



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

[REDACTED]
Blake H.,¹
Complainant,

v.

Martin J. O'Malley,
Commissioner,
Social Security Administration,
Agency.

Appeal No. 2023005147

Agency No. NY-22-0704-SSA

DECISION

On September 17, 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 final decision² concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission AFFIRMS the Agency's final decision.

ISSUE PRESENTED

Whether the Agency's final decision properly found that Complainant was not subjected to discrimination as alleged.

¹ This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

² On appeal, Complainant provided a copy of an August 29, 2023 final decision containing internal Agency comments. The record also contains a September 14, 2023 final decision without internal Agency comments. Both decisions reached the same results.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Contract Representative (Collections Representative), GS-7, with the Internal Revenue Service (IRS) Brookhaven Campus in Holtsville, New York. During the relevant time, Complainant was an applicant for employment with the Social Security Administration (SSA).

Complainant applied for six vacancies for the position of Social Insurance Specialist (Claims Specialist), GS-0105-7. Complainant stated as part of the application process he completed a three-hour online assessment and then had a two-hour virtual panel interview. Complainant noted he was not selected for any of the vacancies. He claimed the panel members were aware of his disability due to information already on file with SSA due to his previous receipt of Social Security Disability Insurance (SSDI) benefits until he returned to work in October 2021. He claimed that the Agency/panel members used his Social Security Number (SSN) to look up information about him and discovered that he collected SSDI benefits.

According to the Vacancy Announcements for these positions, applicants were required to undergo a Competency Assessment Interview Process (CAIP) interview. Applicants had to participate in a panel interview (after basic eligibility determination) to demonstrate an aptitude for meeting and dealing with the public. Applicants had to pass the interview in order to be fully qualified and receive further consideration for selection. During the interview, applicants were required to demonstrate clarity of speech, ability to listen, ability to put others at ease, and ability to organize and express thoughts clearly.

One interview was conducted for the Social Insurance Specialist (Claims Specialist) positions advertised under VAN DEU-11533418-22 ROII 068 and DEU-11533530 ROII 069. District Manager 1 (DM1) in Mineola, New York and District Manager 2 (DM2) in Riverhead, New York were on the interview panel that interviewed Complainant on July 7, 2022. Complainant stated on September 8, 2022, he learned he was not selected for either vacancy.

DM1 noted Complainant's interview rating evaluated him as "not acceptable." ROI at 000211. DM1 stated Complainant's responses to the interview questions were unorganized and lacked focus. He noted during the interview Complainant was vague, would "go on tangents when answering questions" and sometimes it was difficult to follow him. Id. at 000212.

DM1 also noted that at times Complainant used vocabulary that was insensitive. DM1 stated he had no knowledge of Complainant's disability.

DM2 stated CAIP was a structured interview process used to determine the candidate's ability to meet and deal with the public. She noted Complainant's responses were unorganized and lacked focus and his responses were not easily understood by the panel. DM2 stated Complainant's responses did not illustrate an ability to meet and deal with the public. DM2 stated she did not have knowledge of Complainant's disability.

Complainant provided a rebuttal stating he answered the panel's questions thoroughly and that the Agency did not hire him due to his disability and the fact that he previously collected SSDI. He claims it was not true that he used insensitive vocabulary. He states he has superior interpersonal and communication skills, as evidence by his most recent appraisal and his experience.

The record contains the CAIP Panel Consensus Evaluation signed by both interviewers finding Complainant "not acceptable." The evaluation stated many of Complainant's responses did not address the questions asked and were repetitive in nature. The evaluation stated Complainant was not able to effectively articulate his responses, at times used vocabulary that was insensitive, and did not possess the Customer Service, Interpersonal, and Communication skills to meet and deal with the public.

Because he did not pass the CAIP, Complainant was not on the Certificate of Eligibles for VAN DEU-11533418-22 ROII 068 and DEU-11533530 ROII 069 and eliminated from the selection process. Several candidates were selected for the Claims Specialist positions at different locations.

