



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

[REDACTED]  
Giselle T.,<sup>1</sup>  
Class Agent,

v.

Todd Hunter,  
Acting Secretary,  
Department of Veterans Affairs (VA),  
Agency.

Appeal No. 2023004959

Hearing No. 540-2021-00078X

Agency No. 2003-0554-2021101203

DECISION

Class Agent filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated August 7, 2023, dismissing her complaint of unlawful employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

ISSUES PRESENTED

Whether the Agency's final decision properly dismissed Class Agent's class complaint for failure to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1).

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<sup>1</sup> This case has been randomly assigned a pseudonym which will replace Class Agent'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, Class Agent worked as a Mental Health Staff Nurse at the Rocky Mountain Regional VA Medical Center (VAMC) in Aurora, Colorado. On May 2, 2018, Class Agent filed a formal equal employment opportunity (EEO) complaint alleging that the Agency subjected her to hostile work environment harassment on the bases of disability (Multiple Sclerosis, Cancer, and Depression) and reprisal for prior EEO activity (reasonable accommodation requests) when, since June 2017, management treated Class Agent disparately as to committee participation, comments, reprimands, reasonable accommodation (a flexible schedule), workload, and evaluation of proficiencies (Complaint 1).<sup>2</sup> In November 2018, Class Agent amended her complaint to allege harassment regarding a claim against her, a return to duty letter, medical inquiries, leave requests, and constructive retirement.

Following an EEO investigation of Complaint 1, the Agency informed Class Agent of the right to request a hearing before an EEOC Administrative Judge (AJ) or an immediate final agency decision. Class Agent requested the former.

On April 1, 2020, Class Agent filed a Motion to Amend Complaint 1 to include an allegation that the Agency violated the Rehabilitation Act and 29 C.F.R. Part 1630.14 when it commingled Class Agent's confidential medical information with non-medical information related to the facility's Local Reasonable Accommodation Coordinator ("LRA Coordinator") (i.e., training records, etc.) in the same file after Class Agent requested a reasonable accommodation. The AJ granted the motion and further discovery ensued. As part of that discovery, LRA Coordinator testified that, as a general practice, she maintained training certificates for the relevant supervisors in each employee's reasonable accommodation file at the facility.

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<sup>2</sup> The Agency identified the complaint as Agency Number 2003-0554-2018102026. On August 31, 2022, Class Agent and the Agency entered into a settlement agreement in which Class Agent withdrew "any and all pending informal and formal EEO complaints," except her class complaint. The class complaint was re-docketed as Agency No. 2003-0554-2021101203.

On October 28, 2020, Class Agent filed a Motion for Class Certification solely on the above-referenced claim, alleging that the Agency violated the Rehabilitation Act by failing to maintain, in a separate file, confidential medical information for VAMC employees who requested reasonable accommodation. On November 18, 2020, the AJ issued an initial decision on class certification (Initial Decision), certifying a class of employees at the facility who requested reasonable accommodations and alleged that the Agency violated the Rehabilitation Act as referenced above.

On December 3, 2020, the Agency issued a Final Order finding that the AJ correctly certified the class complaint. The Agency accepted and fully implemented the AJ's Decision. Subsequently, on July 30, 2021, the Agency filed a Motion to Dismiss the class complaint for failure to state a claim under 29 C.F.R. 1614.107(a)(1). Specifically, the Agency stated that the Rehabilitation Act does not prohibit an agency from maintaining confidential medical information and non-medical information in the same file where both types of information relate to an employee's request for a reasonable accommodation. On August 2, 2023, the AJ issued an Order Granting Agency's Motion to Dismiss, dismissing the class complaint with prejudice. On August 7, 2023, the Agency issued a final decision sustaining the AJ's dismissal. The instant appeal from Class Agent followed.

#### CONTENTIONS ON APPEAL

On appeal, Class Agent stated that the Agency maintained reasonable accommodation files in electronic format, some with a subfolder for medical documentation and a subfolder for correspondence. Class Agent stated that the reasonable accommodation folders contain a training certificate for the deciding management official, and that is a personnel record to be maintained separately from confidential medical information. Further, Class Agent stated that "the question of whether the Agency's actions did, in fact, violate the Rehabilitation Act is irrelevant to the issue of whether the [Class Agent] has stated an actionable claim upon which relief can be granted."

In opposition to Class Agent's appeal, the Agency stated that each medical center has a LRA Coordinator. The Agency stated, to maintain confidentiality and accuracy, the LRA Coordinator is the single point of contact for reasonable accommodation requests. The LRA Coordinator maintains individual electronic file folders (LRA file) for each accommodation request, and each file is maintained in a secure database. The LRA file can contain nonmedical and medical information related to a reasonable accommodation request.

