



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

[REDACTED]  
Josefina L.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2020000206

Hearing No. 430-2019-00348X

Agency No. 4K-290-0101-18

**DECISION**

On September 10, 2019, 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 August 16, 2019 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 AFFIRMS the Agency's final decision.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a City Carrier Assistant (CCA), 01/AA, at the Spartanburg-Westside Branch in Spartanburg, South Carolina. On July 10, 2019, Complainant filed an EEO complaint alleging that the Agency discriminated against her based on her disability (Chondromalacia and Osteoarthritis Right Knee, Degenerative Disease Lumbar Spine, Lumbar Radiculitis) when: (1) on or about June 25, 2018, she was

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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.

removed from her hold-down assignment; and (2) on or about August 25, 2018 through September 14, 2018, she was removed from her position.<sup>2</sup>

After 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 EEOC Administrative Judge (AJ). Complainant requested a hearing, but the AJ remanded the complaint to the Agency, and 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.

### FACTUAL BACKGROUND

#### *Claim 1 – Hold-Down Assignment*

During the relevant timeframe, Complainant had been given a hold-down assignment (HDR) (City Route 1).<sup>3</sup> The main task of a CCA is to deliver and collect mail requiring outdoor work, prolonged walking, standing, loading/unloading vehicles, driving in all kinds of weather, lifting and carrying in all sorts of terrain. On October 5, 2016, Complainant fell at work and sprained her back, right knee, and ankle going to a dismounted mailbox. Complainant was treated and returned to work without restrictions in or about April 2017.

On June 7, 2018, Complainant visited her doctor (P1) believing she suffered a recurrence of the original October 5, 2016 injury. On June 8, 2018, Complainant provided her first-line supervisor (S1A) with a medical note dated June 7, 2018 from P1 stating she could return to work with restrictions of “no stairs or hills” for six weeks (i.e., through July 18, 2018). This document did not indicate a medical condition or explain the reason for the restrictions. Complainant asserted that she was told that she could not have a hold-down assignment because she was not able to perform all the duties of the position. In addition, Complainant advised S1A that her injury was from a prior U.S. Department of Labor Workers’ Compensation (OWCP) injury that was on file. Management immediately contacted the OWCP office to make sure that the correct forms would be provided to Complainant. OWCP instructed management to gather a statement from Complainant as to the circumstances of the recurrence because Complainant had not been seen by a physician since April 2017 and had been released back to full duty with no restrictions. Management asked Complainant for clarifying medical documentation.

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<sup>2</sup> Complainant initially raised an additional claim pertaining to being sent home early on June 8, 2018. The Agency dismissed this claim pursuant to 29 C.F.R. § 1614.107(a)(2) for untimely EEO Counselor contact. Complainant does not raise this issue on appeal and the Commission finds no basis to disturb the dismissal.

<sup>3</sup> A “hold-down” assignment is when a CCA works a carrier’s assigned route while the carrier is out on leave, usually for an extensive period.

At first, Complainant was permitted to remain assigned to the HDR. S1A and Complainant's manager (M1) asserted that management tried to work with Complainant as much as possible by removing portions of the HDR that involved hills and stairs.<sup>4</sup> Complainant remained on the HDR until on or about June 25, 2018, when Complainant was replaced by a CCA who did not have any medical restrictions. M1 stated that Complainant was removed from the HDR because she could not perform all duties of the HDR. M1 noted that Complainant often wanted to pick and choose what she felt she could perform on the HDR. Complainant claimed that she was told that she was removed from the HDR because she could not climb hills or stairs.<sup>5</sup>

M1 further affirmed that despite several requests for clarifying medical documentation, Complainant did not go through the proper procedure by submitting a light duty request or otherwise provide clarifying medical documentation to support her claims that she had medical restrictions. M1 further asserted that according to the original note from P1, Complainant's restrictions should have ended on July 18, 2018 (i.e., six weeks from June 7, 2018).

The record shows that on or about July 16, 2018, Complainant provided management with a letter from P1 dated July 16, 2018 stating that Complainant was seen in P1's office on June 7, 2018. P1 also stated in this letter that the "route described is within reason of the patient's restrictions and contains the minimum steps necessary for the patient to continue to work."<sup>6</sup>

On August 3, 2018, Complainant arrived at work (returning from a doctor's appointment) and gave S1A a letter from P1 stating that she was restricted to working eight hours per day, five days a week for three months (i.e., until November 3, 2018). This letter did not mention any restriction to climbing hills or stairs. Again, management found that Complainant failed to provide a medical rationale for her restrictions and failed to produce the medical documentation requested to support her restrictions.<sup>7</sup> Management advised Complainant several times after August 3, 2018, that her restrictions had not been approved due to insufficient medical documentation.

