested to be assigned to her previous position on sub-acute unit 2-2-B and to resume care of her previously assigned patients in order to minimize stress and anxiety from transferring to another acute unit and not to be reassigned to another unit for at least 5 years, if not permanently; occasional telework on days when she was not feeling well enough to drive to work; and Leave Without Pay (LWOP) for days when she was not feeling well enough to work. See ROI at 309.

The Agency granted Complainant's requests for occasional telework and LWOP under the FMLA when necessary and agreed that she would be assigned to the 2-2-B unit for six months until she had adjusted to her treatment and that if Complainant required further accommodation after six months, they could reengage in the interactive process. See ROI at 309-310. The accommodation determination stated that assigning Complainant to the 2-2-B unit for five years outright would be an undue burden the Agency because it needed to be able to adjust assignments based on patient care needs. See ROI at 310. Complainant requested a final level review of her accommodation request and the Agency agreed to assign Complainant to the 2-2-B unit for twelve months and stated that if reassignment was necessary based on the needs of the service after the 12-month period, Complainant and her supervisor could discuss it to determine if further accommodation was necessary. See ROI at 317-18. The final level review further stated that if, after the 12-month period, an extension of the accommodations were deemed to be medically necessary, the Agency and Complainant would discuss extending the accommodations or making them permanent. See ROI at 318. The Director explained that they could not grant Complainant's request to commit to keep her on the 2-2-B unit for five years without any further evaluation because it was a challenging time for mental health units in the region and management was concerned that staffing would be so reduced by resignations, transfers, and retirements that they would not be able to staff the inpatient units, which had happened before, so they needed to retain some flexibility for long-term planning. See ROI at 432-33.

Complainant stated that she was subjected to unspecified rumors by other nurse practitioners who were "out to get her," because they were upset on being displaced after Complainant returned to work from being on Family and Medical Leave Act (FMLA) leave. See ROI at 259. She asserted that on August 20, 2021, the Associate Director sent her an email recommending that she order Clozapine and he would co-sign it and she told him that she was not comfortable doing that as the policy used to state that only a psychiatrist or neurologist should order Clozapine. See ROI at 31. She stated that she also checked with the pharmacy and was told that it was a bad practice because she needed a registration number which she did not have. See ROI at 31. She stated that the Director never sent her a copy of the policy which the Associate Director cited saying that ordering Clozapine fit within the model of care. See ROI at 31-32.

Complainant asserted that if she had ordered the Clozapine as she was ordered to do, she could have been fired and lost her license and insisted this was an attempt by the Associate Director to try to hurt her and her career, which was sanctioned by the Director. See ROI at 297. Complainant stated that due to the harassment she suffered, she was forced to resign on September 30, 2021. See ROI at 236.

One of Complainant's Coworkers (Coworker 1), another Nurse Practitioner, explained that he only expressed some frustration at the situation regarding his sudden reassignment to a new unit but denied that he either blamed Complainant or was "out to get" her. See ROI at 558. He stated that he had no idea what rumors Complainant was referring to. The Associate Director explained that he was told by upper management that it was within a Nurse Practitioner's scope of practice at the Agency to prescribe a particular medication so that was why he asked Complainant to prescribe Clozapine. See ROI at 540. He explained that one of Complainant's patients was prescribed the medication and taking the medication requires regular blood draws for a standard blood test that can be ordered by NPs. See ROI at 541. He stated that he was later informed by upper management that it was not within a nurse practitioner's scope of practice to prescribe the medication. See ROI at 540.

