



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

[REDACTED]  
Carletta W.,<sup>1</sup>  
Complainant,

v.

Mark Averill,  
Acting Secretary,  
Department of the Army,  
Agency.

Appeal No. 2024000598

Hearing No. 570-2023-00013X

Agency No. ARBELVOIR21AUG02539

**DECISION**

On October 21, 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 October 3, 2023, final order concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 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 a Management Support Assistant, GS-0303-07 at the Agency's Army Sustainment Command (ASC) Joint Personal Property Shipping Office facility in Fort Belvoir, Virginia.

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<sup>1</sup> 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 September 22, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (African-American), sex (female), disability (mental), age (64), and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and Section 501 of the Rehabilitation Act of 1973 when:

1. On or about March 16, 2021, the Deputy (Deputy) Joint Personnel Property Shipping Office-Mid-Atlantic, denied Complainant's request through a Human Resource Assistant, to receive the highest previous rate of pay and or pay of a GS-7 step 10, despite her (Complainant's) prior federal service as a Program Analyst GS-12;
2. On or about March 17, 2021, Deputy did not respond to Complainant's reasonable accommodation for disability to know what step of a GS-07 she (Complainant) was being placed in;
3. On or about April 21, 2021, Complainant received a letter from a Human Resource Specialist, withdrawing the offered position;
4. On or about July 22, 2021 and July 30, 2021, Complainant was not provided with requested in-processing/onboarding information from Deputy nor the Senior Administrative Specialist;
5. On or about July 27, 2021, Complainant sought in-processing/onboarding from the civilian personnel office and did not receive it;
6. On or about August 2, 2021, Complainant was not provided with a clean, vacant desk area, nor a computer upon reporting for duty;
7. On or about August 3, 2021, Deputy sent Complainant's reasonable accommodation request to telework to Labor Management Employee Relations;
8. On or about August 9, 2021, after great difficulty Complainant received a Standard Form (SF) 50 with her name as [Complainant] and pay information of a GS-0303-7 step1, from a second HR Assistant (HR Assistant 2 [Civilian Personnel Advisory Center (CPAC)]);

9. On or about August 10, 2021, and July 27, 2021, Deputy placed a female in between Complainant's contact with Deputy for information;
10. On or about August 10, 2021, Complainant received a burdensome/onerous and oppressive 28-page document requesting medical information and a medical release in response to her reasonable accommodation request to telework that she submitted on August 3, 2021, from Deputy and the EEO Specialist, Army Sustainment Command;
11. On or about August 10, 2021, and August 11, 2021, Complainant received harassing, intimidating emails from the EEO Director, Army Sustainment Command, regarding Complainant's response to Deputy about the 28-page document she received in response to her reasonable accommodation request to telework;
12. On or about August 18, 2021, Deputy instructed that Complainant come to work to obtain her common access card during walk-in hours on August 19, 2021, knowing that there was not walk-in hours on Friday, August 19, 2021;
13. On or about August 23, 2021, Complainant was required to take a Cybersecurity Training and Test on a technician's computer in the technician's cubicle with the technician sitting next to her, socially talking to another coworker;
14. On or about August 30, 2021, upon gaining access to her computer, Complainant requested refresher training in Microsoft Excel and as reprisal Deputy replied to her regarding the request micro aggressively, "I purchased a book, Excel for Dummies";
15. On or about September 1, 2021, as reprisal Complainant received an email from the EEO Specialist requesting clarification on her submitted medical documentation;
16. On or about September 9, 2021, as reprisal Complainant was made to come into the office to receive training from a Staff Action Officer (Staff Action Officer), and Staff Action Officer did not come into the office to conduct the training;

17. On or about September 18, 2021, as reprisal Complainant has not received a response to her reasonable accommodation request to telework that was submitted on August 3, 2021, and she continues to be badgered for additional medical information and explanations;
18. On or about September 24, 2021, Staff Action Officer was dishonest, falsified a document and kept badgering Complainant; and
19. Between December 17, 2021, and February 2022, a named individual removed Complainant from her position and its associated benefits.

