



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

[REDACTED]
Lamar M.,¹
Complainant,

v.

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

Appeal No. 2019005929

Agency No. 4K-220-0010-19

DECISION

On July 26, 2019, Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's June 21, 2019 final decision concerning an equal employment opportunity (EEO) complaint claiming 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 relevant time, Complainant worked as a Supervisor, Distribution Operations at the Agency's Northern Virginia Processing and Distribution Center in Merrifield, Virginia.

On December 26, 2018, Complainant filed a formal complaint alleging the Agency discriminated against him based on disability when:

1. on October 30, 2018, he was not provided with a certified interpreter at the kickoff Combined Federal Campaign (CFC) meeting; and
2. on November 2, 2018, he was segregated during the CFC kickoff meeting.

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 identified his disability as deafness and the record established that he required the services of a sign language interpreter.

After the investigation of the formal complaint, Complainant was provided with a copy of the report of the investigation and with a notice of the right to request a hearing before an EEOC Administrative Judge or a final decision within thirty days of receipt of the correspondence. Complainant did not respond.

In its June 21, 2019 final decision, the Agency found no discrimination based on the evidence developed during the investigation.

The instant appeal followed. Complainant argues that the Agency violated its own policies and regulations when it failed to provide him with an interpreter. Complainant further argues that he shown the Agency has constantly disregarded his hearing impairment and its own rules and regulations.

ANALYSIS AND FINDINGS

As a threshold matter, we note that Complainant requested that the instant formal complaint and another complaint be consolidated on appeal. We decline to consolidate these two appeals as they are not sufficiently like and related and we have already issued an appellate decision on the other complaint in EEOC Appeal No. 2019005480 (December 7, 2020).

Denial of Reasonable Accommodation

The Agency determined that Complainant is an individual with a disability (deafness). Complainant is substantially limited in the major life activity of hearing. Moreover, there is no dispute that Complainant can perform the essential functions of his job with reasonable accommodations.

Under the Commission's regulations, an agency is required to make reasonable accommodation to the known physical and mental limitations of an otherwise qualified individual with a disability unless the agency can show that accommodation would cause an undue hardship. 29 C.F.R. § 1630.9. In order to establish that Complainant was denied a reasonable accommodation, Complainant must show that (1) he is an "individual with a disability," as defined by 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: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC No. 915.002 (Oct. 17, 2002) (Reasonable Accommodation Guidance). "The term 'qualified,' with respect to an individual with a disability, means that the individual satisfied the requisite skill, experience, education and other job-related requirements of the employment position such 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).

An agency is required to make reasonable accommodation to 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), (p).

Complainant claimed that on October 30, 2018, he was notified by another supervisor of the CFC kickoff meeting in the Agency's cafeteria. Complainant stated that he went to CFC kickoff meeting for only a short time because no sign language interpreter was present. Complainant further noted that management officials apologized to him for not providing him an interpreter and explained that "their staffs are new." Furthermore, Complainant stated that while he did not request an interpreter for the CFC kick off meeting, Agency management is "aware that I will always need an interpreter for any or all meetings."

The Manager, Human Resources (HR), averred that there is a requirement to provide interpreters for deaf employees for any presentations. The Manager stated that when she arrived at the meeting, she became aware that there was no interpreter at the CFC kickoff meeting. The Manager noted that the CFC coordinators were responsible for obtaining an interpreter for the meeting, and that the CFC coordinators should have requested assistance from Human Resources. The Manager stated, however, "I failed to provide them with instruction ahead of the meeting to remind them that the interpreter was required. It was my responsibility to do so."

Complainant next claimed that on November 2, 2018, the Agency arranged a "make-up" CFC meeting for deaf employees. He further claimed that there were three deaf employees "in attendance, and no keynote speakers were present, not even the District Manager or the Human Resources Manager; only the CFC representative was present." He said that the deaf employees felt "marginalized, minimized, and segregated, and recognize that they lost the opportunity to network [and] be part of the larger workforce."

