



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

[REDACTED]
Tera B.,¹
Complainant,

v.

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

Appeal No. 2023005297

Hearing No. 550-2022-00158X

Agency No. 4E-995-0015-21

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's August 22, 2023, final order concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission AFFIRMS the Agency's final order.

ISSUES PRESENTED

- (1) Whether the EEOC Administrative Judge's grant of summary judgment in favor of the Agency was appropriate, or whether genuine disputes of material fact exist that require a hearing.

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) Whether the Agency's final order properly found that Complainant was not subjected to discrimination on the basis of disability when her start time was changed.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier at the Agency's Muldoon Station in Anchorage, Alaska.

On August 30, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against her based on disability (unspecified) when, on April 17, 2021, Complainant's begin tour time was changed from 7:30 AM to 9:30 AM because she had an eight-hour medical restriction. Complainant does not dispute the framing of the complaint on appeal.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). Complainant requested a hearing. Over Complainant's objections, the AJ granted the Agency's motion for a decision without a hearing and issued a decision by summary judgment in favor of the Agency on August 10, 2023. The Agency subsequently issued a final order fully implementing the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged. The instant appeal followed.

The AJ found that during the relevant period, Complainant was under a medical restriction that she work no more than eight hours per day, 40 hours per week (i.e., with no overtime), which was based on a medical note she had sent to an Agency nurse years prior to the events at issue. The note was not provided to Complainant's current management, including the Manager, Customer Services (MCS) at Complainant's facility. Other than the eight-hour limitation, Complainant had no further medical restrictions and there is no evidence that she requested or was provided a reasonable accommodation for a disability.

The note provided to the Agency nurse did not specify Complainant's disability. The AJ noted that Complainant had refused to disclose the nature of her disability during the investigation into Complainant's EEO complaint. In Complainant's affidavit, when asked to identify her medical condition, Complainant responded by stating, "My medical condition(s) is irrelevant.

I have several conditions including be[ing] a 100% disabled veteran but I only have [one] note stating I am an 8 hour only working medical restricted employee. . . . This EEO [complaint] is about an 8 hour medical note [] targeting only 8 hour note holders, not my medical conditions.” ROI at 61. When asked what were her work limitations as a result of her medical condition, Complainant indicated that the Agency nurse and her doctor knew the conditions but that they were “HIPPA [sic] protected,” referring to the Health Insurance Portability and Accountability Act (HIPAA). ROI at 63. When asked about limitations in her personal life as a result of her medical condition, Complainant stated that she lived her personal life “to the best of [her] ability” but that she struggles “with a lot of personal life because of health issues.” Id.²

Prior to April 17, 2021, Complainant’s schedule was from 7:30 AM to 4:00 PM, Monday through Saturday, with Sundays and a rotating day off. On April 10, 2021, MCS issued a schedule change for several routes that would take effect a week later, on April 17. Eleven routes, including Complainant’s, had their schedules changed to 9:30 AM to 6:00 PM. See ROI at 108. MCS averred that the reason for the schedule changes stemmed from a significant increase in mail volume throughout 2020. Due to what he called “poor utilization of vehicles available” at the facility, MCS stated that the Agency had carriers delivering mail past 8:00 PM, working more than 12 hours per day—which created overtime violations and other issues—and that the facility had “severe challenges” sorting the mail prior to carrier start times. ROI at 86-87. To resolve some of these issues, MCS decided to create a four-hour window in the morning (beginning at 6:00 AM) for city carrier assistants (who are non-career, parttime employees) to use the postal vehicles for deliveries, which resulted in many of the fulltime city carriers having their schedules moved up.³

² We note that attached to her opposition to the Agency’s motion for summary judgment, Complainant submitted for the first time several medical documents and progress notes that listed various medical conditions. However, Complainant’s opposition brief did not indicate Complainant’s specific disability and stated that Complainant’s “precise medical condition is not material.” Complainant Opp. to Mot. for Summ. J. at 8. Complainant only indicated that her “many serious medical issues were physical impairment which limited her major life activities in 2021.” Id. at 7.

³ The schedule change was the subject of a grievance brought by the union, but the record indicated that at the time of the Agency’s motion for summary judgment, the grievance remained pending after reaching an

MCS stated that he chose the eleven routes for change because they had a set fixed schedule, and he believed the collective bargaining agreement allowed him to move their start times by two hours, while the routes he did not change were already about 10-12 hours long. ROI at 89. The Agency continued to meet Complainant's eight-hour restriction after her schedule was changed.

A few weeks after the change, MCS restored five of the carriers who had been affected back to an earlier schedule with a 7:45 AM start time. These five routes were identified after MCS and the union steward went over the results of the first two weeks of the schedule change and found that some of the routes could return to an earlier start time based on mail volumes. Complainant's route was not one of the five, and she objected to the schedule change. She stated that she needed time before 6:00 PM to attend medical appointments. Complainant was granted leave and other schedule changes to attend such medical appointments in the months following the schedule change. However, Complainant submitted a new doctor's note to the Agency dated August 18, 2021, which stated that Complainant "has concerning symptoms that as of yet are not fully explained. She will need to continue medical workup with multiple specialists. This will require the ability to attend visits. I would like her to work the 7:45am to 4:15pm shift to accom[modate] her ongoing treatment." Attach. 4 to Agency Mot. for Summ. J. at 1. The note did not identify Complainant's symptoms or conditions. As a result of the note, the Agency granted the request, and Complainant's schedule was changed in accordance with the doctor's note the following day.