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). Complainant timely requested a hearing. While discovery was pending, on February 28, 2023, Complainant filed a motion to amend her complaint to include a constructive discharge claim. The AJ denied Complainant's motion to amend as it was not filed until more than six months after the AJ's Order Scheduling Initial Conference, which gave Complainant a deadline of 10 days in which to file any motion to amend. The AJ also denied Complainant's motion to extend the discovery deadline as she had already granted Complainant a period of more than 100 days to conduct discovery and Complainant had not established good cause for an extension. Over Complainant's objections, the AJ assigned to the case granted the Agency's March 13, 2023, motion for a decision without a hearing and issued a decision without a hearing on June 7, 2023. The AJ found that Complainant did not establish that the Agency denied her a reasonable accommodation or that she was subjected to discrimination as alleged. The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

### CONTENTIONS ON APPEAL

On appeal, Complainant questions the veracity of the Agency's witnesses' statements and insists that the explanations are questionable and therefore that there are material issues of fact in dispute that should have precluded summary judgment. Complainant also contends that the AJ erred in denying her request for an extension on the discovery deadline and her motion to amend. She further argues that the AJ was biased against her, citing an article that indicated that the AJ had never ruled for a complainant in the preceding year, and did not fairly consider the facts because she contends that the weight of the evidence supports her assertions of discriminatory or retaliatory animus. Complainant also insists that the AJ erred in dismissing several of her claims alleging retaliation for engaging in whistleblower activity by opposing a practice that she believed to be unlawful and in violation of Agency policy.<sup>3</sup>

In response, the Agency argues that the AJ acted properly in denying Complainant's motions to extend the discovery deadline and her motion to amend and further that the AJ correctly concluded that the Agency offered Complainant an effective accommodation and that there was no evidence supporting Complainant's claims of discriminatory or retaliatory animus.

### STANDARD OF REVIEW

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. (Aug. 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). This essentially means that we should look at this case with fresh eyes.

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<sup>3</sup> To the extent Complainant insists on appeal that she was subjected to whistleblower retaliation for advocating for a veteran and opposing illegal practices, we reject Complainant's contention as claims of whistleblower retaliation are not within the Commission's jurisdiction. See Wiser v. U.S. Postal Serv., EEOC Appeal No. 0120122485 (Oct. 19, 2012).

In other words, we are free to accept (if accurate) or reject (if erroneous) the AJ's, and Agency's, factual conclusions and legal analysis – including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. See id. at Chapter 9, § VI.A. (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

### *Issuance of Summary Judgment*

We determine whether the AJ appropriately issued the decision without a hearing. The Commission’s regulations allow an AJ to issue a decision without a hearing upon finding that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). EEOC’s decision without a hearing regulation follows the summary judgment procedure from federal court. Fed. R. Civ. P. 56. The U.S. Supreme Court held summary judgment is appropriate where a judge determines no genuine issue of material fact exists under the legal and evidentiary standards. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a summary judgment motion, the judge is to determine whether there are genuine issues for trial, as opposed to weighing the evidence. Id. at 249. At the summary judgment stage, the judge must believe the non-moving party’s evidence and must draw justifiable inferences in the non-moving party’s favor. Id. at 255. A “genuine issue of fact” is one that a reasonable judge could find in favor for 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 “material” fact has the potential to affect the outcome of a case.

An AJ may issue a decision without a hearing only after determining that the record has been adequately developed. See Petty v. Dep’t of Def., EEOC Appeal No. 01A24206 (July 11, 2003). We carefully reviewed the record and find that it is adequately developed. To successfully oppose a decision without a hearing, Complainant must identify material facts of record that are in dispute or present further material evidence establishing facts in dispute.

Complainant repeatedly challenges details of the Agency's characterization of events, her disagreements are not actually material as they do not provide any actual support for her assertions of discriminatory or retaliatory animus. It is well settled that mere assertions of a factual dispute without more are not sufficient to defeat a motion for summary judgment. See Darrell C. v. U.S. Postal Serv., EEOC Appeal No. 10200181833 (July 12, 2019); Quartermain v. U.S. Comm'n on Civil Rights, EEOC Appeal No. 0120112994 (May 21, 2013). Upon our review of the record, we find that the AJ correctly determined that Complainant failed to establish a dispute of material fact. Accordingly, we find that the AJ properly issued a decision without a hearing.