A second interview was conducted for the Social Insurance Specialist (Claims Specialist) positions advertised under VAN: DEU-11475168-22 ROII 035 and VAN: DEU-11475316-22 ROII 036. District Manager 3 (DM3) in Poughkeepsie, New York and District Manager 4 (DM4) in the Bronx, New York were on the interview panel that interviewed Complainant. Complainant stated he was not selected for either vacancy.

DM3 served as a lead panel interviewer. She noted as part of the process, the applicants go through a review of minimum qualifications and a panel interview.

She noted the CAIP questions contain behavioral based and scenario-based questions focused on: Customer Service, Interpersonal Skills, Planning and Organizing, Analytical Thinking/Problem Solving and Integrity. DM3 stated she did not have knowledge of Complainant's disability.

DM4 noted she also served as a panel interviewer. She stated applicants were rated and scored. She noted each interviewing panel member scored each response an applicant provided on a scale of 0 to 5.

Complainant stated he was not hired based on his disability. He reiterated that panel members, selecting official, and Human Resources, have easy access to his social security number and would find that he collected SSDI payments.

DM3 rated Complainant a 4 in Customer Service, 3 in Interpersonal Skills, 2 in Planning and Organizing, 2 in Decision Making, 4 in Analytical Thinking/Problem Solving, 2 in Integrity, and 2 in Communication. On her CAIP Interviewer Summary Evaluation, DM3 noted Complainant was pleasant throughout the interview. She stated he was not clear in articulating responses, rambled on all of his responses, and his thoughts appeared disorganized. She noted in one question, Complainant asked the panel to cut and paste his response from a prior question.

On her CAIP Interviewer Summary Evaluation, DM4 noted that Complainant spoke in a clear manner; however, his responses to most of the questions lacked depth. She stated he did not provide a solid response regarding the planning/organizing question. She noted he struggled to provide a scenario related to the integrity question. She stated several of his answers were "basic" and noted that based on the overall assessment, he did not possess all the skills required to be effective at Customer Service. ROI at 000779.

The CAIP Panel Consensus Evaluation signed by DM3 and DM4 rated Complainant "not acceptable." It was noted Complainant struggled with articulating his thoughts, lost focus, lacked depth, failed to effectively communicate basic points, and did not demonstrate active listening skills when posed with follow-up questions.

Complainant was not on the Certificate of Eligibles for DEU-11475168-22 ROII 035 and VAN: DEU-11475316-22 ROII 036. Thus, he was not considered for selection. Several candidates were selected for the Claims Specialist positions at different locations.

On January 9, 2023, Complainant filed an EEO complaint, which was subsequently amended, alleging that the Agency discriminated against him on the basis of disability (Bipolar Disorder Type Two) when:

1. On September 8, 2022, Complainant learned he was not selected for the Social Insurance Specialist (Claims Specialist) position, GS-0105-7, under Vacancy Announcement Number (VAN): DEU-11533418-22 ROII 068.
2. On September 9, 2022, Complainant learned he was not selected for the Social Insurance Specialist (Claims Specialist) position, GS-0105-7, under VAN: DEU- 11475168-22 ROII 035.
3. On November 16, 2022, Complainant learned he was not selected for the Social Insurance Specialist (Claims Specialist) position, GS-0105-7, under VAN: DEU-11475316-22 ROII 036.
4. On September 8, 2022, Complainant learned he was not selected for the Social Insurance Specialist (Claims Specialist) position, GS-0105-7, under VAN: DEU-11533530 ROII 069.
5. On July 10, 2020, Complainant learned he was not selected for the Social Insurance Specialist (Claims Specialist) position, GS-0105-7, under VAN: DEU-10750496-20 ROII 017.
6. On December 6, 2021, Complainant learned he was not selected for the Social Insurance Specialist (Claims Specialist) position, GS-0105-7, under VAN: DEU-11284440-22 ROII 019.

The Agency accepted claims 1-4 for further processing. The Agency dismissed the nonselection under VAN: DEU- 10750496-20 ROII 017 (claim 5), for untimely filing of the formal complaint. The Agency noted that Complainant was issued a Notice of Right to File on October 14, 2020, but did not file a formal complaint until January 9, 2023. The Agency dismissed the nonselection under VAN: DEU-11284440-22 ROII 019 (claim 6), for untimely EEO Counselor contact. The Agency noted Complainant stated he received notice of his nonselection on December 6, 2021, but did not contact an EEO Counselor until September 1, 2022, which was beyond the applicable limitations period.

