



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

[REDACTED]  
Josiah M.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2019003865

Hearing No. 520-2017-00547X

Agency No. 4B-060-0146-16

**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 April 3, 2019 final decision concerning an equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

**BACKGROUND**

During the period at issue, Complainant worked for the Agency as a Carrier Technician in Holyoke, Massachusetts.

On October 24, 2016, Complainant filed an EEO complaint alleging that the Agency discriminated against him based on disability (Post Traumatic Stress Disorder (PTSD) and anxiety) when, since June 15, 2016, his requests to transfer from the Holyoke Post Office have been denied.

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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.

After an 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 requested a hearing but the AJ subsequently issued a Dismissal Order: Sanctions on March 1, 2019. The AJ stated that Complainant's behavior during the pre-hearing conference was "disruptive, disrespectful, and threatening..." The AJ specified that during a pre-hearing conference Complainant "lost control of his behavior, and his behavior got worse as the conference continued when the Complainant started screaming at both me and the Agency representative. He continued to do so and refused to stop screaming when I repeatedly told him to stop screaming and use a conversational voice." The AJ remanded the formal complaint to the Agency, and the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b).

The Agency found that Complainant did not prove that the Agency subjected him to discrimination as alleged. The Agency found that Complainant was not a qualified individual with a disability based on documentation that Complainant was not able to work during the period at issue. The Agency further found under a disparate treatment analysis, even assuming *arguendo* that Complainant established a *prima facie* case of disability, the Agency articulated legitimate, nondiscriminatory reasons for its actions which Complainant failed to establish was pretext for discrimination.

The instant appeal followed. Complainant requests a transcript of the pre-hearing conference at issue and asserts that he made no threats of violence. He further asserts that various parties have engaged in criminal actions against him.

### ANALYSIS AND FINDINGS

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").

#### *AJ's Sanction*

An EEOC Administrative Judge has the authority to sanction a party for failure to comply fully with an order without good cause shown. See 29 C.F.R. 1614.109. Where a complainant has engaged in contumacious conduct, an AJ may appropriately sanction the complainant by dismissing the complaint. See Hale v. Dep't of Justice, EEOC Appeal No. 01A03341 (Dec. 12, 2000).

We find that the AJ did not abuse her discretion in dismissing Complainant's request for a hearing as a sanction for contumacious conduct and remanding the matter to the Agency for a final decision. The record is devoid of evidence that the pre-hearing conference at issue was transcribed. However, the AJ's account in her Order of Dismissal asserts that Complainant was disruptive, disrespectful and threatening. The AJ asserts that Complainant used profane language at the conference, including, but not limited to, the following statements: "Fucking felonies were committed. I am fucking sick of it!" In response to the Agency's representative's request for Complainant's medical records, the AJ asserts that Complainant stated "Shut up, you fucking bitch [the name of Agency representative]" during the pre-hearing conference.

In her Dismissal Order, the AJ asserts that "[n]umerous times throughout the conference I tried to get the Complainant on track, in order to facilitate a productive conference, in an attempt to identify his claims and define the scope of discovery. It was to no avail. The Complainant simply refused to stop swearing, yelling and interrupting. What is worse, his comments, as well as his tone were of a threatening nature. The Complainant's conduct was egregious, and he gave absolutely no indication that he would or wanted to comport his behavior in a professional, dignified manner. As a result, of Complainant's obstructive behavior, I was unable to conduct the conference, and I had to terminate the call."

The AJ provided Complainant an opportunity to respond to the allegations regarding his behavior during the pre-hearing conference. The record contains an email from the AJ to the Agency representative dated February 27, 2019, in which Complainant was copied. The AJ stated, "I would like the Agency's view of how it would like the EEOC to proceed at this point in light of [Complainant's] conduct today at the conference." The AJ allowed the Agency to respond and thereafter she allowed Complainant the opportunity to respond. The Agency responded via email dated February 27, 2019, in which Complainant was copied, setting forth Complainant's behavior during the pre-hearing conference and requesting at the very least for Complainant's hearing request to be dismissed. The record is devoid of evidence that Complainant responded. Finally, in the AJ's initial Case Acknowledgment Order dated November 15, 2018, the AJ had advised Complainant that "failure to follow this Order or other orders of the [AJ] may result in sanctions, up to and including dismissal of the complaint."