*Denial of Additional Discovery and Motion to Amend*

On appeal, Complainant contends that the AJ erred in denying her motion to extend the discovery deadline and in denying her motion to amend her complaint to include a constructive discharge claim. EEOC Administrative Judges have full responsibility for the adjudication of the complaint, including overseeing the development of the record, and have broad discretion in the conduct of hearings. 29 C.F.R. § 1614.109(a), (e). Given the AJ's broad authority to regulate the conduct of a hearing, a party claiming that the AJ abused their discretion faces a very high bar. Trina C. v. U.S. Postal Serv., EEOC Appeal No. 0120142617 (Sept. 13, 2016), citing Kenyatta S. v. Dep't of Justice, EEOC Appeal No. 0720150016 n.3 (June 2, 2016) (responsibility for adjudicating complaints pursuant to 29 C.F.R. § 1614.109(e) gives AJs wide latitude in directing terms, conduct, and course of administrative hearings before EEOC).

We reject Complainant's contentions. The record indicates that the AJ permitted Complainant 105 days in which to complete discovery and Complainant did not provide any reason or explanation for her failure to obtain the depositions which she insists are necessary in that time. In addition, we note that the AJ's Order Scheduling the Initial Conference clearly informed Complainant that she had 10 days in which to file any motion to amend and Complainant offered no reason for her failure to file her motion to amend until six months after the AJ's Order. We also emphasize that although Complainant resigned from the Agency citing alleged harassment on September 30, 2021, she made no attempt to amend her complaint to include a constructive discharge claim either before the Agency or before the AJ until months after the AJ issued the Order Scheduling the Initial Conference. Complainant's mere disagreement with the AJ's decisions are not sufficient to establish that the AJ abused his discretion. See Jones v. Dep't of Agric., EEOC Appeal No. 0120080673 (June 9, 2010).

We further reject Complainant's argument alleging bias on the part of the AJ as Complainant's arguments do not establish any impropriety on the AJ's part, only that Complainant clearly takes issue with the AJ's adverse rulings. However, disagreement with the AJ's rulings is not indication of impropriety or of any bias on the part of the AJ. See Jed T. v. Dep't of Veterans Affs., EEOC Appeal No. 2022000805 (May 18, 2023). The Commission has reviewed the record and finds no abuse of discretion by the AJ. Further, the Commission is unable to find any evidence of bias, or other reversible error, resulting from the manner in which the AJ managed this case.

### *Denial of Reasonable Accommodation*

Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. § 791 (2012) (as amended) requires that an Agency make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless the Agency can demonstrate that doing so would impose an undue hardship. 29 C.F.R. § 1630.9(a) (2017); EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (Enforcement Guidance) (revised Oct. 17, 2002). Once an employer becomes aware of the need for an accommodation of an employee's disability, the employer may engage in an interactive process with the employee to identify and implement appropriate reasonable accommodations. See 29 C.F.R. § 1630.2(o)(3) (2019). An Agency may choose among reasonable accommodations as long as the chosen accommodation is effective, and while the preference of the individual with a disability should be given primary consideration, an Agency has the ultimate discretion to choose between effective accommodations. See Enforcement Guidance, supra, at Q. 9.

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 a "qualified" individual with a disability pursuant to 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide her with a reasonable accommodation. See, e.g., Bill A. v. Dep't of the Army, EEOC Appeal No. 0120131989 (Oct. 26, 2016).

In this case, Complainant alleges that the Agency violated the Rehabilitation Act because it did not commit to assigning Complainant to the 2-2-B subacute unit for a period of five years but instead only committed to assign her to the 2-2-B unit for one year with an option to revisit the accommodation after that time if necessary.