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 Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing.

The parties were afforded the opportunity to engage in discovery. The Agency filed a Motion for Summary Judgment (Agency's motion) on April 14, 2023. Complainant filed her opposition (Opposition) on April 28, 2023. On May 5, 2023, the Agency filed its reply (Reply).

The AJ assigned to the case reviewed the evidence contained in the ROI and the parties' pleadings. After a careful review of the parties' submissions, and documentary evidence in the case files, the AJ found that there was no genuine dispute with respect to a material fact and no genuine issue as to credibility, which would warrant a hearing. When viewing the evidence in the light most favorable to Complainant and drawing all permissible inferences in her favor, the AJ concluded that a reasonable fact-finder would not find in Complainant's favor. Therefore, the AJ found that it was appropriate to grant the Agency's motion and to issue a decision without a hearing. The AJ issued a decision without a hearing on September 27, 2023, in favor of the Agency.

Upon a close review of the Agency's Statement of Undisputed Material Facts (SUMF), Complainant's responses thereto, and the entire record, the AJ found that the Agency's SUMF accurately recounted the relevant facts in this case. Therefore, the AJ adopted and incorporated by reference the Agency's SUMF.

Assuming Complainant established a prima facie case, the AJ found that the Agency articulated legitimate, nondiscriminatory rationales for its actions.

The AJ determined that Complainant failed to establish a prima facie case of discrimination, retaliation, and/or harassment; and that she failed to present legally sufficient evidence to show that the Agency's articulated reasons were pretextual for discrimination.

In addressing whether Complainant established a prima facie case of discrimination, retaliation, and/or harassment, the AJ found that she had not. Specifically, the AJ found that Complainant failed to present evidence that as a member of her protected groups, she was treated differently than similarly situated individuals not of her protected group. See ROI at 803. Moreover, observed the AJ, Complainant failed to offer legally sufficient evidence, and at times any evidence, to support an inference of discriminatory animus based on any of her protected bases beyond her own conclusory assertions. The AJ also observed that Complainant's unsupported opinions are not evidence of discriminatory animus.

As it relates to retaliation, the AJ asserted that Complainant's protected EEO activity occurred in August 2021, and any incident occurring prior to August 2021 could not be considered under the basis of retaliation. See ROI at 583. With respect to Claim 2, the AJ observed that Complainant's allegation involves a request for "an accommodation to know if management was going to place [her] in a step 10." ROI at 626. The AJ asserted that a complainant must show a nexus between the disabling condition and the requested accommodation. As it relates to Claim 2, the AJ found that Complainant failed to show a nexus between her request for knowledge as to her pay and any condition. ROI at 590-91 and Opposition at 11.

With respect to Complainant's harassment claims, the AJ again found that Complainant failed to establish that the actions taken by management were based on her membership in her protected classes and, thus, that she was subjected to prohibited harassment. Citing to applicable Commission precedent, the AJ observed that even assuming that the incidents described by Complainant occurred as alleged, they do not rise to the level of a hostile work environment based on her protected characteristics. The AJ found that the incidents as described by Complainant are common workplace occurrences and/or perceived slights. Again citing to applicable Commission precedent, the AJ asserted that management has discretion to make routine managerial decisions regarding its subordinates as it did here, adding that routine managerial oversight or trivial slights and petty annoyances do not rise to the level of severe or pervasive conduct.

The AJ also found that the alleged incidents would not deter an individual from engaging in protected EEO activity. The AJ observed that the responsiveness and responses of the Agency demonstrated a supportive environment.

The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged. This appeal followed.

On appeal, Complainant reiterates her allegations but failed to present any evidence to support her statements, arguments, and assertions. The Agency did not submit an appeal brief.

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. (as revised, August 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*).

Upon review, we find the record in the present case was fully developed. Moreover, as did the AJ, we find that there was no indication that the Agency was unlawfully motivated by Complainant's protected bases. We also find that Complainant could not survive summary judgment on her claims based on the Agency's articulated reasons for the challenged management actions.

