



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Raylene S.,¹
Complainant,

v.

Scott Bessent,
Secretary,
Department of the Treasury
(Internal Revenue Service),
Agency.

Appeal No. 2024000267

Hearing No. 410-2023-00118X

Agency No. IRS-22-0507-F

DECISION

On October 11, 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 29, 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.

At the time of events giving rise to this complaint, Complainant worked as an Operations Manager, IR-340-02 (GS-15 equivalent), at the Agency's Atlanta Campus of the Agency's Refundable Credits Examinations Operations (RCEO) in Chamblee, Georgia. The Agency's RCEO also has campuses in Fresno, Kansas City, Andover, and Austin.

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.

On August 10, 2022, Complainant filed a formal EEO complaint alleging:

1. She was subjected to discrimination, including harassment, based on her disability (depression, anxiety) and prior EEO activity when:
 - a. Her March 30, 2022, request for a reasonable accommodation, including her subsequent May 17, 2022, and May 26, 2022 requests for interim accommodations were denied;
 - b. On March 30, 2022, unlike her less experienced peers, her manager informed her that she would be visiting her at the Atlanta Campus due to the number of recent EEO complaints filed in her organization; and
 - c. On May 19, 2022, her manager offered her a downgrade to a GS-14 Senior Tax Analyst position.
2. She was subjected to harassment based on her disability (depression, anxiety) and prior protected EEO activity when during the week of April 11, 2022, her manager travelled to her office to inform her in person that Complainant's email was offensive.

Regarding claims 1(a) and 1(c), Complainant stated that she requested the reasonable accommodation of a reassignment to a non-campus senior manager position or a GS-15 position. Complainant reported that she requested an interim accommodation of 100 percent telework or a temporary reassignment until she could be permanently reassigned. Complainant stated that she submitted the relevant reasonable accommodation request form to the Agency's EEO office on March 30, 2022. Complainant reported that she provided medical documentation to an EDI Reasonable Accommodation Coordinator (RAC). Complainant identified her disability as depression and anxiety disorder. The medical form completed by Complainant's doctor stated, "these impairments, particularly the anxiety and depression, substantially limit [Complainant's] ability to perform essential job duties. She is not able to meet the demands of her current job." Report of Investigation (ROI) at 269. The doctor indicated that current medical information supported the recommendation that Complainant telework while the search for a less stressful job was completed. Complainant stated that the Planning and Analysis Chief was retiring, which created a vacant, funded GS-15 equivalent position which Complainant could perform.

Complainant's first-line supervisor (Supervisor-1) stated that she became aware of Complainant's reasonable accommodation request on April 26, 2022, via an email from Complainant's second-line supervisor (Supervisor-2).

Supervisor-1 stated that she contacted the RAC to schedule a meeting after she became aware of the request. Supervisor-1 stated that the first meeting related to the request occurred on May 11, 2022. Supervisor-1 reported that there were no GS-15 positions available that fit within Complainant's limitations. Supervisor-1 stated that the GS-14 position identified in claim 1(c) was available and fit within Complainant's restrictions. Supervisor-1 reported receiving guidance from the RAC to offer Complainant the position because the position would allow for telework and did not have any subordinates, which was a major factor Complainant reported as causing her stress in her present position. Supervisor-1 stated that the Planning and Analysis Chief position, while having a reduced number of direct subordinates, has a tremendous amount of responsibility which would cause Complainant a lot of stress. Supervisor-1 stated that the GS-14 position served as the right hand for Supervisor-1 and was responsible for interactions between all five campuses of RCEO, all action items that come into the Directorate, data calls, analysis of work inventory and measures, and providing guidance on behalf of the Director. Complainant declined to accept the reassignment to the GS-14 position.

Supervisor-1 reported that she offered Complainant an alternative reasonable accommodation of telework of three days per week, the ability to change her in office days as necessary, and a change in her tour of duty. Supervisor-1 stated that 100 percent telework for Complainant would not have been compatible with the duties of Complainant's position because of the regular communication required with Complainant's subordinates. Supervisor-1 reported that the RAC was conducting a search for potential permanent reassignments for Complainant.

