



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

████████████████████
Ria T.,¹
Complainant,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service
(Southern Area),
Agency.

Appeal No. 0120182257

Agency No. 4G330038217

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 May 14, 2018, final decision 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. and 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 REVERSES the Agency's final decision finding no discrimination regarding Complainant's reasonable accommodation claim.

ISSUE PRESENTED

The issue is whether Complainant established that the Agency discriminated against her based on disability when she was not provided a reasonable accommodation from August 15, 2017, through October 26, 2017.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier Assistant at the Agency's Country Lakes Post Office in Miami, Florida.

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 15, 2017, Complainant submitted a request for temporary light duty due to a high-risk pregnancy. Complainant submitted a physician's statement noting that she was not to be exposed to sun or heat, through February 19, 2018. Furthermore, Complainant's medical documentation also notes that she was restricted (physician noted she can perform zero hours) in her ability to reach above her shoulders, stoop, kneel, bend or climb. Complainant stated that she could work inside, casing open routes and sorting international packages. Report of Investigation (ROI) at 139-40,144-8.

Complainant stated that she gave her written documentation to her union representative, who then gave it to a supervisor (S1) (female). Complainant stated that S1 delayed giving her documentation to another supervisor (S2) (male) until August 25, 2017. Complainant stated that her representative provided an updated request to a Manager (M1) (male) on October 17, 2017. ROI at 53, 56. On October 17, 2017, M1 denied Complainant's request for light duty. ROI at 142.

Complainant stated that on or about October 20, 2017, Complainant was offered work to input change of address information, which she accepted, and she started on October 26, 2017. Complainant stated that she was forced to go without pay for over two months, and had the Agency offered the accommodation two months earlier, she would have been able to work. ROI at 54,57.

On October 25, 2017, Complainant filed a formal EEO complaint alleging that the Agency discriminated against her on the bases of sex (female), disability (pregnancy), and in reprisal for protected EEO activity, when from August 15, 2017, to an unspecified date, the Agency did not accommodate her medical restrictions and she was not permitted to work.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the ROI and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant did not prove that the Agency subjected her to discrimination as alleged.

The Agency determined that Complainant was not an individual with a disability within the meaning of the Rehabilitation Act because she did not have a complication which substantially limited a major life activity, on other than a temporary basis. The Agency found that Complainant was not a qualified individual because she was not able to perform the essential functions of her position because she was not able to deliver mail in the sun or heat, drive industrial vehicles, or lift more than 35 pounds. The Agency also found that Complainant was not denied a reasonable accommodation because she was on "full restriction" from August 15, 2017, through October 26, 2017.

The Agency also found that Complainant had not established a prima facie case of discrimination in reprisal for protected EEO activity. Specifically, the Agency found that Complainant had not shown a causal connection between her initial EEO activity, on September 20, 2017, and not being provided light duty beginning on August 15, 2017, which occurred prior to her EEO activity.

The Agency also found that Complainant did not establish a prima facie case of sex discrimination because she did not name any similarly situated employees, outside of her protected group, who were treated more favorably, and did not present any evidence that affords a sufficient basis from which to draw an inference of sex discrimination.

The Agency assumed, for the sake of argument, that Complainant had established a prima facie case of discrimination based on sex and disability, and in reprisal for protected EEO activity, and found that management officials had articulated legitimate, nondiscriminatory explanations for their actions. M1 stated that he was not aware of Complainant's request until approximately October 14, 2017, and that Complainant had a "full restriction," and that she was not accommodated until she provided updated documentation with fewer restrictions on October 20, 2017. The Agency then found that Complainant had not presented evidence that there was work available within her restrictions during the period that she alleged that she was denied an accommodation. The Agency concluded that the evidence did not support a finding that Complainant was discriminated against as alleged.