According to a September 7, 2018 Step B Decision, a Dispute Resolution Team (DRT) concluded that management violated Article 41 of the National Agreement (NA) when it removed Complainant from her hold-down route on or about June 26, 2018. According to the terms of the NA, once a CCA is assigned to a hold-down, they cannot be removed until the full-time carrier assigned to the route returned to duty.

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<sup>4</sup> The record contains a work calendar indicating that Complainant was not assigned hills or stairs between June 6 and July 20, 2018.

<sup>5</sup> Complainant states that management wanted something in writing from P1 describing the degree of incline and the number of steps per house Complainant could climb.

<sup>6</sup> The "route" referenced in P1's letter is not described or identified.

<sup>7</sup> The record contains a second letter from P1 dated August 3, 2018 with additional information about Complainant's injury but there is no indication in the record that this letter was provided to management prior to September 10, 2018.

The DRT found no evidence that management was motivated by animus (of any kind) toward Complainant when it removed her from the hold-down assignment. Complainant also testified that she does not believe her medical condition was a factor when she was removed from her hold-down assignment.

### *Claim 2 – Placed Off the Clock*

On August 24, 2018, Complainant left a note on the supervisors' desk (at the end of her shift) indicating that her assigned route that day did not meet her medical restrictions. The note states: "I was told to deliver 277 and this route has problems that are against my restrictions. I will do what I can without braking the restrictions. Hills – Stairs and 8 hours."

Complainant was called at home later that evening and told not to come in to work the next day and to expect a letter in the mail. Management informed Complainant (via letter dated August 24, 2018) that she could not return to work until she provided clarifying medical documentation. Complainant asserted that she was only limited to working eight hours each day and five days each week, so she did not understand why management was requesting medical documentation and keeping her out of work. M1 sent a second letter to Complainant on September 6, 2018 instructing her to provide the requested medical documentation and advising her that failure to do so could lead to disciplinary action. Complainant noted that she provided the requested documentation to the new Postmaster on September 13, 2018<sup>8</sup> and returned to work on September 15, 2018.<sup>9</sup>

### ANALYSIS AND FINDINGS

#### *The AJ's Dismissal of Complainant's Hearing Request as a Sanction*

The record shows that on May 22, 2019, the AJ issued a notice of receipt of the hearing request and order (Notice and Order) pertaining to various procedural requirements including an order scheduling an Initial Conference (IC) for June 24, 2019, at 11:00 a.m.

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<sup>8</sup> On or about September 10, 2018, Complainant faxed management: (1) a copy of a Medical Condition Report (MCR) Light Duty Request dated August 24, 2018 (MCR1); (2) a letter dated September 7, 2018 from P1; and (3) a statement from Complainant dated September 11, 2018 in support of her OWCP claim. These documents provided details of her injury and restrictions. However, the MCR1 was completed incorrectly and Complainant submitted an updated MCR on September 13, 2018 (MCR2).

<sup>9</sup> In accordance with a Step B Decision dated November 14, 2018, the DRT agreed with management that Complainant did not request light duty until September 11, 2018 via fax. The DRT also found that "management appropriately sought guidance from the Occupational Health Nurse Administrator and HR from September 11, 2018 until their decision was rendered to return the grievant to work on September 15, 2018." The DRT concluded that Complainant's grievance with respect to being placed off work from August 24 and September 14, 2018 was without merit.

The Notice and Order was sent to Complainant's mailing address on file and was not returned as undeliverable. We note that Complainant returned the Designation of Representative form and the Settlement Discussion form that was referenced in the Notice and Order demonstrating that she was on notice of the scheduled time and date of the IC. On the scheduled date and time, the AJ and the Agency representative were available for the IC. Complainant failed to join the conference call.

On June 27, 2019, the AJ issued a Notice of Intent to Issue Sanction and Order to Show Cause (SCO) permitting Complainant until July 9, 2019, to file a response as to why she was not available for the IC on June 24, 2019. The document was sent to Complainant's email address on file and was not returned as undeliverable. The document stated that Complainant was to submit her response via email to [charlottehearings@eoc.gov](mailto:charlottehearings@eoc.gov) by 5:00 p.m. on July 9, 2019. Complainant did not respond to the SCO. Accordingly, on July 10, 2019, the AJ dismissed Complainant's hearing request as a sanction for failing to prosecute.

