



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

[REDACTED]
Tressa L.,¹
Complainant,

v.

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

Appeal No. 2024000229

Hearing No. 460-2023-00143X

Agency No. 1C-731-0040-23

DECISION

On October 10, 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 September 6, 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 VACATES 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 as alleged.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Mail Handler – Group Leader, M-05, at the Agency's North Houston Processing and Distribution Center in Houston, Texas.

On December 27, 2022, Complainant filed a formal EEO complaint alleging discrimination based on disability (cervical and lumbar degenerative disc disease, anxiety, depression, and post-traumatic stress disorder) and reprisal (instant case) when:

1. On October 1, 2022, her request for work accommodations was not granted; and
2. On October 17, 2022, she was issued a Notice of Removal for Failure to Maintain Regular Attendance/absent without leave (AWOL).

Regarding claim 1, Complainant stated that she requested a reasonable accommodation multiple times either verbally or in association with the submission of a written doctor's note. Complainant stated she requested a reasonable accommodation on the following dates in 2021: February 23, March 1, March 12, March 13, April 12, August 5, August 17, October 6, October 18, November 18, December 2, and December 4. Complainant stated she requested a reasonable accommodation on the following dates in 2022: February 21, June 8, June 30, August 5, September 7, September 16, September 22, October 11, December 2, December 12, and December 22. Complainant stated she made these requests to her first-line supervisor (Supervisor-1) directly or via her Union Representative.

Complainant stated that she requested the following reasonable accommodations: (1) to be exempt from operating any PIT (not defined in the record) equipment; (2) no bending, twisting, pushing, pulling, or lifting anything uncomfortably heavy; and (3) 20-to-30-minute breaks every one to two hours to allow her to sit, recline or lay down while using a medical device for her neck or perform strengthening stretches and exercises. The record contains a doctor's note generally identifying these restrictions dated October 18, 2021, where the doctor stated that the restrictions would last indefinitely. Complainant stated she requested the above accommodation beginning in February 2021, and multiple other times through the date identified in claim 1. Complainant stated that Supervisor-1 verbally offered

the accommodation that Complainant no longer operate the forklift or other PIT equipment. Complainant stated that Supervisor-1 made demeaning remarks about Complainant's mental health such as, "[Complainant] everyone knows you are crazy." Report of Investigation (ROI) at 249. Complainant reported that Supervisor-1 did not take her physical condition seriously when he told her, "girl you to [sic] young to be having all these health problems." ROI at 249.

The record contains additional medical documentation directly stating that Complainant is experiencing symptoms related to her medical conditions that prevent her from completing her full duties. For instance, a letter dated September 22, 2022, from Complainant's medical provider noted that Complainant was experiencing recurring symptoms related to cervical spine disc herniation with radiculopathy. ROI at 45, 77.

Supervisor-1 did not provide an affidavit during the initial investigation. The EEO investigator, however, received Supervisor-1's completed affidavit on April 27, 2023, and delivered it to Complainant on April 28, 2023. Supervisor-1 stated that Complainant told him that she suffered from back pain, however, he denied receiving any medical documentation regarding her condition. Supervisor-1 stated that the specific duties Complainant is required to perform are scanning and assisting supervisor with giving instructions and running the unit. Supervisor-1 stated that Complainant does not have any work limitations. Despite stating that Complainant did not have any work limitations, Supervisor-1 stated that he agreed to grant Complainant's request of the accommodation of not having to ride any equipment on September 2, 2022. Supervisor-1 stated that the above accommodation would have allowed Complainant to perform the duties of her work assignment.

Complainant stated that her prior EEO activity was protesting and complaining about Supervisor-1 ignoring Complainant's injuries and medical conditions that resulted in her work limitations. Complainant stated that this prior activity began when she first provided her medical documents related to her disabilities to Supervisor-1 on February 23, 2021, and continued on the many dates she previously identified as the dates she requested a reasonable accommodation.

Regarding claim 2, Complainant stated her neck was injured while working on February 9, 2021. Complainant stated that she sought treatment but had many days where her injury or side effects from treatment prevented her from working.

Complainant stated that she told Supervisor-1 that she needed an accommodation, light duty assignment, and workers' compensation due to her injury and symptoms. Complainant stated that her doctors instructed her to investigate disability options in June 2022, because her pain had gotten so severe. Complainant stated that she requested information about short term disability from Supervisor-1 but that he did not provide the information and responded, "girl you to [sic] young to have all these health problems." (ROI) at 252. Complainant stated that her symptoms became unbearable on July 5, 2022, and that she took involuntary leave without pay. Complainant stated that she took such leave until Supervisor-1 or upper management could provide her with disability, workers' compensation, reasonable accommodation, job modification, or a light duty assignment. Complainant reiterated that she submitted medical documentation regarding her medical condition via Union Representative prior to the Agency issuing the Notice of Removal (Notice). The record contains the email Complainant sent to Union Representative on October 11, 2022.

The Attendance Control Officer (Manager-1) stated that she issued the Notice because Complainant failed to maintain a regular schedule. Manager-1 stated that Complainant had not reported to work since July 7, 2022. Manager-1 reported that the Agency sent several directives to Complainant's address of record, but that Complainant failed to respond. A Manager, Distribution Operation (Manager-2) was the concurring official for the Notice.

