



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

[REDACTED]
Loyd H,¹
Complainant,

v.

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

Appeal No. 2020005113

Hearing No. 550-2019-00377X

Agency No. 1F-946-0083-16

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 July 9, 2020 final order concerning his equal employment opportunity (EEO) complaint claiming 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.

BACKGROUND

During the period at issue, Complainant worked as a Custodian for the Agency in Oakland, California. On September 5, 2018, Complainant contacted an EEO Counselor and filed a formal EEO complaint on December 15, 2018, alleging that the Agency discriminated against him on the bases of race (African-American) and disability.

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.

By Partial Acceptance/Partial Dismissal letter dated January 17, 2019, the Agency determined that Complainant's complaint was comprised of the following claims:

1. On an unspecified date, [Complainant was] denied union representation.
2. On August 31, 2018, [Complainant was] put [out] of a building due to a confrontation with a supervisor.
3. Since August 31, 2018 and ongoing, [Complainant] was paged constantly and told [he] is taking too long to answer the page.
4. On September 7, 2018, [he was] put out of the building and told there was no work for [him].

The Agency accepted claims (2)-(4) for investigation. However, the Agency dismissed claim (1) for failure to state a claim, reasoning that it was a collateral attack on the grievance process.

At the conclusion of the investigation, Complainant was provided a copy of the investigative file and requested a hearing before an EEOC Administrative Judge (AJ). On June 10, 2020, the AJ advised the parties that he was considering issuing a decision without a hearing and provided the parties an opportunity to respond.

On June 26, 2020, the AJ issued a decision by summary judgment in favor of the Agency. The AJ concluded that Complainant did not establish that he was subjected to unlawful discrimination. The AJ reasoned that the Agency articulated legitimate, nondiscriminatory reasons for its actions which Complainant failed to establish was pretext for discrimination. The AJ further found that the alleged incidents were not sufficiently severe or pervasive to constitute harassment.

The Agency's final action implemented the AJ's decision.

The instant appeal followed.

STANDARD OF REVIEW

In rendering this appellate decision, we must scrutinize the AJ's legal *and* factual conclusions, and the Agency's final order adopting them, de novo. See 29 C.F.R. § 1614.405(a) (stating that a "decision on an appeal from an Agency's final action shall be based on a de novo review . . ."); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (Aug. 5, 2015) (providing that an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed de novo).

This essentially means that we should look at this case with fresh eyes. In other words, we are free to accept (if accurate) or reject (if erroneous) the AJ's, and Agency's, factual conclusions and legal analysis – including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. See id. at Chapter 9, § VI.A. (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

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.

After a careful review of the record, we find that the AJ concluded that there was no genuine issue of material fact in this case. In finding no discrimination, the AJ conducted a disparate treatment analysis and harassment analysis with respect to Complainant's claims. However, the record reflects that Complainant was alleging a *denial of a reasonable accommodation* claim with respect to claim (4) when Agency management provided him with a modified job offer which exceeded his medical restrictions and told him that there was no other work available for him. Affidavit (Aff.) A at 14. Complainant alleges that while the Agency stated that there was no other work available for him, he was previously being accommodated through a modified job offer.² Aff. A at 15. In addition, Complainant alleges he was not returned to work until December 2018 and he was placed in the same modified position that he was working in prior to being placed off work in September 2018. Id.

² In an attachment to his formal complaint, Complainant stated that when his managers created a new modified job offer for him which exceeded his restrictions, he was put out of the workplace and was told by management that there was no other work for him. Complainant, in this document, also asserts that he *already had a modified job offer* (prior to the Agency creating a new job offer) which accommodated his restrictions.

Under the Commission's regulations, federal agencies may not discriminate against individuals with disabilities and are required to make reasonable accommodations for the known physical and mental limitations of qualified individuals with disabilities, unless an Agency can show that reasonable accommodation would cause undue hardship. See 29 C.F.R. §§ 1630.2(o) and (p). To establish that complainant was improperly denied a reasonable accommodation, complainant must show that: (1) he is an individual with a disability, pursuant to 29 C.F.R. 1630.2(g); (2) he is a “qualified” individual with a disability, pursuant to 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC No. 915.002 (Oct. 17, 2002).