On appeal, Complainant states that she submitted the settlement form in May 2019 and asserts that she learned on *June 20, 2019*<sup>10</sup> via email that she missed her appointment and that her case was being dismissed due to her failure to appear at a "meeting." Complainant states that neither she nor her representative was aware of the scheduled meeting with the AJ. Complainant does not explain why she never responded to the email.

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. Sanctions serve a dual purpose. On the one hand, they aim to deter the underlying conduct of the non-complying party and prevent similar misconduct in the future. Barbour v. U.S. Postal Serv., EEOC 07A30133 (June 16, 2005). On the other hand, they are corrective and provide equitable remedies to the opposing party. Given these dual purposes, sanctions must be tailored to each situation by applying the least severe sanction necessary to respond to a party's failure to show good cause for its actions and to equitably remedy the opposing party. Royal v. Dep't of Veterans Affairs, EEOC Request No. 0520080052 (Sept. 25, 2009). Factors pertinent to "tailoring" a sanction, or determining whether a sanction is even warranted, include: (1) the extent and nature of the non-compliance, including the justification presented by the non-complying party; (2) the prejudicial effect of the non-compliance on the opposing party; (3) the consequences resulting from the delay in justice, if any; (4) the number of times the party has engaged in such conduct; and (5) the effect on the integrity of the EEO process as a whole. Id.

Regarding the first and fourth factors, the record shows that Complainant's non-compliance consisted of failing to appear for the June 24<sup>th</sup> IC or respond to the SCO. For the first time on appeal, Complainant attempts to explain her failure to appear at the IC by claiming that she was not aware of the "meeting." We do not find her explanation credible since the undisputed facts show that she received the Notice and Order and responded to portions of the Notice and Order demonstrating that she in fact was on notice of the IC.

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<sup>10</sup> Complainant likely meant June 27th instead of June 20<sup>th</sup>.

Further, on appeal, while Complainant indicates that she received the SCO, she fails to explain why she did not respond to it. The record establishes that Complainant was on notice that her failure to appear for the IC and her failure to respond to the SCO could result in the dismissal of her hearing request. Applying the second and third factors, the Agency was prejudiced, and justice was delayed by Complainant's failure to attend the IC as the hearing process came to a standstill.

With respect to the fifth factor, we have consistently held in recent decisions that dismissal of a hearing request as a sanction is only appropriate in extreme circumstances. One such circumstance is when the complainant engages in contumacious conduct, not merely negligence. Cassey B. v. Dep't of Veterans Affairs, EEOC Appeal No. 2019004838 (Sept. 24, 2020); Cecile T. v. Dep't of the Treasury, EEOC Appeal No. 2019002373 (Sept. 22, 2020); Carolyn M. v. U.S. Postal Serv., EEOC Request No. 2019004843 (Mar. 10, 2020). Examples of contumacious conduct warranting dismissal of hearing requests include: Charlie K. v. Dep't of Veterans Affairs, EEOC Appeal No. 2019002293 (Sept. 22, 2020) (failure to provide investigative affidavit during agency investigation and failure to provide answers to interrogatories during discovery despite being granted multiple extensions in both phases of the proceeding, as well as failure to appear at pre-hearing conference); and Cleo S. v. U.S. Postal Serv., EEOC Appeal No. 0120181406 (Feb. 28, 2020) (failure to participate in email communications being sought by the Agency and to produce documentation ordered by AJ in a manner demonstrating disregard for administrative process and unwillingness to comply with AJ's orders despite warning of consequences). Absent a showing of contumacious conduct, hearing requests may be dismissed where the complainant fails to pursue his or her claim with due diligence. Alice S. v. Soc. Sec. Admin., EEOC Appeal No. 2019002475 (Sept. 22, 2020) (failure to respond to emails from AJ that included initial conference order and order to show cause due to overlooking those emails); Robert A. v. U.S. Postal Serv., EEOC Appeal No. 0120182698 (Feb. 21, 2020) (failure to respond to order to show cause despite having received order from AJ via email, and failure to provide evidence that he was incapacitated and unable to comply with the order).

In other words, there must be a showing that Complainant either willfully disobeyed the AJ's orders or unjustifiably failed to respond to those orders in order to justify dismissal of the hearing request as a sanction. In the absence of either circumstance, we cannot find that the integrity of that process had been so compromised as to warrant the most severe sanction. When a lesser sanction would normally suffice to deter the conduct and to equitably remedy the opposing party an AJ may be abusing his discretion by dismissing the hearing. See Georgianne B. v. Dep't of Agric., EEOC Appeal Nos 0120181591 & 0120181592 (Feb. 27, 2020) (dismissal of hearing request rejected on appeal where AJ dismissed hearing request outright rather than grant Agency's motion to compel discovery or limiting the complainant's discovery when the complainant failed to appear at the initial conference and failed to respond to a discovery request despite the fact that the parties and the AJ remaining in continuous email correspondence in an effort to litigate the case); Drucilla Y. v. Dep't of the Treasury, EEOC Appeal No. 0120182728 (Feb. 27, 2020) (dismissal of hearing request rejected on appeal where the complainant made earnest but unsuccessful effort to comply with an onerous acknowledgement and scheduling order).

