



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

[REDACTED]
Cyrus A.,¹
Complainant,

v.

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

Appeal No. 2019000685
Hearing No. 510-2016-00047X
Agency No. 4G-330-0182-15

DECISION

On October 4, 2018, Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's September 6, 2018 final order concerning his 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.

ISSUE PRESENTED

Whether the EEOC Administrative Judge (AJ) properly granted summary judgment concerning Complainant's allegations of employment discrimination.

BACKGROUND

At the time of events giving rise to this complaint, Complainant a City Carrier worked as an Acting Supervisor at the Agency's Boynton Beach Downtown Post Office in Boynton Beach, Florida. In April 2011, Complainant, a City Carrier, maintained that he asked that he be allowed to perform the Acting Supervisor position as a reasonable accommodation. He claimed that his supervisor at that time approved his request.

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.

He started the detail working one pay period as a carrier and the other as an Acting Supervisor. From 2013 to April 2015, Complainant worked as a temporary Acting Supervisor full-time. Following the arrival of a new supervisor, on or about April 6, 2015, Complainant's detail was terminated to give other employees the opportunity to perform in the Acting position. Complainant thereafter bid upon a city carrier position. Complainant subsequently argued that the decision to take away his detail was based on his race, color, disability, age, and/or sex. On July 13, 2015, Complainant filed a formal complaint alleging that the Agency discriminated against him on the bases of race (Caucasian), sex (male), color (white), disability (knee and lower back), and age (over 40) when on or around April 7, 2015, and ongoing he was denied reasonable accommodation when he was relieved from his detail as an Acting Supervisor.

After its investigation into the complaint, the Agency provided Complainant with a copy of the report of investigation and notice of right to request a hearing before an Equal Employment Opportunity Commission (EEOC or Commission) Administrative Judge (AJ). Complainant timely requested a hearing. The Agency submitted a motion for a decision without a hearing. The AJ subsequently issued a decision by summary judgment in favor of the Agency.

The AJ found that the Agency articulated legitimate, nondiscriminatory reasons for its actions. Specifically, the AJ determined that Complainant did not prove that he was subjected to disability discrimination. The AJ noted that Complainant's medical documentation showed that he could not perform his carrier position either with or without a reasonable accommodation. As such, the Agency was not obligated to provide him with an accommodation. Further, the evidence showed that Complainant never formally requested or obtained a reasonable accommodation through the District Reasonable Accommodation Committee (DRAC) process prior to May 2015. In May 2015, Complainant filed an OWCP claim, and after that claim was initially denied, Complainant applied for disability retirement. The AJ further found that Complainant did not establish that he suffered an on-the-job injury. The AJ found that Complainant did not show that other employees were treated more favorably than he was, as none of the comparators that he offered, were given an Acting Position as a reasonable accommodation. Moreover, those allowed to perform in the Acting position made written requests for the opportunity while Complainant never made a written request to act after he was returned to the carrier position. The AJ also determined that the evidence did not support Complainant's claim that he was subjected to race, color, or age discrimination, as the pool of employees that served as Acting Supervisors was very diverse and included his protected bases.

The Agency issued its final order adopting the AJ's finding that Complainant failed to prove discrimination as alleged. The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant contends, among other things, that he verbally told management that he had a disability, and he was under no obligation to provide medical documentation in support.

Further, Complainant maintains that former managers allowed him to work in the Acting Position as a reasonable accommodation but when the new supervisor arrived she used the position to promote employees not of his protected bases. He also maintains that he was unaware of the DRAC until a union representative told him about it.

Further, Complainant asserts that upon the arrival of the new supervisor she promoted more African American employees into the Acting Supervisor position than Caucasian employees. He also contends that he was not given light or limited duty while other carriers with disabilities were assigned to light and limited work.

In response, the Agency contends, among other things, that the AJ's decision should be affirmed as Complainant did not prove that he was subjected to discrimination as he alleged.