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 or retaliatory 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.

Regarding Claim 1, Deputy denied Complainant's request because he determined, based on the information she provided, that she did not meet the criteria to justify an Advance In Hire (AIH) rate. ROI at 651-53 and Agency Exhibit 5 at 14-8. See Opposition at 17. See also ROI at 621 and 623.

Regarding Claim 3, the Agency withdrew Complainant's conditional job offer for the reasons stated in the letter. ROI at 635. The Agency rescinded the withdrawal of the job offer about two days later. ROI at 636.

Regarding Claims 4 and 5, the record evidence reflects that Complainant requested "reporting instructions" and asked whether she would complete in-processing at home or her duty station. ROI at 791. Deputy responded that he did not have information for her that week, and to expect it the following week. ROI at 792. The following week on July 29, 2021, Staff Action Officer informed Complainant to come into the office to complete onboarding. ROI at 655, 674, and 801. Despite Staff Action Officer's email, Complainant followed up with Deputy on July 30, 2021. ROI at 794. The record evidence shows that Staff Action Officer provided responses to Complainant's questions. ROI at 655, 674, and 795-98. The record evidence also shows that HR Assistant 2 responded to Complainant's request for information. ROI at 749-50 and 799-800. The record evidence includes background confusion as to which office will conduct the onboarding. ROI at 770.

Regarding Claim 7, Deputy followed protocol for addressing Complainant's reasonable accommodation request. ROI at 656-57. In response, Complainant received information and forms to complete (Claim 10). ROI at 698-700. The EEO Director then attempted to clarify Complainant's interpretation of the EEO Specialist, Acting Disability Program Manager's email (Claim 11). ROI at 699-701. The EEO Specialist continued to process Complainant's reasonable accommodation request (Claim 15). ROI at 60, 628-32, and 730. On September 23, 2021, after receiving updated medical information, the Agency responded to Complainant's reasonable accommodation request (Claim 17). ROI at 181-85 and 633.

Regarding Claim 19, Complainant's appointment SF-50 executed on March 10, 2021, did not correctly indicate that Complainant was a retired annuitant. ROI at 141.

After Complainant requested to be placed in FERS, CPAC realized it had erred when Complainant was appointed, and that Complainant was a reemployed annuitant. See Agency's motion's exhibits (Agency's Exhibits) at 2-3. The rules for a reemployed annuitant within the Department of Defense are governed by Title 5 USC, Sections 9902(g)-(h) and DoDI 1400.25, VOL 300, Employment of Federal Civilian Annuitants in the Department of Defense.

Title 5 USC, Section 9902(h) provides that DoD reemployed annuitants shall continue to receive full annuity and salary upon reemployment. However, reemployed annuitants serve at the will of the appointing officer, which means they have no due process rights to their position. DoD provides annuitants should be hired to meet critical mission needs, such as a hard-to-fill position as evidenced by historically high turnover, a severe shortage of candidates or other significant recruiting difficulty, a position identified as critical to the accomplishment of the organization's mission or to complete a specific project or initiative, or the need for an annuitant who has unique or specialized skills, or unusual qualifications not generally available.

Because Complainant was truly a DoD reemployed annuitant, entitled to continue receive her retirement annuity, she was not entitled to participate in Thrift Saving Plan (TSP) or any retirement system. See Agency's Exhibits at 12. Therefore, when CPAC corrected its mistake, Complainant "lost" these benefits, but they were precluded by law. We agree with the AJ that the Agency initially granted those benefits in error.

To support her overall harassment claims, Complainant alleges dissatisfaction with her pay; the cleanliness of her work area; the availability of a work computer on her first day; the onboarding and reasonable accommodation processes; and how the Agency responded to her training requests. Assuming that Complainant's allegations occurred as alleged, we agree with the AJ's determination that Complainant did not prove her claim of a hostile work environment.

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 fully implementing the AJ's decision finding no discrimination.

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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

March 6, 2025  
Date