The AJ concluded that Complainant did not establish that the Agency violated the Rehabilitation Act because it was reasonable for the Agency to grant Complainant an accommodation for a year with the option to extend the accommodation, if necessary, because of the need to take into account the needs of the service. We agree with the AJ that Complainant did not establish a violation of the Rehabilitation Act. Complainant does not argue that the Agency's offered accommodation was somehow ineffective, only contends that the Agency had no valid reason not to provide her with her requested accommodation for a full five years. We reject Complainant's argument. It is well established that complainants are not entitled to the accommodation of their choice, only to an effective accommodation. See Harvey G. v. Dep't of Veterans Affs., EEOC Appeal No. 2019004914 (Sept. 23, 2020). We therefore affirm the AJ's determination that Complainant did not establish that the Agency denied her a reasonable accommodation in violation of the Rehabilitation Act. See Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120120800 (July 17, 2014).

#### *Disparate Treatment*

Applying the McDonnell Douglas burden-shifting standard defined in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), a complainant initially must establish a prima facie case of discrimination by presenting facts which, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. See St. Mary's Honor Center v. Hicks, 509 U.S. 502, 507 (1993); Texas Dep't of Community Affs. v. Burdine, 450 U.S. 248, 252-53 (1981); McDonnell Douglas 411 U.S. at 802. The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. Burdine, 450 U.S. at 253. Once the agency has met its burden, the complainant has the responsibility to demonstrate by a preponderance of the evidence that the agency's action was based on prohibited considerations of discrimination, that is, its articulated reason for its action was not its true reason but a sham or pretext for discrimination. See Hicks, 509 U.S. at 511; Burdine, 450 U.S. at 252-53; McDonnell Douglas, 411 U.S. at 804.

Complainant may establish a prima facie case of discrimination by providing evidence that: (1) she is a member of a protected class; (2) she suffered an adverse employment action; and (3) either that similarly situated individuals outside her 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).

Complainant may establish a prima facie case of reprisal by showing that: (1) she engaged in a protected activity; (2) the agency was aware of the protected activity; (3) subsequently, she was 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). When establishing a prima facie case of retaliation under Title VII, close temporal proximity is sufficient to infer a causal nexus between an employee's protected activity and an adverse action on the part of an employer. See Clark County School Dist. v. Breedon, 532 U.S. 268, 273 (2001) (noting that "cases that accept mere temporal proximity between an employer's knowledge of protected activity and an adverse employment action as sufficient evidence of causality to establish a prima facie case uniformly hold that the temporal proximity must be 'very close'").

We find that Complainant did not establish a prima facie case with respect to her protected classes of sex or disability. Complainant identified the Associate Director as a coworker who was treated more favorably than she was but the Associate Director is not a valid comparator as he holds a different position than Complainant. There is no evidence in the record beyond Complainant's bare assertions that she was assigned a heavier caseload than other practitioners. Complainant's bare assertions alone are not sufficient to establish a prima facie case. See Evelina M. v. U.S. Postal Serv., EEOC Appeal No. 2023002009 (Oct. 2, 2024).

We further find that the AJ correctly found that Complainant did not establish a prima facie case of reprisal with respect to her claims arising out of her attempt to "protect veterans from unethical practices and misrepresentations" because such activities do not constitute protected activity for purposes of an EEO complaint. See Milton D. v. Dep't of Veterans Affs., EEOC Appeal No. 2023000087 (Feb. 27, 2023) (stating that a reprisal claim under the Commission's regulations must involve opposing a practice made unlawful by one of the statutes enforced by the Commission or participating in any proceeding under one of those statutes). In this case, Complainant's only protected activity consists of requesting a reasonable accommodation on January 4, 2021 so Complainant could not establish a prima facie case of reprisal for any claims occurring prior to that date.

We further find that, even if Complainant could establish a prima facie case, the Agency articulated legitimate, nondiscriminatory reasons for its actions. The Director stated the management of patient assignments is made within each inpatient unit and decided by the treatment team, including the Attending Psychiatrists and the Advanced Practice Nurses and that at the relevant times, Complainant was the only full-time clinician who was assigned to the sub-acute 2-2-B unit with two part-time clinicians who were splitting their time with other clinical assignments and so, Complainant would appear to have more patients than the other part-time clinicians. See ROI at 405; 438. The Associate Director explained that he asked Complainant to prescribe Clozapine due to a misunderstanding after he was mistakenly informed by upper management that such a prescription was within the NPs scope of practice. See ROI at 540.