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 requested a hearing. the AJ assigned to the case issued a notice of intent to issue a decision without a hearing on August 8, 2023, to which both parties responded. On August 30, 2023, the AJ issued a decision without a hearing finding no discrimination.

The AJ found that Complainant failed to present any evidence to establish a prima facie case that her request for work accommodations was not granted or that she was issued the Notice based on discrimination or retaliation. Regarding claim 1, the AJ found that there was no dispute that Complainant has a disability. The AJ stated that she considered Complainant to be a qualified individual with a disability despite Complainant failing to affirm that she could perform the duties of her position with or without a reasonable accommodation. The AJ's decision did not address claim 1 regarding the denial of a reasonable accommodation.

The AJ found that the Agency had a legitimate, nondiscriminatory reason for issuing the Notice - Complainant's failure to report for duty since July 7, 2022, failure to notify management about her absence, and failure to provide acceptable documentation of her incapacitation. The AJ found that Complainant did not offer evidence that calls into question this legitimate, nondiscriminatory reason. The AJ found that Complainant's claim of reprisal fails because it was based on her filing a grievance after she received the Notice contained in claim 2.

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. Complainant filed the instant appeal.

CONTENTIONS ON APPEAL

In her appellate brief, Complainant recounts her employment history with the Agency from her hiring in 2014 through her purportedly providing medical documentation to Supervisor-1 on February 23, 2021.

The Agency requests affirmation of its final order.

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 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").

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

Complainant submitted an appellate brief that included attachments. The Agency submitted an appellate brief prior to Complainant's appellate submission, a response brief to Complainant's submission, and a motion to strike Complainant's attachments, which the Agency argued were inadmissible supplemental evidence. Complainant filed a response to the Agency's motion to strike.

As a general rule, no new evidence will be considered on appeal absent an affirmative showing that the evidence was not reasonably available prior to or during the investigation or during the hearing process. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Ch. 9, § VI.A.3 (Aug. 5, 2015). Here, Complainant has not provided arguments or evidence to show that the new materials were not available while the case was pending a hearing, or any explanation as to why they were not provided to the AJ while the case was pending a hearing. Accordingly, the Commission declines to consider any newly provided evidence on appeal. Furthermore, we note that even if we were to consider the attachments, they would not change our disposition.

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.

An agency is required to make reasonable accommodation to the known physical and mental limitations of an individual with a disability unless the agency can show that accommodation would cause an undue hardship. 29 C.F.R. §§ 1630.2(o) and (p).

In order to establish that she was denied a reasonable accommodation, Complainant must show that: (1) she is an individual with a disability as defined by 29 C.F.R. § 1630.2(g); (2) she is "qualified" as defined by 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (Enforcement Guidance on Reasonable Accommodation), No. 915.002 (Oct. 17, 2002).

In the instant case, we find that the AJ failed to view the evidence in a light most favorable to Complainant and improperly determined that there are no genuine issues of material fact the merited a hearing. In claim 1, Complainant claims that she was denied a reasonable accommodation. The AJ stated that Complainant failed to present any evidence to establish that her requests for reasonable accommodations were not granted. The record, however, contains evidence that the offered reasonable accommodation was ineffective in addressing Complainant's claimed limitations. Supervisor-1 admitted to offering the accommodation of not having to ride any equipment on September 2, 2022. Complainant provided evidence that her doctor prescribed restrictions in addition to a prohibition of driving or riding heavy equipment. Complainant's doctor indicated that Complainant had restrictions in the amount she could lift or carry as well as other exertional and postural limitations. We find that a hearing is necessary to resolve the issues of material fact regarding claim 1.

We find that the termination in claim 2 is intertwined with the alleged reasonable accommodation denial in claim 1. Complainant is clearly alleging she could not maintain proper attendance because she was not reasonably accommodated. If the Agency is found to have denied her a reasonable accommodation, then that denial may have led to Complainant's attendance issues and subsequent removal. Thus, without determining whether Complainant was discriminated against as alleged in claim 1, we cannot properly determine if Complainant was improperly terminated as alleged in claim 2.

We also note that Complainant identified her prior EEO activity not only as the filing of a grievance related to the Notice, but also as her requesting a reasonable accommodation on February 23, 2021, and her ongoing efforts to receive an accommodation. Thus, the basis of retaliation also has material facts in dispute that are proper for a hearing regarding claim 2.

CONCLUSION

We find that a decision without a hearing was not proper. We VACATE the Agency's final order, and REMAND the complaint to the Agency for further processing in accordance with the ORDER herein.

ORDER

The Agency shall submit to the Hearings Unit of the Houston Field Office a request for a hearing within 15 calendar days of the date this decision is issued. The Agency is directed to submit a copy of the complaint file to the EEOC Hearings Unit within 15 calendar days of the date this decision is issued. The Agency shall provide written notification to the Compliance Officer at the address set forth herein that the complaint file has been transmitted to the Hearings Unit. Thereafter, the Administrative Judge shall issue a decision in accordance with 29 C.F.R. § 1614.109 and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and §1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408.

A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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 (R0124)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. 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. **Filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

February 12, 2025
Date