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 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”).

ANALYSIS AND FINDINGS

We determine whether the AJ appropriately issued the decision without a hearing. The Commission’s regulations allow an AJ to issue a decision without a hearing upon finding that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). EEOC’s decision without a hearing regulation follows the summary judgment procedure from federal court. Fed. R. Civ. P. 56. The U.S. Supreme Court held summary judgment is appropriate where a judge determines no genuine issue of material fact exists under the legal and evidentiary standards. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a summary judgment motion, the judge is to determine whether there are genuine issues for trial, as opposed to weighing the evidence. Id. at 249. At the summary judgment stage, the judge must believe the non-moving party’s evidence and must draw justifiable inferences in the non-moving party’s favor. Id. at 255. A “genuine issue of fact” is one that a reasonable judge could find in favor for 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 “material” fact has the potential to affect the outcome of a case.

An AJ may issue a decision without a hearing only after determining that the record has been adequately developed. See Petty v. Dep’t of Def., EEOC Appeal No. 01A24206 (July 11, 2003). We carefully reviewed the record and find that it is adequately developed.

To successfully oppose a decision without a hearing, Complainant must identify material facts of record that are in dispute or present further material evidence establishing facts in dispute. Here, 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. Ultimately, the AJ correctly determined that there are no genuine issues of material fact or credibility that merited a hearing. Therefore, the AJ's issuance of a decision without a hearing was appropriate.

At the outset, we find that, even assuming Complainant, a carrier, was a qualified individual with a disability, he did not establish that he was entitled to an Acting Supervisor position as a reasonable accommodation. The 204B position, Acting Supervisor, was a developmental, temporary assignment used to train employees for higher level positions and opportunities. Although Complainant was allowed, for a time, to perform the duties associated with the 204B position, he was not occupying a vacate, funded position. Because he was not performing duties that were the essential functions of a position, the Agency was not obligated to allow him to permanently perform these nonessential duties as a reasonable accommodation. See Vina D. v. Dep't of Homeland Security, EEOC Appeal No. 0120152229 (Jul. 26, 2017); Spry v. U.S. Postal Serv., EEOC Petition No. 03980078 (Dec. 11, 1998). We also note that Complainant was not entitled to a promotion as a reasonable accommodation nor did he identify a position that was vacant and funded to which he could have been reassigned.

Likewise, upon careful review of the AJ's decision and the evidence of record, as well as the parties' arguments on appeal, we conclude that even assuming, arguendo, Complainant established a prima facie case of discrimination as to all bases, the Agency articulated legitimate, nondiscriminatory reasons for its action, namely that Complainant was in a detail position and he was removed from the position in order to provide developmental opportunities to other employees. We find that other than disagreeing with the Agency's actions, he did not demonstrate that the Agency's nondiscriminatory reasons were pretext for discrimination. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). We note that employers have broad discretion to set policies and carry out personnel decisions and should not be second-guessed by a reviewing authority absent evidence of unlawful motivation. Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 259; Vanek v. Dep't of the Treasury, EEOC Request No. 05940906 (Jan. 16, 1997).

Finally, with respect to Complainant's contentions on appeal we find that other than his conclusory statements, he has not provided any evidence which suggests that he was denied a reasonable accommodation, for example, he contends that other employees with disabilities were provided light and limited duties, but he does not show that these employees had injuries or disabilities that were similar or the same as his. Further, he has not shown that any other employee was allowed to act in a detail supervisory position as an accommodation or for the length of time that he was allowed. We find, Complainant has not provided any evidence which suggested that he was subjected to discrimination, or that discriminatory animus was involved in the Agency's actions. Therefore, we find 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 adopting the AJ's decision.

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).

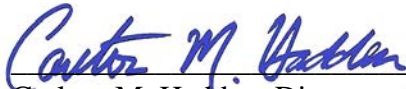
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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 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. 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

January 22, 2020

Date