With the foregoing considerations in mind, we find that Complainant's two incidents of non-compliance did not rise to the level of contumacious conduct; however, she failed to demonstrate that she was confused by the orders or had otherwise made a documented effort to comply with the AJ's orders. Likewise, she has not demonstrated that she was incapacitated in any way or that she had been prevented from complying with the orders by circumstances out of her control. Complainant's conduct in the instant case reflects her unjustified failure to exercise the due diligence necessary for the administrative process to function properly. Further, Complainant failed to take responsibility for her behavior and her actions demonstrate a disregard of the administrative hearing process. We find that the AJ appropriately tailored the sanction in this case to, among other things, ensure compliance with AJ Orders in the future. see Leoma B. v. U.S. Postal Serv., EEOC Appeal No. 2020002542 (Nov. 18, 2020); see also, Vickie T. v. U.S. Postal Serv., EEOC Appeal No. 0120181675 (Jan. 22, 2020); Erich B. v. U.S. Postal Serv., EEOC Appeal Nos. 2020004690 & 2020004691 (Oct. 15, 2020). As a result, the Commission finds that the AJ's dismissal of the hearing request as a sanction was reasonable and not an abuse of discretion. We now move on to address the merits of Complainant's claim.

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").

### *Disparate Treatment*

Complainant must satisfy a three-part evidentiary scheme to prevail on a claim of disparate treatment discrimination. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). First, Complainant must establish a prima facie case by demonstrating that she was subjected to an adverse employment action under circumstances that would support an inference of discrimination. McDonnell Douglas, 411 U.S. at 802; Furnco Constr. Corp. v. Waters, 438 U.S. 567, 576 (1978). Second, the burden is on the Agency to articulate a legitimate, nondiscriminatory, reason for its actions. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). Third, should the Agency carry its burden, Complainant must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the Agency were not its true reasons, but were a pretext for discrimination. McDonnell Douglas, 411 U.S. at 804; St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993); see Prewitt v. U.S. Postal Service, 662 F.2d 292 (5<sup>th</sup> Cir. 1981) (applying this analytical framework to cases brought under the Rehabilitation Act).

### Claim 1 – Hold-Down Assignment

We assume for purposes of this decision that Complainant established a prima facie case of discrimination. We find that management officials articulated a legitimate, non-discriminatory explanation for removing Complainant from the HDR. Specifically, M1 believed that Complainant was no longer contractually entitled to the HDR because she was not capable of performing every aspect of the assignment. The record indicates that management essentially concluded that the award of the HDR was contractually void. The HDR was then assigned to a CCA (CCA1) who could perform every aspect of the assignment. While the DRT concluded that removing Complainant from the HDR violated the NA, it did not find any evidence of ill-motives on the part of any management official when removing Complainant.

We also find that Complainant failed to establish that management's legitimate, non-discriminatory explanation was a pretext or otherwise motivated by discriminatory animus. Aside from Complainant's bare, uncorroborated complaints, the record is devoid of evidence that management held discriminatory animus when it removed Complainant from her HDR. We note that even Complainant states that she does not believe her medical condition was the reason for removing the HDR. This issue appears to be more about an erroneous interpretation of the union contract than discriminatory motives. See Hughlette v. U.S. Postal Serv., EEOC Appeal No. 01A00078 (Aug. 8, 2000). Accordingly, we find insufficient evidence in the record of unlawful discrimination.

