



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Georgeann R.,¹
Complainant,

v.

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

Appeal No. 2019005191

Agency No. 1K-271-0003-19

DECISION

Complainant timely 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 final decision concerning her 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. For the following reasons, the Commission VACATES the Agency's final decision.

ISSUE PRESENTED

The issue presented is whether the preponderance of evidence demonstrates that Complainant was subjected to discrimination when the Agency did not grant her request for accommodation.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Mail Processing Clerk at the Agency's Processing and Distribution Center in Raleigh, North Carolina. Report of Investigation (ROI), at 6. On October 4, 2017, Complainant's doctor diagnosed her with Bilateral Knee Degenerative Disease, which reportedly physically affected her ability to perform the duties of her position. ROI, at 68. Complainant's duties as a Mail Processing Clerk included working the Flat Sorter Machine, among other things. *Id.* at 69.

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.

Complainant however maintained that performing duties on the Flat Sorter Machine were very strenuous on her knee condition because the work required heavy lifting, twisting, turning, and leaning in awkward positions. Id. at 72.

On February 7, 2018, and March 8, 2018, Complainant submitted requests for a reasonable accommodation to the Agency, notifying the Agency that she could not work the Flat Sorter Machine due to her knee condition. Id. at 73. As a reasonable accommodation, Complainant requested that she be reassigned to perform the duties of an AFCS 200 Machine Operator with additional scheduled 15-minute breaks. Complainant previously worked as an AFCS 200 Machine Operator and believed that the position was less strenuous on her knee condition. Id. at 74.

Complainant's request for accommodation was forwarded to the District Reasonable Accommodation Committee (DRAC), which held a meeting with Complainant on August 30, 2018. Id. at 96. Therein, Complainant submitted medical documentation dated April 9, 2018, from her doctor notifying the DRAC that she was unable to stand, walk, climb stairs, kneel and stoop for more than 4 hours a day, and could not perform Flat Sorter duties. Id. However, the physical restrictions for the AFCS 200 Machine Operator position, included standing and walking for 6 hours per day. Id. at 177. Complainant's medical documentation also indicated that she could lift 0-10 pounds continuously and 10-70 pounds intermittently. Id. at 93-94.

In a letter dated October 2, 2018, the DRAC responded to the Complainant's request for accommodation writing in pertinent part:

Based on your medical documentation and the information you have provided to DRAC, you have indicated that you cannot perform the essential functions of your position with or without an accommodation. DRAC has reviewed whether there are other positions within a 50-mile radius of your current facility that can accommodate your medical restrictions. At this time, there are not any suitable vacant positions available within your restrictions with or without an accommodation. Therefore, the Postal Service is unable to offer you any accommodations. We encourage you to continue to bid on jobs and search for jobs on eCareer and eReassign that are within the scope of your medical restrictions.

Id. at 21-22.

The Plant Manager did explain that there were a limited number of AFCS 200 Machine Operator bid positions available during the relevant time where Complainant was assigned. Id. at 108. But he explained that such an accommodation would have resulted in having to back fill Complainant's position with another employee from another section on a daily basis, resulting in overtime hours and shortages in other sections for an undeterminable period of time. Id.

The Plant Manager further explained that 15-minute breaks every two hours were already allowed, and the Agency could not provide Complainant with extra 15-minute breaks beyond the breaks already allowed due staffing concerns and because the Agency was approaching its peak season. Id. at 142.

On January 23, 2019, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the basis of disability when on October 2, 2018, her request for accommodation was denied. Following the investigation, the Agency provided Complainant with a copy of the report of investigation 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 failed to prove that the Agency subjected her to discrimination as alleged.

The Agency initially determined that Complainant did not establish that she was an individual with a disability within the meaning of the Rehabilitation Act. In so finding, the Agency observed that the last medical documentation submitted by Complainant dated April 9, 2018, noted that Complainant could lift 0-10 pounds continuously and 10-70 intermittently. The Agency nevertheless assumed, without finding, that Complainant established that she was an individual with a disability entitled to the protection of the Rehabilitation Act. The Agency noted, however, that Complainant's duties as a Mail Processing Clerk entailed working on the Flat Sorter Machine, which required her to stand all day, load mail, and involved heavy lifting. The Agency found that Complainant could not perform the Flat Sorter Machine duties that her position required, and she did not identify an accommodation that would have allowed her to perform the essential duties of her bid position, which included the Flat Sorter duties. The Agency determined that Complainant did not establish that she was a "qualified" individual with a disability in accordance with the Rehabilitation Act, and therefore she could not be accommodated in her current Mail Processing Clerk position.