CONTENTIONS ON APPEAL

On appeal, Complainant argues that all the reasons provided by the management officials regarding the delay and denial of Complainant's request for a reasonable accommodation were pretext for discrimination. Complainant notes that none of her managers had the authority to delay or deny her request, but that they had an obligation to forward her request to the Agency's Reasonable Accommodation Committee (RAC). Complainant states that when M1 learned that he was obligated to forward Complainant's request to RAC, he immediately found work for Complainant and asked her to withdraw her EEO complaint. Complainant requests that the Commission reverse the Agency's final decision and find that she was improperly denied a reasonable accommodation from August 15, 2017, through October 26, 2017.

The Agency did not respond to Complainant's appeal.

ANALYSIS AND FINDINGS

Standard of Review

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), 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").

As an initial matter, we note that the Commission has the discretion to review only those issues specifically raised in an appeal. *Id.* at Chap. 9, § IV.A.3. On appeal, Complainant only challenges the Agency's decision regarding her claim that the Agency failed to provide her with a reasonable accommodation from August 15, 2017, through October 26, 2017; as such, we will not address her claims based on sex or in reprisal for protected EEO activity, in this decision.

Reasonable Accommodation in Violation of the Rehabilitation Act

We note that the Agency stated that pregnancy does not render one an individual with a disability under the Rehabilitation Act. However, “[a] pregnant employee may be entitled to reasonable accommodation ... for limitations resulting from pregnancy-related conditions that constitute a disability or for limitations resulting from the interaction of the pregnancy with an underlying impairment.” Enforcement Guidance: Pregnancy Discrimination and Related Issues, No. 915.003 § II.B. (Jun. 25, 2015). The Commission has recognized that there are circumstances under which complications from pregnancy can substantially limit a major life activity, and therefore rise to the level of a disability. See Hana D. v. U.S. Postal Serv., EEOC Appeal No. 0120182266 (Feb. 5, 2019) (citation omitted).

Complainant's request may be construed as a request for reasonable accommodation because she identified her exact medical restrictions (no exposure to sun or heat; no reaching above shoulders, stooping, kneeling, bending, or climbing), and she requested an accommodation of a temporary light duty assignment on August 15, 2017. Enforcement Guidance: Pregnancy Discrimination and Related Issues at § IV (indicating that employers should “[t]rain managers to recognize requests for reasonable accommodation and to respond promptly to all requests ... as amended, managers should treat requests for accommodation from pregnant workers as requests for accommodation under the ADA unless it is clear that no impairment exists”). We note that the Commission has found that conditions, if severe, constitute disabilities if they are expected to last for more than several months. Enforcement Guidance on the Americans With Disabilities Act and Psychiatric Disabilities, No. 915.002 at question 7 (Mar. 25, 1997); see Bitsas v. Dep't of State, EEOC Appeal No. 0120051657 (Sept. 30, 2009); Smith v. U.S. Postal Serv., EEOC Appeal No. 01A00660 (Apr. 17, 2003). Here, Complainant's condition began in August 2017, and was expected to last until October 2018. ROI at 53,72. Accordingly, we find that Complainant is a qualified, disabled individual who requested a reasonable accommodation for her disabilities.

The Commission has held that failure to respond to a request for accommodation in a timely manner may result in a finding of discrimination. See Denese G. v. Dep't of the Treasury, EEOC Appeal No. 0120141118 (Dec. 29, 2016); Shealy v. Equal Employment Opport. Comm., EEOC Appeal No. 0120070356 (April 18, 2011); Villanueva v. Dep't of Homeland Security, EEOC Appeal No. 01A34968 (Aug. 10, 2006). In determining whether there was an unnecessary delay, we are to consider (1) the reasons for the delay; (2) the length of the delay; (3) how much the individual with a disability and the employer each contributed to the delay. (4) what the employer was doing during the delay, and (5) whether the required accommodation was simple or complex to provide. EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act at Question 10, n.38 (Oct. 17, 2002).