The AJ found that there was no evidence that the change in Complainant's start time constituted disparate treatment or a failure to accommodate Complainant's disability. The AJ noted that the Agency did not treat Complainant less favorably than similarly situated employees outside her protected basis. The AJ also determined that there was no evidence that Complainant's unspecified medical condition constituted a disability under the Rehabilitation Act or that her medical condition motivated MCS's decision to issue the schedule change. The AJ concluded that the change was part of an overall restructuring of carrier schedules to address operational problems that had arisen over the previous year at the Muldoon facility and that numerous carriers were affected. The AJ further determined that MCS was not aware of Complainant's medical conditions.

impasse. The AJ noted that there was no evidence indicating that a claim of discrimination was raised in connection with the grievance.

The AJ therefore concluded that the Agency had articulated legitimate, nondiscriminatory reasons for Complainant's schedule change and that Complainant failed to show that these were pretext for disability discrimination.

CONTENTIONS ON APPEAL

Complainant does not submit any statement on appeal.

The Agency opposes the appeal and argues that Complainant fails to present any evidence or argument showing that the decision finding no discrimination was in error.

STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, 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 Chap. 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").

The Commission's regulations allow an AJ to grant summary judgment when he or she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). An issue of fact is "genuine" if the evidence is such that a reasonable fact finder could find in favor of the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A fact is "material" if it has the potential to affect the outcome of the case. In rendering this appellate decision, we must scrutinize the AJ's legal and factual conclusions, and the Agency's final order adopting them, *de novo*. See 29 C.F.R. § 1614.405(a) (stating that a "decision on an appeal from an Agency's final action shall be based on a *de novo* review. . ."); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (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*).

ANALYSIS

In order to successfully oppose a decision by summary judgment, a complainant must identify, with specificity, facts in dispute either within the record or by producing further supporting evidence and must further establish that such facts are material under applicable law. Such a dispute would indicate that a hearing is necessary to produce evidence to support a finding that the Agency was motivated by discriminatory animus. Here, however, Complainant has failed to establish such a dispute. Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable fact finder could not find in Complainant's favor.

To prevail in a disparate treatment claim such as this, Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Complainant must initially establish a prima facie case by demonstrating that Complainant was 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 802 n.13.

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).

The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Tex. Dep't of Cmty. Affs. 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's explanation was pretextual. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 143 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 507 (1993). Complainant can do this by showing that the proffered explanations were unworthy of credence or that a discriminatory reason more likely motivated the Agency. Burdine, 450 U.S. at 256. A showing that the employer's articulated reasons were not credible permits, but does not compel, a finding of discrimination. Hicks, 509 U.S. at 511.

Here, we find that Complainant has failed to establish a prima facie case of disability discrimination because she has not sufficiently satisfied the first element by showing that she has a disability within the meaning of the Rehabilitation Act. A disability is: (1) a physical or mental impairment that substantially limits one or more major life activities; (2) a record of such impairment; or (3) being regarded as having such an impairment. 29 C.F.R. § 1630.2(g). Major life activities include such functions as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working, and the operation of a major bodily function. 29 C.F.R. § 1630.2(i). An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to the ability of most people in the general population. 29 C.F.R. § 1630.2(j)(1)(ii).

Complainant refused, both during the investigation and before the AJ, to adequately specify her medical conditions or any major life activities limited by her medical conditions. See supra note 2. Her only medical restriction was that her workday be limited to eight hours per day, 40 hours per week. Without specific information about her medical conditions or limitations in the record, we find there is no genuine dispute that Complainant has not shown that she has a disability within the meaning of the Rehabilitation Act. See, e.g., Alfonso T. v. Dep't of the Army, EEOC Appeal No. 2023004939 (Mar. 25, 2024) (finding that complainant “failed to establish a prima facie case on the basis of disability because [he] failed to identify his disability apart from indicating it was mental disability” and concluding that, “without identifying a more specific disability[,] we [cannot] find [c]omplainant is disabled for purposes of establishing a prima facie case”); Erwin B. v. Dep't of the Interior, EEOC Appeal No. 2022001196 (May 22, 2023) (finding that complainant failed to show he had a disability under the Rehabilitation Act after he “was asked but did not identify specific major life activities impaired or limited as a result of his condition”).

Furthermore, we find that the Agency articulated legitimate, nondiscriminatory reasons for its actions that Complainant failed to rebut as pretextual. The record indicated that MCS’s decision to change the schedules of several carriers, including Complainant, was based on operational needs, including MCS’s decision to have a four-hour window for city carrier assistants to use the limited number of vehicles at the facility beginning at 6:00 AM. Ten other carriers with fixed schedules also had their schedules changed by the same amount of time. Moreover, once Complainant’s doctor requested that Complainant’s schedule be returned to an earlier time, the Agency promptly granted the request.

We therefore find the record is devoid of any evidence that creates a genuine dispute of material fact regarding whether the Agency's actions were motivated by discriminatory animus.

CONCLUSION

Accordingly, the Agency's final decision finding no discrimination 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

December 30, 2024
Date