Regarding claim 1(b), Complainant stated that on March 30, 2022, Supervisor-1 informed Complainant that Supervisor-1 would be visiting Complainant's operation due to the number of EEO complaints at the Atlanta campus. Complainant reported concern over the visit because: (1) Supervisor-1 had not visited the Operations Manager for another facility, who was less experienced in that role; (2) there were no EEO complaints at that time; and (3) the visit was scheduled for April 11, 2022, which gave Complainant less than two weeks' notice to prepare for the visit. Complainant stated that executives usually give weeks to prepare and plan for a campus visit. Complainant later admitted that there had been three employees who had filed EEO complaints due to terminations for conduct and performance during their probationary period.

Supervisor-1 stated that she informed all managers in early February that she would be visiting each site. Supervisor-1 stated that Supervisor-2 and Complainant's third-line supervisor (Supervisor-3) approved the travel on March 25. Supervisor-1 reported that there was a concern about Complainant's performance. Supervisor-1 stated that while Complainant is very knowledgeable about the examination process, Complainant frequently had a nasty attitude during staff meetings and over email. Supervisor-1 reported that Complainant was frequently disdainful when receiving direction. Supervisor-1 stated that she spoke about Complainant's attitude several times on the phone and during the campus visit. Supervisor-1 stated that the office that handles discrimination complaints issued a report noting that there had been 33 complaints over several years under Complainant's leadership and that 10 indicated that Complainant was the responsible management official. Supervisor-1 reported that a labor relations specialist reported a concern about Complainant frequently ignoring advice. Complainant stated that her prior EEO activity was participating in these proceedings related to formal complaints filed by other Agency employees.

Regarding claim 2, Complainant's statements identified Supervisor-1 as the relevant manager and the site visit to be the same one discussed in claim 1(b). Complainant stated that Supervisor-1 did not like an email Complainant had sent Supervisor-1 on April 1, 2022. Complainant stated that Supervisor-1 told Complainant during a meeting on April 13, 2022, "I booked this trip to talk to you face to face, to let you know not to talk to me like that. I could have had that conversation with you by phone but I wanted to look you in your face." ROI at 73. Complainant stated that she considered this behavior to be bullying. Supervisor-1 stated that the visit to the Atlanta campus was scheduled and approved on March 25, which was prior to the email in question that was sent on April 11, so the email could not have been the reason for the visit. Supervisor-1 acknowledged that she discussed Complainant's email and other examples of Complainant's unacceptable attitude and behavior with Complainant during the visit.

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. Over Complainant's objections, the AJ assigned to the case granted the Agency's July 17, 2023 motion for a decision without a hearing and issued a decision without a hearing finding no discrimination on September 8, 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 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*).

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.

The record establishes that Complainant was not denied a reasonable accommodation. Complainant was denied the specific interim and permanent accommodations that she requested, but Supervisor-1 offered Complainant alternative reasonable accommodations. Supervisor-1 explained that a vacant, funded GS-15 or equivalent position was not available for Complainant, so she offered Complainant the vacant GS-14 position. Furthermore, Supervisor-1 explained that 100 percent telework would not allow Complainant to perform the essential duty of managing her subordinate employees. Finally, we note that the record supports that the RAC was conducting an ongoing search for a GS-15 or equivalent position for permanent reassignment.

Regarding claims 1(b) and 2, the record establishes that the allegedly harassing conduct was Supervisor-1 engaging in her managerial duties, specifically a site visit and discussing negative conduct by Complainant. Anti-discrimination statutes are not general civility codes designed to protect against the "ordinary tribulations" of the workplace. See Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998); see also Lassiter v. Dep't of the Army, EEOC Appeal No. 0120122332 (Oct. 10, 2012) (personality conflicts, general workplace disputes, trivial slights and petty annoyances between an alleged harasser and a complainant do not rise to the level of harassment). Instead, EEO laws address discriminatory conduct that alters the work environment. See Oncale v. Sundowner Offshore Serv., Inc., 523 U.S. 75, 81 (1998).

Even construing any inferences raised by the undisputed facts in favor of Complainant, a reasonable fact-finder could not find in Complainant's favor.

Upon careful review of the AJ's decision and the evidence of record, as well as the parties' arguments on appeal, we conclude that the AJ correctly determined that the preponderance of the evidence did not establish that Complainant was discriminated against by the Agency as alleged.

Accordingly, we AFFIRM the Agency's final order implementing the AJ's decision.

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

February 13, 2025
Date