When asked about the two-month delay in responding to Complainant's request for a reasonable accommodation, S1 stated that she had "no recollection," and S2 responded, "don't know." ROI at 120,106. M1 responded that the delay was based on Complainant's "temporary light duty full restriction." ROI at 92. However, we find that the granted accommodation would have allowed Complainant to work within her restrictions, and Complainant stated that had she been granted the accommodation two months earlier, she would have been able to work. ROI at 57.

While we note that M1 stated that he was out of the office from August 12, through September 2, 2017, and did not receive Complainant's request until October 14, 2017, there is no explanation why S1 and S2 did not forward Complainant's request to RAC, or why they did not try to identify an accommodation for Complainant. ROI at 87.

We find that Complainant did not contribute to the two-month delay, and that the Agency simply failed to act on her request until late October 2017. We further find that the requested accommodation was simple because M1 was able to find an accommodation for Complainant to work within an air-conditioned building within a few days. In this case, we find that the Agency violated the Rehabilitation Act when it caused an unnecessary delay in responding to Complainant's request for a reasonable accommodation.

Where a discriminatory practice involves the provision of a reasonable accommodation, damages may be awarded if the Agency fails to demonstrate that it made a good faith effort to provide the individual with a reasonable accommodation for her disability. See 42 U.S.C. § 1981a(a)(3); and Gunn v. U.S. Postal Serv., EEOC Appeal No. 0120053293 (June 15, 2007). Here, we find that the Agency has failed to show that it made a good faith effort to timely respond to Complainant's request for an accommodation; and she is therefore entitled to present a claim for compensatory damages on the Agency's failure to timely accommodate her. See West v. Gibson, 527 U.S. 212 (1999); see Complainant v. Dep't of Justice, EEOC Appeal No. 0120121339 (May 8, 2015) (complainant entitled to present a claim for compensatory damages when Agency failed to establish good faith in accommodation attempt), request for reconsideration denied, EEOC Request No. 0520150404 (Nov. 12, 2015).

CONCLUSION

We REVERSE the Agency's decision on Complainant's claim that the Agency failed to reasonably accommodate her disability from August 15, 2017, through October 26, 2017, and we REMAND the matter for the Agency to comply with the ORDER herein.

ORDER

The Agency shall take the following remedial actions:

1. Within 60 days of the date this decision is issued, the Agency shall determine the amount of back pay with interest and other benefits due Complainant for the period of August 15, 2017, through October 26, 2017. Within 60 days from the date of the Agency's determination on the amount of back pay due, the Agency shall pay Complainant the back pay and/or benefits due.
2. Within 90 days of the date this decision is issued, the Agency shall conduct a supplemental investigation with respect to Complainant's claim of compensatory damages. The Agency shall allow Complainant to present evidence in support of her compensatory damages claim. See Carle v. Dep't of the Navy, EEOC No. 01922369 (Jan. 5, 1993). Complainant shall cooperate with the Agency in this regard. The Agency shall issue a final decision addressing the issues of compensatory damages within 30 days after the completion of the investigation.
3. Within 90 days of the date this decision is issued, the Agency shall provide 8 hours of in-person or interactive EEO training for S1, S2, and M1 on the Rehabilitation Act. The training shall emphasize the Rehabilitation Act's requirements with respect to an Agency's duties to timely respond to employees' requests for a reasonable accommodation to ensure that similar violations do not occur.
4. Within 60 days of the date this decision is issued, the Agency shall consider taking appropriate disciplinary action against S1, S2, and M1. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If any of the responsible management officials have left the Agency's employ, the Agency shall furnish documentation of their departure date(s).

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation of the Agency's calculation of back pay and other benefits due Complainant, including evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Country Lakes Post Office in Miami, Florida copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily

posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP).

ATTORNEY'S FEES (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. §1614.501(e)(1)(iii)), she/he is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations – within thirty (30) calendar days of receipt of this decision. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

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 (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which 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 to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in 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). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your 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(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

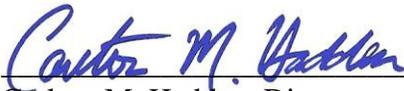
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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 his or her 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 14, 2020

Date