



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Freddy K.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Pacific Area),
Agency.

Appeal No. 2020004714

Agency No. 1F-957-0043-20

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated August 6, 2020, dismissing his complaint of unlawful 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

At the time of events giving rise to this complaint, Complainant worked as a Mail-Handler at the Agency's West Sacramento Processing and Distribution Center in West Sacramento, California.

On July 11, 2020, Complainant filed a formal equal employment opportunity (EEO) complaint alleging that the Agency discriminated against him on the basis of disability (ligament sprain of lumbar spine, Plantar Fascial Fibromatosis, and lesion of plantar nerves) when, since May 17, 2019, it denied Complainant reasonable accommodation by failing to provide an ergonomic chair as prescribed, causing him to remain off work and lose pay.

The Agency dismissed Complainant's complaint pursuant to 29 C.F.R. § 1614.107(a)(1), for stating the same claim that was resolved in a settlement agreement, dated October 5, 2019, for

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.

Agency No. 1F-957-0090-19. The Agency stated that Complainant referred to a May 17, 2019 statement from his physician in both complaints. The instant appeal followed.

On appeal, Complainant stated that the instant complaint and the complaint resolved by the settlement agreement are not the same or similar. Complainant stated that Agency No. 1F-957-0090-19 involves a seven-day suspension related to a request for reasonable accommodation to work the day shift due to his Diabetes and drowsiness while on duty.² Complainant acknowledges that he referenced a May 17, 2019 letter from his physician in both instances, but states they are separate matters. He noted, when he initiated Agency No. 1F-957-0090-19, he thought the Agency was working on providing an appropriate ergonomic chair.

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.107(a)(1) provides that the agency shall dismiss a complaint that states the same claim that is pending before or has been decided by the agency or Commission. It has long been established that “same” does not mean “similar.” The Commission has held that for a formal complaint to be dismissed as “identical,” the elements of the formal complaint must be identical to the elements of the prior formal complaint in time, place, incident, and parties. Battle v. Dep’t of Transportation, EEOC Appeal No. 05A20049 (September 26, 2003) (reversed and remanded an allegation for further processing where the matter was not identical to the elements in time, place, incident, and parties to a matter raised before an EEOC Administrative Judge). In the instant matter, we find that the agency's dismissal of complainant's claim was improper.

A review of the record reflects that Complainant initiated EEO Contact regarding a May 19, 2019 management allegation that he was “snoozing on the job” and for which he received a Notice of 7-Day Suspension. The Agency docketed the matter as Agency No. 1F-957-0090-19. The record shows, effective October 5, 2019, the parties reached a settlement agreement in which the Agency agreed to reduce the suspension to a letter of warning and Complainant agreed that the agreement resolved the matter and he would not proceed with his grievance.

² The record contains an EEO Contact Summary regarding a May 19, 2019 management allegation that Complainant was “snoozing on the job” and Complainant’s request for removal of a related Notice of 7-Day Suspension. The record also contains a settlement agreement dated October 5, 2019, which provides the following information.

1. Management agrees to reduce the 7 day suspension issued to [Complainant] for safety violation for sleeping on the workroom floor to a letter of warning with an 18 month retention. This is to be initiated no later than 10/11/19.
2. [Complainant] agrees to not accept g[r]ievance at step 3, [Complainant] agrees this resolves grievance, and will notify union that the matter has been resolved by 10/7/19. Further, he agrees to not accept grievance outcome.

Subsequently, on July 11, 2020, Complainant filed a formal EEO complaint alleging that the Agency discriminated against him on the basis of disability (ligament sprain of lumbar spine, Plantar Fascial Fibromatosis, and lesion of plantar nerves) when, since May 17, 2019, it denied him reasonable accommodation by failing to provide an ergonomic chair as prescribed. We find the two matters are not the same claim.

CONCLUSION

Based on a careful review of the record herein, the Commission determines that the Agency's dismissal of complainant's complaint was improper pursuant to 29 C.F.R. § 1614.107(a)(1). We REVERSE the Agency's dismissal and REMAND the matter for further processing consistent with this decision and the Order below.

ORDER (E0618)

The Agency is ordered to process the remanded claims 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, a copy of complainant's request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

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 (M0620)

The Commission may, in its discretion, reconsider this appellate decision if the 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 his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at

<https://publicportal.eeoc.gov/Portal/Login.aspx>.

Alternatively, complainant can submit his or her 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, 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 his or her 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(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

November 9, 2020
Date