The Agency further observed that Complainant's medical documentation reflected that she could not stand or walk more than 4 hours a day. The Agency noted that even if Complainant were reassigned to the AFCS 200 Machine Operator position, even with the additional two 15-minute breaks, Complainant would have been required to stand/walk more than 4 hours per day. The Agency determined that Complainant failed to identify a vacant funded position that was available, which would have accommodated her medical restrictions.

CONTENTIONS ON APPEAL

On appeal, Complainant maintains that she has not been allowed by the Agency to work within her medical restrictions, and she believes that the Agency should have provided her with a simple reasonable accommodation. Complainant believes there is other work within the Processing and Distribution Center in Raleigh that she could have performed within her medical restrictions. Complainant states that the Agency has accommodated other employees within the Agency, and she believes that the Agency has singled her out and treated her improperly.

The Agency has not responded to Complainant's brief on appeal.

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

Reasonable Accommodation

Under the Commission's regulations, a federal agency may not discriminate against a qualified individual on the basis of disability and is required to provide reasonable accommodations to the known physical and mental limitations of an otherwise qualified individual with a disability unless the Agency can show that reasonable accommodation would cause an undue hardship. See 29 C.F.R. §§ 1630.2(o), (p). To establish that she was denied a reasonable accommodation, Complainant must show that: (1) she is an individual with a disability, as defined by 29 C.F.R. § 1630.2(g); (2) she is a "qualified" individual with a disability pursuant to 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide her with a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC Notice No. 915.002 (Oct. 17, 2002) (Enforcement Guidance on Reasonable Accommodation).

The events in the instant case arose after January 1, 2009, the effective date of the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), which expanded the definition of disability under the ADA and the Rehabilitation Act. The primary purpose of the ADAAA is to make it easier for people with disabilities to obtain protection under the ADA. 29 C.F.R. § 1630.1(c)(4). Consistent with the ADAAA's purpose of reinstating a broad scope of protection under the ADA, the definition of "disability" shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA. *Id.* The primary object of attention in cases brought under the ADA should be whether agencies have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of disability. *Id.* The question of whether an individual meets the definition of disability should not demand extensive analysis. *Id.*

Under EEOC regulations implementing the ADAAA, an individual with a disability is one who: (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. 29

C.F.R. § 1630.2(g). Major life activities include, but are not limited to: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. 29 C.F.R. §1630.2(i)(1)(i). The term “substantially limits” shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. 29 C.F.R. §1630.2(j)(1)(i). “Substantially limits” is not meant to be a demanding standard. Id. An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. 29 C.F.R. §1630.2(j)(1)(ii). An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. Id.

In the instant case, we note that the Agency initially determined that Complainant did not establish that she was an individual with a disability within the meaning of the Rehabilitation Act. We disagree and find ample evidence to show that Complainant was substantially limited in the major life activities of working and walking. We therefore find that Complainant showed that she is an individual with a disability protected by the Rehabilitation Act under the expansive definition set forth in the ADAAA.

We next need to establish if Complainant was a “qualified individual with a disability.” 29 C.F.R. § 1630.2(m). An individual with a disability is “qualified” if he or she satisfies the requisite skill, experience, education, and other job-related requirements of the employment position that the individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position. 29 C.F.R. § 1630.2(m). “Essential functions” are the fundamental duties of a job, that is, the outcomes that must be achieved by someone in that position. Gwendolyn G. v. U.S. Postal Serv., EEOC Appeal No. 0120080613 (Dec. 23, 2013).

Following a review of the record, we find that Complainant has not shown that she can perform the essential functions of the Mail Processing Clerk position with or without a reasonable accommodation. The record reflects that Complainant’s Mail Processing Clerk position involved working on the Flat Sorter Machine, which required heavy lifting, prolonged standing and walking, among other physical requirements. We note that Complainant submitted medical documentation dated April 9, 2018, from her doctor notifying the DRAC that she was unable to stand, walk, climb stairs, kneel and stoop for more than 4 hours a day, and could not perform Flat Sorter duties. Therefore, we find that Complainant did not establish that she was a qualified individual with a disability within the meaning of the Rehabilitation Act with respect to her own Mail Processing Clerk position because the preponderance of the evidence shows that she could not perform the essential functions of that position with or without accommodation. As such, the Agency was not required to accommodate Complainant in her Mail Processing Clerk position.