Commission precedent establishes that for "a severely hearing impaired employee who can sign, reasonable accommodation, at a minimum, requires providing an interpreter for safety talks, discussions on work procedures, policies, and assignments, and for every disciplinary action, so that the employee can understand what is occurring at any and every time in his employment career, whether or not he asks for an interpreter." See Feris v. Environmental Protection Agency, EEOC Appeal No. 01934828 (August 10, 1995). Moreover, an employer must ensure that employees with disabilities have access to information that is provided to other similarly-situated employees without disabilities, regardless of whether they need it to perform their jobs. See Reasonable Accommodation Guidance, Question 14; see also Reiley v. USPS, EEOC Appeal No. 07A10019 (June 5, 2002) (an employer must provide reasonable accommodation to enable an employee with a disability to have equal access to information communicated in the workplace).

After a careful review of the record, we find that the Agency failed to provide Complainant an interpreter for the CFC kickoff meeting as required by the Rehabilitation Act.

There was no need for Complainant to specifically request an interpreter for this meeting as the Agency was well-aware of his accommodation need and the HR Manager testified that interpreters were routinely provided for meetings and were, in fact, required under Agency policy and practice. We determine, further that the Agency actions in the “make up” meeting which subsequently ensued was, by the admission of the Agency’s own HR Manager, insufficient to remedy the situation.

In addition, the Commission finds that Complainant may be entitled to compensatory damages for the Agency’s failure to accommodate him. Where a discriminatory practice involves the provision of a reasonable accommodation, damages may be awarded if the Agency fails to demonstrate that it made a good faith effort to provide the individual with a reasonable accommodation of his disability. 42 U.S.C. § 1981a(a)(3); Morris v. Department of Defense, EEOC Appeal No. 01962984 n.3 (Oct. 1, 1998). In this case, the Agency’s failure to provide Complainant with interpreter services, despite his history of obtaining relief through the EEO process for the Agency’s failure to accommodate him, clearly constitutes a lack of good faith. Complainant is therefore entitled to present a claim for compensatory damages. See West v. Gibson, 527 U.S. 212 (1999).

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, the Commission finds that the Agency denied Complainant reasonable accommodation in violation of the Rehabilitation Act when it failed to provide him an interpreter for the CFC kickoff meeting. The Agency’s final decision is REVERSED, and the Commission REMANDS the complaint to the Agency to address the issue of remedies.

ORDER

The Agency shall take the following remedial action:

1. Effective immediately, the Agency shall provide appropriate interpreting services for all future employee meetings where deaf employees in need of such services will be in attendance.
2. Within thirty (30) calendar days of the date this decision is issued, the Agency shall give Complainant a notice of his right to submit objective evidence (pursuant to the guidance given in Carle v. Department of the Navy, EEOC Appeal No. 019222369 (January 5, 1993)) in support of his claim for compensatory damages, relevant to the denial of interpreter as a reasonable accommodation. Complainant shall have sixty (60) calendar days from the date of receipt of said notice to submit such objective evidence.
3. The Agency shall issue a final decision on compensatory damages no later than one hundred and fifty (150) calendar days after the date this decision is issued and pay

Complainant the determined amount of compensatory damages within 30 days of its decision.

POSTING ORDER (G0617)

The Agency is ordered to post at its Northern Virginia Processing and Distribution Center in Merrifield, Virginia copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered defaced, or covered by any other material. The original notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within ten (10) days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

ATTORNEY'S FEES (H1016)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), he is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency - - **not** to the Equal Employment Opportunity Commission, Office of Federal Operations - - within thirty (30) calendar days of this decision becoming final. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

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).**

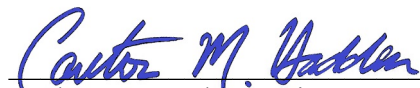
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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

June 15, 2021
Date