We find that Complainant did not establish that any of the Agency's reasons are a pretext for discrimination. There is absolutely no evidence in the record to support her assertions of any discriminatory animus and the Commission has repeatedly stated that mere assertions or conjecture that an agency's explanation is a pretext for intentional discrimination are insufficient because subjective belief, however genuine, does not constitute evidence of any unlawful motive. See Leif S. v. Dep't of the Treasury, EEOC Appeal No. 2021004037 (April 28, 2022); Juliet B. v. U.S. Postal Serv., EEOC Appeal No. 0120182519 (Oct. 8, 2019).

### *Hostile Work Environment*

In order to establish a prima facie case of harassment, Complainant must prove, by a preponderance of the evidence, the existence of five elements: (1) that she is a member of a statutorily protected class; (2) that she was subjected to unwelcome conduct related to her protected class; (3) that the harassment complained of was based on her protected class; (4) that the harassment had the purpose or effect of unreasonably interfering with her work performance and/or creating an intimidating, hostile, or offensive work environment; and (5) that there is a basis for imputing liability to the employer. See Celine B. v. Dep't of Navy, EEOC Appeal No. 2019001961 (Sept. 21, 2020); Humphrey v. U.S. Postal Serv., EEOC Appeal No. 01965238 (Oct. 16, 1998). See also Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); Flowers v. Southern Reg'l Physician Serv. Inc., 247 F.3d 229 (5th Cir. 2001). The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the victim's circumstances. Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 at § III.B.3.d (Apr. 29, 2024).

In other words, to prove her hostile work environment claim, Complainant must establish that she was subjected to conduct that was either so severe or so pervasive that a “reasonable person” in Complainant’s position would have found the conduct to be hostile or abusive. Complainant must also prove that the conduct was taken because of a protected basis; in this case, her disability. Only if Complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself.

Complainant insists that the Director and the Associate Director were “out to get her” because of her disability and reprisal, treating her harshly. The bulk of the alleged incidents of harassment revolve around Complainant’s disagreement with her caseload, assignment to different units, and issues with working with the Associate Director and other nurses while dealing with patient care. We have previously found that routine work assignments, instructions, and admonishments do not rise to the level of harassment because they are common workplace occurrences. See Colene M. v. Dep’t of Veterans Affs., EEOC Appeal No. 0120180391 (March 26, 2019) (personality conflicts and fundamental disagreements over how work should be done do not constitute harassment); see also Shellie T. v. Dep’t of Defense, EEOC Appeal No. 2023001813 (July 20, 2023) (stating that instances of a supervisor questioning an employee with respect to their duties, even if done in a confrontational manner, were not sufficient to state a claim of harassment). We find that Complainant’s hostile work environment claim must fail because there is no evidence beyond her own subjective assertions that any of the alleged incidents of harassment are due to any of her protected bases. See Ceola K. v. Dep’t of Defense, EEOC Appeal No. 2022003102 (June 22, 2023). In addition, we note that Complainant herself appeared to ascribe the interpersonal conflict between her and the Director and the Associate Director to retaliation stemming from the April 2020 incident where she disagreed with the discharge of a patient, which is not protected activity for purposes of an EEO reprisal claim. The evidence in the record does not support Complainant’s insistence that the alleged incidents of harassment were due to either of her protected bases and therefore Complainant has not established that she was subjected to unlawful harassment. See Eryn M. v. U.S. Postal Serv., EEOC Appeal No. 2020004853 (Aug. 25, 2022).

### 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 order finding that Complainant did not establish that the Agency subjected her to 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 17, 2024  
Date