The discussion of “qualified” does not end at Complainant's position of record. The term “qualified individual with a disability,” with respect to employment, is defined as a person with a disability who, with or without a reasonable accommodation, can perform the essential functions of the position held or desired. 29 C.F.R. § 1630.2(m). The term “position” is not limited to the position held by the employee, but also includes positions that the employee could have held as a result of reassignment. Therefore, in determining whether an employee is “qualified,” an agency must look beyond the position which the employee presently encumbers. Enforcement Guidance on Reasonable Accommodation; see also Interpretive Guidance on Title I of the Americans With Disabilities Act, Appendix, to 29 C.F.R. Part 1630.2(o).²

An agency is in the best position to know which jobs are vacant or will become vacant within a reasonable time and, as part of the interactive process, should ask the employee about his or her qualifications and interests. Because it possesses the relevant information, an agency is obligated to inform an employee about vacant positions for which the employee may be eligible as a reassignment. See Bill A. v. Dep't of the Army, EEOC Appeal No. 0120131989 (Oct. 16, 2016) (citing Woodman v. Runyon, 132 F.3d 1330, 1344 (10th Cir. 1997)); see also Enforcement Guidance on Reasonable Accommodation at Q. 28. The employee should assist the agency in identifying vacancies to the extent that the employee has information about them. Further, if the agency is unsure whether the employee is qualified for a particular position, the agency can discuss with the employee his or her qualifications. Mengine v. Runyon, 114 F.3d 415, 419-20 (3d Cir. 1997) (once an employer has identified possible vacancies, an employee has a duty to identify which one he is capable of performing)); see also Enforcement Guidance on Reasonable Accommodation at Q. 28.

Here, the DRAC informed Complainant that it reviewed whether there were other positions within a 50-mile radius of her current facility, which could have accommodated her medical restrictions. ROI, at 142. While the Agency may have conducted a search within a 50-mile radius of Complainant's duty station, the Agency's obligation under the Rehabilitation Act to offer a reassignment is not limited to vacancies within a particular department, facility, or geographical area. Bill A. v. Dep't of the Army, *supra*. Accordingly, absent undue hardship, the Agency must conduct an agency-wide search for vacant, funded positions that the employee can perform with or without reasonable accommodation.

Moreover, while the Agency does state it did a search for a vacant funded position for Complainant, the Agency has not provided any specific explanation or evidence in the record as to what extent its search was actually conducted. Cole M. v. U.S. Postal Serv., EEOC Appeal No. 0120182273 (Feb. 26, 2020) (finding that while the agency may have explored alternatives for complainant, it did not provide an explanation in the record as to what extent the agency conducted a search for a vacant, funded position to which it could have reassigned complainant).

² To the extent that Complainant wanted to be reassigned to the position of AFCS 200 Machine Operator, we note that the position required standing/walking for 6 hours per day, but Complainant's medical restrictions indicated that she could only stand/walk for 4 hours per day.

Accordingly, we will remand this matter for a supplemental investigation regarding the availability of a vacant, funded position(s) and to provide Complainant with an opportunity to address whether she could perform the essential functions of any such vacant, funded position(s) with or without a reasonable accommodation. See Bill A., supra.

CONCLUSION

Based on a thorough review of the record, we VACATE the Agency's final decision and REMAND this matter to the Agency for further processing in accordance with the Order herein.

ORDER

Within **sixty (60) calendar days** of the date this decision is issued the Agency shall conduct a supplemental investigation into this complaint as follows:

- 1) The Agency shall supplement the record with documentation, including sworn statements, that reveals whether there were vacant positions to which Complainant was qualified to be reassigned and to what extent the Agency conducted a search for an equivalent vacant position to which it could have reassigned Complainant.
- 2) The Agency shall grant Complainant an opportunity to address for the record whether she could have performed the essential functions of vacant positions with or without reasonable accommodation.

The Agency shall instruct the investigator to compile the above information into an investigative report and transmit it to the Agency within **ninety (90) calendar days** of the date this decision is issued. No later than **thirty (30) calendar days** after receiving the report, the Agency will provide Complainant with a copy of the report, and also provide a copy to the Compliance Officer referenced below. Upon completion of the investigative report and receipt by Complainant, the Agency shall again provide Complainant with the opportunity to request a hearing before an Administrative Judge or have the Agency issue a final decision in accordance with 29 C.F.R. § 1614.108(f).

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).

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](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)

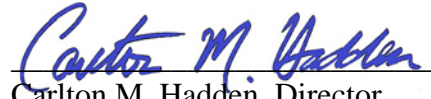
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this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

December 3, 2020

Date