Based on the foregoing, we find that Complainant's behavior at pre-hearing conference constituted contumacious conduct and the AJ did not abuse her discretion in dismissing his hearing request and remanding the matter to the Agency for a final decision. See Hooker Jr. v. Dep't of Veterans Affairs, EEOC Appeal No. 01201221645 (Aug. 27, 2013) (affirming dismissal of hearing request due to Complainant's disrespectful and threatening behavior toward Agency representative and AJ). The Commission does take lightly the sanctioning of complainant through the dismissal of a hearing request. However, neither does it take lightly behavior such as that exhibited by the Complainant in this hearing conference.

Finally, in her Dismissal Order, the AJ noted that she denied Complainant's request to amend his formal complaint because his claims involving torts and criminal actions were not within the jurisdiction of the Commission.

We concur that Complainant's allegations involving torts and criminal actions by medical providers and other parties are outside of the jurisdiction of the Commission.

*Final Agency Decision*

The Agency properly found no discrimination. Under the Commission's regulations, an Agency is required to make reasonable accommodation for 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); 29 C.F.R. § 1630.2(p). To establish a prima facie case of disability discrimination under a disparate treatment theory, Complainant must demonstrate that: (1) he is an "individual with a disability" (2) he is "qualified" for the position held or desired; (3) he was subjected to an adverse personnel action under circumstances giving rise to an inference of disability discrimination and/or denied a reasonable accommodation.

Here, Complainant alleged that after he was assaulted by a postal customer in May 2016, he was diagnosed with PTSD and made numerous requests to be transferred to another facility between June and late August 2016. His requests were denied. The record further shows that Complainant was absent from work on sick or annual leave, workers' compensation or leave without pay from May 11 through November 2016 and beyond.

Complainant failed to establish a prima facie case of disability discrimination. Assuming arguendo, that Complainant is an individual with a disability under the Rehabilitation Act, we find that Complainant was not a "qualified" individual during the period in question because he has not shown that he was able to perform the essential functions of his position, with or without accommodation. In response to being asked by the EEO Investigator what work restrictions he had due to the PTSD, Complainant responded, "I am unable to work." Report of Investigation (ROI) at 84. The record contains a Duty Status Report, CA-17 Form dated May 13, 2016 indicating that Complainant is "unfit for duty at this time." ROI at 105. In a June 8, 2016, letter from a physician, he states that Complainant has anxiety and post-traumatic stress and advised him to stay out of work until cleared by a psychologist." ROI at 106

Complainant asserts that when he tried to return to work on June 15, 2016, he had a "panic attack"/"meltdown." ROI at 28, 91. Following this event, the record contains a Form CA-17, dated June 16, 2016 indicating that Complainant was not able to return to work. ROI at 108 Finally, the record contains a letter from a physician dated January 10, 2017, stating that "[Complainant] is not able to work any job including his mail carrier job at the present time."<sup>2</sup> ROI at 110. Based on the foregoing, we find that Complainant was not a "qualified" individual with a disability and thus, would not be eligible for the reasonable accommodation of reassignment.

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<sup>2</sup> The record reflects that Complainant remained in a non-work status after his attempt to return to work on June 15, 2016.

### CONCLUSION

Accordingly, we AFFIRM the Agency's final decision finding no discrimination.

### 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:

A handwritten signature in blue ink, reading "Carlton M. Hadden", is written over a horizontal line.

Carlton M. Hadden, Director  
Office of Federal Operations

February 14, 2020

Date