The AJ did not address, in his decision, Complainant’s denial of a reasonable accommodation claim. The record therefore needs further development regarding this claim and such development may involve determinations with respect to credibility. Assuming, without finding, that Complainant is a qualified individual with a disability with respect to the Rehabilitation Act, Complainant alleges that he was provided with a new modified job offer that exceeded his medical restrictions. The record contains a Work Status Form from Complainant’s physician dated September 7, 2018 that contained the following restrictions: no lifting over 20 pounds, no bending or squatting at all, and that Complainant must sit for ten minutes every hour.³ ROI, Exhibit (Ex.) 8 at 3. The September 7, 2018 Work Status Form indicated that Complainant’s restrictions were permanent. Id. The record contains a copy of an Offer of a Modified Assignment (Limited Duty) for Complainant dated September 7, 2018. ROI Ex. 8. The modified assignment included various duties such as emptying trash and refilling soap, paper, and bathroom supplies. Id. The physical requirements for this modified job offer required, in pertinent part, slight bending and stooping for one hour. Id. The record reflects that Complainant signed a modified job offer on December 3, 2018.⁴ ROI Ex. 13.

The record contains statements from management that there was no work available to accommodate Complainant’s restrictions. The record contains an affidavit from the Manager, Maintenance Operations (M1). Therein, M1 asserts that he sought guidance from the Agency’s Injury Compensation Department and that he was told to place Complainant in an OWCP leave status, if he refused to sign the modified job offer. ROI Aff. C at 8. The record also contains a memorandum from M1 dated September 10, 2018. ROI Ex. 9. Therein, M1 asserts that Complainant provided him with Work Status forms with “extreme limitation[s].” Id. M1, in the memorandum, sets forth that there is no work in the department for such limitations and that he informed Complainant that he was putting him on OWCP. Id.

³ The record also contains a Work Status Form dated August 31, 2018 which did not contain the no bending and squatting restriction. ROI, Ex. 8 at 1. However, this Work Status Form was amended by Complainant’s physician to include the no bending or squatting restriction. ROI, Ex. 8 at 2.

⁴ The record also contains modified job offers for Complainant dated October 10, 2018 and October 23, 2018. ROI Ex. 11 and Ex. 12. It is unclear from the record before us if Complainant actually received these modified job offers and if so, why he did not accept them.

The record also contains an affidavit from the Manager, Maintenance (M2). ROI Aff. D. Therein, M2 asserts that Complainant was sent home because there was no work available within his limitations. ROI Aff. D. at 10. However, as set forth above, Complainant alleges that his prior modified job offer accommodated his restrictions.

Finally, the record reflects that the Agency placed Complainant back in his prior modified job offer. The record contains an affidavit from a supervisor. ROI Aff. E. Therein, the supervisor asserts that he reviewed Complainant's prior job offer dated December 15, 2015 and that in December 2018, he presented Complainant with a modified job offer that was the same as the one he had been working under (the December 15, 2015 modified job offer) with the exception of removing anything that violated his limitations. ROI Aff. E. at 2.

Based on the foregoing, we find that Complainant's denial of a reasonable accommodation claim warrants further development, including possible credibility determinations, with respect to whether Complainant was a qualified individual with a disability pursuant to the Rehabilitation Act and whether the Agency failed to provide him with a reasonable 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 (March 26, 1998). See also Peavley v. U.S. Postal Serv., EEOC Request No. 05950628 (October 31, 1996); Chronister v. U.S. Postal Serv., EEOC Request No. 05940578 (April 25, 1995). In summary, there are simply too many unresolved issues which require further development of the record and possible credibility determinations. Therefore, judgment as a matter of law for the Agency should not have been granted without proper consideration of Complainant's reasonable accommodation claim.

In light of our remand of Complainant's denial of a reasonable claim (claim (4)), the Commission declines to fragment the complaint by separately addressing the related harassment claim. Accordingly, the Agency's final order implementing the AJ's decision without a hearing is VACATED and we REMAND the entire complaint to the Agency in accordance with the ORDER below.

ORDER

The Agency is directed to submit a renewed hearing request on behalf of Complainant, as well the complaint file and a copy of this decision, to the EEOC Hearings Unit of the San Francisco District Office 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 Administrative Judge shall process the complaint in accordance with 29 C.F.R. § 1614.109 and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

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).

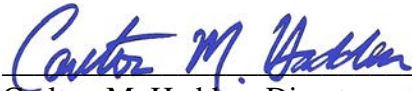
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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

January 8, 2021

Date