



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

████████████████████  
Miles N.,<sup>1</sup>  
Complainant,

v.

Steven T. Mnuchin,  
Secretary,  
Department of the Treasury  
(Bureau of Engraving and Printing),  
Agency.

Appeal No. 2019001889

Hearing No. 570-2012-00974X

Agency No. BEP-11-0694-F

**DECISION**

On January 7, 2019, 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 25, 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. 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 VACATES the Agency's final order.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as an Electro-Machinist (Journeyman), WE-2606-02, at the Agency's Bureau of Engraving and Printing facility in Washington, D.C.

On August 24, 2011, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (African-American) and disability (allergic contact dermatitis)

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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.

when the Agency reassigned Complainant from his position of Electro-Machinist to the lower-graded position of Electrical Worker.

Complainant began working as a Machinist in 1980 at the Department of the Navy. In 1989, he transferred to the Agency, and participated in a four-year training program to become certified as an Electro-Machinist Journeyman. In 1994, Complainant completed his training, and was assigned to the printing processing machines for currency and for postage stamps as an Electro-Machinist Journeyman.

Four years later, the Agency changed the composition of the ink used for printing currency. While working under one of the currency presses, his arms became coated with ink dust, causing burns and a rash. Benadryl alleviated the problem, but it returned every time he worked on the currency presses. Complainant was subsequently diagnosed as allergic to formaldehyde, which was used in the new currency-press ink. Medical documentation in the record and provided to Agency management indicates that Complainant was to avoid exposure to formaldehyde.

Between 2001 and 2011, Complainant worked on the stamp presses, which used a different ink; was temporarily placed on light duty while he recovered from an unrelated surgery; and spent two years performing administrative duties as a Systems Administrator.

On February 22, 2011, the Agency informed Complainant that management had provided the Agency with sufficient medical documentation to support his request for a reasonable accommodation, and the Agency was granting his request. As a result, the Agency offered Complainant the position of Electrical Worker at the KG 8 Step 3 level. However, Complainant would maintain his WE/02 Step 1 salary for two years, at which time his salary would revert to KG 8 Step 3. The record indicates that KG 8 Step 3 wages are \$29.21 per hourly. Complainant's pay at the time of his reassignment was \$47.02 per hour.

Complainant accepted the offer and was told he could return to Journeyman status only after re-enrolling in the same four-year training program. When he entered the program, the instructors stated that he was already qualified, but management would not accept him as such. Complainant consistently argued that he never requested reassignment. Complainant claimed that he later learned that the current ink used in the currency process no longer contained formaldehyde, but he was unaware of when this change occurred.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. The AJ notified the parties that he determined *sua sponte* that the complaint did not warrant a hearing. On October 11, 2018, the Agency filed a response and agreed with the AJ that summary judgment was warranted. Complainant also filed a response opposing summary judgment.

The AJ issued a summary judgment decision on October 12, 2018. In the decision, the AJ noted that neither party submitted *any* response to its proposed decision and determined that his summary judgment decision was unopposed. The AJ found that Complainant had not been subjected to discrimination as alleged. The Agency subsequently issued a final order fully adopting the AJ's decision. The instant appeal followed.

### CONTENTIONS ON APPEAL

On appeal, Complainant provides documentation to demonstrate that he timely filed a response to the AJ's proposed decision. As to the merits of his allegations, Complainant argues that he did not need to be put on light duty; he merely needed to avoid exposure to formaldehyde and that the apparent change in ink is a genuine material issue of fact that is in dispute because the change would have meant that Complainant no longer needed accommodation. Accordingly, summary disposition was inappropriate and, at the very least, discovery was necessary.

In response, the Agency argues that Complainant far exceeded the amount of time the Agency routinely allows employees to be on light duty and needed to be reassigned to a vacant, funded position. The Agency contends that medical documentation provided by Complainant demonstrated that he would not be able to perform the essential functions of his position and that it still uses formaldehyde in many of its products.

### STANDARD OF REVIEW

We must determine whether it was appropriate for the AJ to have issued a summary judgment decision on this record. The Commission's regulations allow an AJ to issue a decision without a hearing when he or she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). This regulation is patterned after the summary judgment procedure set forth in Rule 56 of the Federal Rules of Civil Procedure. The U.S. Supreme Court has held that summary judgment is appropriate where a court determines that, given the substantive legal and evidentiary standards that apply to the case, there exists no genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a motion for summary judgment, a court's function is not to weigh the evidence but rather to determine whether there are genuine issues for trial. Id. at 249. The evidence of the non-moving party must be believed at the summary judgment stage and all justifiable inferences must be drawn in the non-moving party's favor. Id. at 255. 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.

