



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Horacio Z,¹
Complainant,

v.

General Paul M. Nakasone,
Director,
National Security Agency,
Agency.

Appeal No. 2024004734

Agency No. 24010

DECISION

Complainant timely appealed to the Equal Employment Opportunity Commission (“EEOC” or “Commission”), from the Agency’s July 26, 2024 dismissal of his complaint of unlawful 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. Upon review, the Commission REVERSES the Agency’s decision and REMANDS the matter for further processing.

ISSUE PRESENTED

Whether the Agency properly dismissed Complainant’s formal EEO complaint pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim.

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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Business Financial Manager, GG-11, for the Agency's facility at Fort Meade, in Maryland.

On February 5, 2024, Complainant filed a formal EEO complaint alleging that the Agency subjected him to discrimination, including a hostile work environment, on the bases of disability (physical) and reprisal for prior protected EEO activity. The Agency, in its FAD, framed Complainant's claim as follows:

1. Complainant was subjected to discrimination based on disability when he was denied a Reasonable Accommodation Request; and
2. Complainant was subjected to discrimination based on reprisal when the Agency's Office of Reasonable Accommodations and Accessibility ("ORAA") refused to amend that request.

The record contains a February 22, 2023 Reasonable Accommodation Decision ("RAD") approving Complainant for a flexible schedule and additional breaks citing a request Complainant provided on January 6, 2023, and medical documentation provided on February 7, 2023. The RAD instructed Complainant to notify ORAA if he required a revision of his accommodations due to change in health status. The RAD also contained instructions for how to request reconsideration of the RAD. The RAD explained that if Complainant requested reconsideration, a Reasonable Accommodations Reconsideration and Denial Review Board would convene and issue a decision within 15 days of the request. The RAD also explained that Complainant could appeal to the EEOC, and provided instructions, including the 45 day time limit to contact an EEO counselor.

Although the RAD indicated that the accommodation provided was consistent with Complainant's request, Complainant asserts that the RAD did not address or grant his specific requests for schedule flexibility. The Agency provides email evidence indicating that Complainant received the RAD on February 24, 2023. There is no indication that Complainant requested reconsideration of the RAD. However, Complainant asserts that he never received a "denial letter" from the Agency.

It appears that Complainant initiated the instant complaint because in October and November 2023, the Division Chief for Business Financial Management Support, inquired with Complainant and HR about time sheet and attendance concerns. Complainant, believing his attendance was consistent with his reasonable accommodation, inquired with HR, at which point, he learned that his specific accommodation request was not granted.

On November 7, 2023, Complainant notified his Reasonable Accommodation Manager that the February 2023 RAD did not include any of the specific schedule flexibility specifications he asked for. He also stated that he did not seek the alternate accommodation provided in the RAD and requested that his original requests be granted. Complainant asserts that the Reasonable Accommodation Manager and other staff within ORAA would not properly engage in the interactive process, nor would they provide him with a satisfactory explanation for why his specific requests were not granted.

On July 26, 2024, the Agency dismissed the matter pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim. The Agency reasoned that Complainant failed to establish that he was "aggrieved" because the Agency did not deny his request for a reasonable accommodation. Rather, the Agency asserts that it provided Complainant with an "alternative accommodation that was effective in helping [Complainant] perform the essential functions of his position." The Agency further reasoned that the alternative accommodation was consistent with business necessity, and Complainant did not submit medical documentation to support his requested changes to the alternative accommodation

The instant appeal followed.

CONTENTIONS ON APPEAL

Complainant contends that the Agency's characterization of his reasonable accommodation request and of the alternative accommodation it provided are factually incorrect. He also contends that the accommodations provided do not constitute an accommodation because they apply to all employees, and/or they are not "effective." Complainant further contends that the Agency failed to properly engage in the interactive process, he was not provided adequate support from the reasonable accommodation manager assigned to his case, and he was not provided with a letter explaining why his specific request was denied.

The Agency reiterates the reasoning set forth in its dismissal, contending that the dismissal for failure to state a claim was proper because Complainant was provided with an effective reasonable accommodation. The Agency notes that Complainant was issued a Reasonable Accommodation Letter on February 22, 2023, yet Complainant did not make any further inquiry until November 6, 2023. Rather, Complainant "simply makes bald allegations" that the accommodation provided during this 9 month time frame was detrimental to his health.

STANDARD OF REVIEW

The Agency's decision to dismiss a complaint is subject to *de novo* review by the Commission, which requires the Commission to examine the record without regard to the factual and legal determinations of the previous decision maker and issue its decision based on the Commission's own assessment of the record and its interpretation of the law. 29 C.F.R. § 1614.405(a). The Commission should construe the complaint in the light most favorable to the complainant and take the complaint's allegations as true. See Cobb v. Department of the Treasury, EEOC Request No. 05970077 (March 13, 1997). Thus, all reasonable inferences that may be drawn from the complaint's allegations must be made in favor of the complainant.

ANALYSIS

Under the regulations set forth at 29 C.F.R. Part 1614, an agency shall accept a complaint from an aggrieved employee or applicant for employment who believes that they have been discriminated against by that agency because of race, color, religion, sex, national origin, age or disability. 29 C.F.R. §§ 1614.103, .106(a). The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994). If the complainant cannot establish that they are aggrieved, the agency shall dismiss a complaint for failure to state a claim. 29 C.F.R. § 1614.107(a)(1).

Here, Complainant established that he is "aggrieved" because he alleges that he is a qualified individual with a disability who was denied a reasonable accommodation.²

² Complainant asserts that he has a disability and that he could perform the essential functions of his job with or without accommodation.

Under the Rehabilitation Act and the Commission's regulations, an agency is required to make reasonable accommodation of the known physical and mental limitations of a qualified individual with a disability unless the agency can show that accommodation would cause an undue hardship. 29 C.F.R. §§ 1630.2(o), 1630.2(p). Therefore, denial of reasonable accommodation alleges a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz, 29 C.F.R. § 1614.107(a)(1).

The Agency's dismissal erroneously addresses the merits of the claim without a proper investigation as required by EEOC regulations. See Dollie T. v. Dep't of Veterans Aff., EEOC Appeal No. 2023001591 (Jul. 6, 2023) citing Osborne v. Dep't of the Treas., EEOC Request No. 05960111 (July 19, 1996) other citations omitted. Specifically, the Agency's articulated reason for the action in dispute, i.e., that Complainant was not denied a reasonable accommodation because the Agency provided him with an effective alternative accommodation goes to the merits of Complainant's complaint, and is irrelevant to the procedural issue of whether he has stated a viable claim under 29 C.F.R. § 1614.107(a)(1). See, e.g. Betram K. v. Dep't of the Navy, EEOC Appeal No. 2023003083 (Oct. 10, 2023) (reversed dismissal for failure to state a claim, reasoning that the agency's explanation that the alleged discriminatory act, denial of reasonable accommodation, was due to "IT-related challenges" improperly addressed the merits of the allegation). In other words, the Agency is asking the Commission to simply accept its bald assertions that the alternative accommodation was effective, Complainant's requested accommodation was not supported by medical documentation, and the alternative accommodation was based on business necessity. These are all matters relating to the merits of Complainant's claim, and cannot be grounds for a procedural dismissal.

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is REVERSED.

We hereby REMAND the matter to the Agency for further processing in accordance with this Decision and the Order below.

ORDER (E0224)

The Agency is ordered to process the remanded claim, as framed below, in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, or a copy of the final agency decision ("FAD") if Complainant does not request a hearing.

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

January 21, 2025

Date