At the conclusion of the investigation on the accepted claims, the Agency provided Complainant with a copy of the report of investigation and notice of his 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 him to discrimination as alleged.

CONTENTIONS ON APPEAL

On appeal, Complainant disputes the statements by DM1 and DM2 that he used insensitive vocabulary. Complainant also disagrees with some of the statements made by the various panel interviewers that he lacked interpersonal and communication skills. Complainant states that he has superior interpersonal and communications skills and cites his appraisal from the IRS and his work experience. Complainant reiterates his claim that panel interviewers had easy access to his SSN and knew that he collected SSDI payments in the past.

In response to Complainant's appeal, the Agency requests its final decision be upheld. The Agency notes on appeal Complainant does not challenge its dismissal of claims 5 and 6. The Agency argues Complainant failed to meet his burden of proof for his claims, did not show disparate treatment, and failed to rebut the Agency's proffered reasons for his nonselections.

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

At the outset, we note Complainant does not specifically contest the Agency's dismissal of claims 5 and 6. Therefore, we do not address it in this decision, as the Commission exercises its discretion to review only those issues specifically raised on appeal. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § IV.A. (Aug. 5, 2015). ("Although the Commission has the right to review all of the issues in a complaint on appeal, it also has the discretion to focus only on those issues specifically raised on appeal.").

For a complainant to prevail on a claim of disparate treatment, they must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). A complainant must initially establish a prima facie case by demonstrating that they were subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Co. v. Waters, 438 U.S. 567, 576 (1978). Proof of a prima facie case will vary depending on the facts of the particular case. McDonnell Douglas, 411 U.S. at 804 n. 14.

To establish a prima facie case of disability discrimination under a disparate treatment theory, a complainant must demonstrate that: (1) they are an "individual with a disability" (2) they are "qualified" for the position held or desired; (3) they were subjected to an adverse employment action; and (4) the circumstances surrounding the adverse action give rise to an inference of discrimination. Horace A. v. EEOC, EEOC Appeal No. 2020003295 (Oct. 13, 2021).

The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dep't of Cmty. Aff. v. Burdine, 450 U.S. 248, 253 (1981). A complainant must ultimately prove, by a preponderance of the evidence, that the agency's explanation is pretext for discrimination. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 143 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993); Burdine, 450 U.S. at 256.

Regarding the prima facie case, we note it is undisputed that Complainant was disabled and was subjected to an adverse action when he was not selected. However, there is no indication that any of the responsible management officials were aware of Complainant's claimed disability. Thus, we find Complainant did not establish a prima facie case of disability discrimination.

Furthermore, we find that the Agency articulated a legitimate, nondiscriminatory reason for its actions. The Agency explained that Complainant was not selected for any of the positions because his responses to the CAIP did not sufficiently demonstrate the competencies of customer service, interpersonal skills, and communication skills to meet and work with the public. Complainant's poor performance in the interviews was reflected in the contemporaneous comments of the DMs on the CAIP evaluation forms.

Upon review, we find Complainant failed to show that the Agency's articulated reason for his nonselection was a mere pretext for discrimination. Outside of his own speculation and bare assertions, Complainant failed to rebut the Agency's legitimate, nondiscriminatory reasons or offer any evidence which could establish discriminatory animus. The Commission has held that agencies generally have broad discretion to set policies and carry out personnel decisions and should not be second-guessed by the reviewing authority absent evidence of unlawful motivation. Vanek v. Dep't of the Treasury, EEOC Request No. 05940906 (Jan. 16, 1997); Shapiro v. Soc. Sec. Admin., EEOC Request No. 05960403 (Dec. 6, 1996).

CONCLUSION

Accordingly, the Agency's final decision dismissing claims 5 and 6, and finding no discrimination on claims 1 - 4 is AFFIRMED.

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

January 8, 2025

Date