If a case can only be resolved by weighing conflicting evidence, issuing a decision without holding a hearing is not appropriate. In the context of an administrative proceeding, an AJ may properly consider issuing a decision without holding a hearing only upon a determination that the record has been adequately developed for summary disposition. See Petty v. Dep't of Def., EEOC Appeal No. 01A24206 (July 11, 2003).

Finally, an AJ should not rule in favor of one party without holding a hearing unless he or she ensures that the party opposing the ruling is given (1) ample notice of the proposal to issue a decision without a hearing, (2) a comprehensive statement of the allegedly undisputed material facts, (3) the opportunity to respond to such a statement, and (4) the chance to engage in discovery before responding, if necessary. According to the Supreme Court, Rule 56 itself precludes summary judgment “where the [party opposing summary judgment] has not had the opportunity to discover information that is essential to his opposition.” Anderson, 477 U.S. at 250. In the hearing context, this means that the administrative judge must enable the parties to engage in the amount of discovery necessary to properly respond to any motion for a decision without a hearing. Cf. 29 C.F.R. § 1614.109(g)(2) (suggesting that an AJ could order discovery, if necessary, after receiving an opposition to a motion for a decision without a hearing).

### ANALYSIS AND FINDINGS

As an initial matter, we note that the AJ incorrectly stated that the parties failed to respond to the notice of intent to issue summary judgment. The Agency contends this mistake was harmless error. We disagree. Complainant articulated arguments in his response that demonstrate that genuine issues of material fact remain in dispute. Furthermore, we find that the AJ failed to view the evidence in a light most favorable to Complainant and improperly determined that there were no genuine issues of material fact that merited a hearing.

For example, Complainant argues that the Agency changed the ink formulation in 1998 to add formaldehyde to ink. As a result, Complainant experienced allergic contact dermatitis for several years until the Agency assigned him to stamp production. Then, sometime prior to his reassignment to Electrical Worker, Complainant contends that the Agency removed formaldehyde from its ink. In defense of its decision to offer Complainant the Electrical Worker position, the Agency contends that Complainant’s argument is founded on speculation and that its readily available documentation indicates that formaldehyde is still widely used in its ink. The Agency neither offered into evidence during the investigation or before the AJ information regarding the Agency’s ink formulation, whether in 1998 or at any point thereafter. Further, the record is unclear as to whether the Agency engaged in a proper interactive process, aside from a job offer to Complainant. In addition, Complainant claims that Electro-Machinist positions became available, but the Agency did not offer him one because they believed that he would need to be retrained even though he was still a qualified Journeyman. Complainant’s arguments demonstrate that there was potential that he could have returned to his position with or without accommodation.

We note that the hearing process is intended to be an extension of the investigative process, designed to ensure that the parties have “a fair and reasonable opportunity to explain and supplement the record and, in appropriate instances, to examine and cross-examine witnesses.” See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), 7-1 (Aug. 5, 2015); see also 29 C.F.R. § 1614.109(e). “Truncation of this process, while material facts are still in dispute and the credibility of witnesses is still ripe for challenge, improperly deprives Complainant of a full and fair investigation of her claims.” Bang v. U.S. Postal Serv., EEOC Appeal No. 01961575 (Mar. 26, 1998). See also Peavley v. U.S. Postal Serv.,

EEOC Request No. 05950628 (Oct. 31, 1996); Chronister v. U.S. Postal Serv., EEOC Request No. 05940578 (April 25, 1995). The courts have been clear that summary judgment is not to be used as a "trial by affidavit." Redmand v. Warrenner, 516 F.2d 766, 768 (1st Cir. 1975). The Commission has noted that when a party submits an affidavit and credibility is at issue, "there is a need for strident cross-examination and summary judgment on such evidence is improper." Pedersen v. Dep't of Justice, EEOC Request No. 05940339 (Feb. 24, 1995).

In summary, there are simply too many unresolved issues which require resolution through a hearing, including an assessment as to the credibility of the various witnesses. Therefore, summary judgment in favor of the Agency should not have been granted.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we VACATE the Agency's final order and REMAND the matter for further processing in accordance with the Order below.

### ORDER

The Agency shall submit to the Hearings Unit of the EEOC's Dallas District Office a renewed request for a hearing on behalf of Complainant, as well as a copy of the complaint file and this appellate decision, within fifteen (15) calendar days of the date this decision is issued. The Agency shall provide written notification to the Compliance Officer at the address set forth below that the complaint file has been transmitted to the Hearings Unit. Thereafter, the AJ shall issue a scheduling order providing for appropriate discovery and further proceedings in accordance with 29 C.F.R. § 1614.109.

### 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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

February 11, 2020

Date