The Agency stated, during the interactive process, Class Agent obtained a copy of her LRA file and learned of the structure to include nonmedical emails and Rehabilitation Act training certifications for the deciding management officials. The Agency stated that Class Agent is asking the Commission to create a new rule of law to prohibit relevant non-medical information from being maintained with confidential medical information for an LRA file. The Agency stated that the instant complaint should be dismissed in its entirety. The Agency stated that the Rehabilitation Act allows an Agency to maintain all records related to a reasonable accommodation request in a folder, and was not related to personnel actions, disciplinary actions, or adverse actions.

### STANDARD OF REVIEW

The Agency's decision to dismiss a complaint is subject to de novo review by the Commission, which requires the Commission to examine the record without regard to the factual and legal determinations of the previous decision maker and issue its decision based on the Commission's own assessment of the record and its interpretation of the law. 29 C.F.R. § 1614.405(a). The Commission should construe the complaint in the light most favorable to the Class Agent and take the complaint's allegations as true. See Cobb v. Department of the Treasury, EEOC Request No. 05970077 (March 13, 1997). Thus, all reasonable inferences that may be drawn from the complaint's allegations must be made in favor of the Class Agent.

### ANALYSIS

The Commission finds that the Agency properly dismissed Class Agent's formal complaint for failure to state a claim. The only questions for an agency to consider in determining whether a complaint states a claim are: (1) whether Class Agent is an/represents aggrieved employee(s); and (2) whether Class Agent raises employment discrimination on a basis covered by EEO statutes. If these questions are answered in the affirmative, an agency must accept the complaint for processing regardless of its judgment on the merits. See Odoski v. Dep't of Energy, EEOC Appeal No. 01901496 (April 16, 1990). We find such is not the case here.

In the instant matter, Class Agent alleges that the Agency commingled confidential medical information provided for a reasonable accommodation request and Rehabilitation Act training documentation for the management official deciding the reasonable accommodation request. See Enforcement

Guidance: Preemployment Disability-Related Questions and Medical Examinations, Notice No. 915.002 (October 10, 1995) ("Guidance I").

Title I of the Americans with Disabilities Act of 1990 (ADA)<sup>3</sup> requires that all information obtained regarding the medical condition or history of an applicant or employee must be maintained on separate forms and in separate files and must be treated as confidential medical records. 42 U.S.C. §§ 12112(d)(3)(B), (4)(C); 29 C.F.R. § 1630.14. These requirements also extend to medical information that an individual voluntarily discloses to an employer. See Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the ADA, No. 915.002, at B (July 27, 2000) ("Guidance II"). The confidentiality obligation imposed on an employer by the ADA remains regardless of whether an applicant is eventually hired, or the employment relationship ends. See Guidance I. These requirements apply to confidential medical information from any applicant or employee and are not limited to individuals with disabilities. See Higgins v. Dep't of the Air Force, EEOC Appeal No. 01A13571 (May 27, 2003); Hampton v. U.S. Postal Service, EEOC Appeal No. 01A00132 (April 13, 2000); Guidance II at B.

Here, we find that Class Agent has not shown that she was aggrieved by the Agency's action. Class Agent alleged that nonmedical information and medical information related to her reasonable accommodation request were maintained in the same accommodation request file. Class Agent has not alleged that the information was improperly disclosed, or that it was not kept confidential by the LRA Coordinator. Moreover, Class Agent has failed to allege how the practice used by the LRA Coordinator would lead to breach of confidentiality or to a potential improper disclosure. Accordingly, we find that Class Agent has not shown she is aggrieved by the LRA Coordinator's practice.

Specifically, the Agency created a confidential folder for use by the LRA Coordinator to process an employee's reasonable accommodation request. As part of that request, the Agency ensured that the deciding management official was trained on the Rehabilitation Act and its requirements, and maintained that information in the overall reasonable accommodation folder.

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<sup>3</sup> The Rehabilitation Act was amended to provide that the standards used to determine whether non-affirmative action employment discrimination has occurred shall be the standards applied under Title I of the ADA. See Valle v. U.S. Postal Service, EEOC Request No. 05960585 (September 5, 1997).

This differs from maintaining the confidential medical information of an employee with that same employee's personnel records. Assumedly, anyone with personnel record access could look to a personnel folder for nonmedical matters and locate that employee's confidential medical information if it is present. However, it would not be the same for someone looking to the reasonable accommodation request file. A person is not looking to an employee's reasonable accommodation request file for their manager's training documentation, unless related to the reasonable accommodation request.

### CONCLUSION

We AFFIRM the Agency's procedural dismissal of the instant complaint, for failure to state a claim.

### STATEMENT OF RIGHTS - ON APPEAL

#### RECONSIDERATION (M0124.1)

The Commission may, in its discretion, reconsider this appellate decision if Class Agent 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).

Class Agent 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, Class Agent 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 Class Agent'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 Class Agent 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 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).

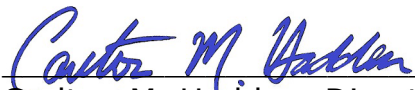
#### CLASS AGENT'S RIGHT TO FILE A CIVIL ACTION (S0124)

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 Class Agent's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director  
Office of Federal Operations

January 28, 2025  
Date