### Claim 2 – Off Work August 24 - September 14, 2018

We assume that Complainant established a prima facie case of discrimination with respect to Claim 2. The record shows that the Agency articulated a legitimate, non-discriminatory reason for placing Complainant off work on August 24, 2018. Specifically, M1 explains that management had been requesting clarifying medical documentation from Complainant since June 8, 2018 without success.<sup>11</sup>

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<sup>11</sup> We note that the record contains several contradictory statements made by Complainant. Complainant initially stated to management that she could not walk hills or climb stairs with no mention of a maximum number of work hours. Thereafter, Complainant provided a medical note indicating that the "route described is within reason of the patient's restrictions and contains the minimum steps necessary for the patient to continue to work." We note that the "route" was not described in P1's letter. The first time P1 mentioned any restriction with respect her hours, was on August 3, 2018. In the EEO counseling report, Complainant indicated that her August 3, 2018 restrictions included "no degree of incline." Complainant also testified that when she first brought P1's August 3, 2018 letter to management, S1A immediately demanded that she have P1 provide the degree of incline and number of steps for each house she could climb, which does not seem credible since the August 3, 2018 restrictions do not mention anything having to do with climbing, hills, stairs or incline. On August 24, 2018, Complainant left a written note with her supervisor asserting that she is being worked outside her restrictions which she claimed included no stairs and hills. Based upon these confusing and often contradictory statements, we

After Complainant had left a written note with her supervisor on August 24, 2018, indicating that she could not work a specific route due to her restrictions of “no hills or stairs” and no more than eight hours of work each day, management finally made the decision to keep Complainant off work until she provided the requested clarifying medical documentation. Management also stated that Complainant would like to pick and choose the assignments that she was able to perform without clear guidance.

We find insufficient evidence of pretext or discriminatory animus. The record shows that Complainant failed to respond to the Agency’s request for medical documentation until mid-September 2018. The record also shows that within a day or two of receiving adequate medical documentation, the Agency returned Complainant to work. Additionally, other than Complainant’s subjective speculation and opinions, Complainant failed to present evidence of discriminatory animus on the part of any responsible management official. Accordingly, we find that Complainant has not established unlawful disparate treatment with respect to this claim.

#### *Denial of Reasonable Accommodation*

A request for a modification at work because of a medical condition is a request for reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC Notice No. 915.002, Question 1 (Oct. 17, 2002) (“Enforcement Guidance on Reasonable Accommodation”). Under the Rehabilitation Act, an employee is not required to use the “magic” words “reasonable accommodation” when making a request. See Enforcement Guidance on Reasonable Accommodation, Question 1. Instead, the employee or the employee's representative need only inform the agency that he or she needs an adjustment or change at work for a reason related to a medical condition. See *Triplett-Graham v. U.S Postal Serv.*, EEOC Appeal No. 01A44720 (Feb. 24, 2006), req. for reconsid. den'd, EEOC Request No. 05A60859 (Sep. 19, 2006); see also *Geraldine B. v. Dep’t of Veterans Affairs*, EEOC Appeal No. 0120090181 (Oct. 13, 2015).

After receiving a request for reasonable accommodation, an agency “must make a reasonable effort to determine the appropriate accommodation.” 29 C.F.R. pt. 1614. app. § 1630.9. Thus, “it may be necessary for the [agency] to initiate an informal, interactive process with the individual with a disability . . . [to] identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.” 29 C.F.R. § 1630.2(o)(3); see also 29 C.F.R. pt. 1630 app. § 1630.9; Enforcement Guidance on Reasonable Accommodation at Question 5. When the need for accommodation is not obvious, an agency may require that the individual with a disability provide documentation of the need for accommodation. 29 C.F.R. pt. 1630 app. § 1630.9. The agency may require only the documentation that is needed to establish that the individual has a disability and that the disability necessitates reasonable accommodation. Enforcement Guidance on Reasonable Accommodation at Question 6.

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find it likely and reasonable that the Agency was often confused as to the exact nature of Complainant’s claimed restrictions.

We find that Complainant failed to engage in the interactive process as is required under the Rehabilitation Act, because she did not provide the Agency with adequate medical documentation to explain the nature of her impairment and her limitations prior to mid-September 2018. Accordingly, the Commission finds that Complainant was not entitled to reasonable accommodation prior to September 13, 2018 because prior to that date, she failed to provide sufficient medical documentation to substantiate her disability and need for the accommodation requested. See Estate of William K. Taylor, Jr. v. Dep't of Homeland Sec., EEOC Appeal No. 0120090482 (June 20, 2013) (complainant's failure to provide requested documentation caused failure to receive possible accommodation), req. to reconsid. den'd, EEOC Request No. 0520130591 (Jan. 16, 2014). After Complainant provided sufficient supporting medical documentation, the Agency returned Complainant to work. As a result, the Commission finds that the Agency did not deny Complainant reasonable accommodation in violation of the Rehabilitation Act.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's final decision finding that Complainant failed to prove her claims as alleged.

### STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0920)

The Commission may, in its discretion, reconsider this appellate decision if 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, a 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 (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:



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Carlton M. Hadden, Director  
Office of Federal Operations

June 16, 2021

Date