



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]

Eve E.,<sup>1</sup>  
Complainant,

v.

Andrew M. Saul,  
Commissioner,  
Social Security Administration,  
Agency.

Appeal No. 2020004148

Hearing No. 530-2018-00245X

Agency No. PHI-17-0754-SSA

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final order dated June 10, 2020, dismissing her complaint of unlawful employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission REVERSES the Agency's final order and REMANDS the complaint for further processing.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant was a former Earnings Reviewer, GS-7 at the Agency's Mid-Atlantic Social Security Center (MATSSC) building in Philadelphia, Pennsylvania. On October 11, 2017, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the basis of disability when, on July 12, 2017, Complainant was forced to walk down the stairs during an emergency/evacuation drill, in spite of her disability.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of her right to request a hearing before an Equal

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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.

Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing.

On March 30, 2020, the Agency filed a motion for a decision without a hearing, asserting that it did not subject Complainant to discrimination as alleged. On June 1, 2020, over Complainant's objections, the assigned AJ dismissed Complainant's case for failure to state a claim.

The record indicates that on July 12, 2017, the seven-story building where Complainant worked needed to be evacuated due to the delivery of a suspicious package. At the time of the emergency evacuation, the Agency had in place a Facility Occupant Emergency Plan (OEP), which provides that in a non-fire evacuation situation, freight elevators will be manually operated by building emergency personnel to evacuate handicapped employees. Additionally, the OEP provides that employees having a disability which does not permit them to walk down stairs, such as Complainant, should remain in the stairwell (with the appropriate disabled persons monitor) to be rescued by the fire department. Complainant alleged that she was forced to descend the stairs instead of being offered the freight elevator or waiting for the fire department.

Complainant alleged that an Assistant Module Manager (AMM), who was not a Floor Warden or a member of the Evacuation Team, physically forced Complainant down five flights of stairs after Complainant indicated to AMM that she physically could not go down the stairs; that she just had back surgery; that she had a disability; and that pertinent information was in her personnel file.

The AJ stated that the circumstances of this matter do not concern Complainant's performance of the essential functions of her job, but rather, the Agency providing assistance to Complainant to allow for her safe egress during an emergency evacuation. As such, the AJ asserted, the Rehabilitation Act does not apply. The AJ noted that Complainant may have a claim in some other forum for violation of the Agency's OEP but that Complainant had not stated a claim for which the Commission may grant relief.

On June 1, 2020, the AJ dismissed Complainant's case for failure to state a claim upon which relief may be granted. On June 10, 2020, the Agency issued a final order stating that the AJ found no discrimination and adopting that decision. The instant appeal followed.

### CONTENTIONS ON APPEAL

In her Appeal Brief, Complainant asserts that the AJ erred in finding that there was no discrimination and that there were no genuine issues of material fact. Complainant requests that the Commission reverse the AJ's decision and find in her favor.

In its Appeal Brief, the Agency reiterates its determination, asserting that Complainant sought a personal use accommodation to assist her with her mobility impairment that an agency is not required to provide.

The Agency requests that the Commission affirm the AJ's decision and reject Complainant's attempt to convert its employees' safety efforts in a crisis into a "failure to accommodate."

### 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 factual conclusions and legal analysis of the AJ and Agency -- 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

At the onset, we note that the AJ dismissed the matter finding that the complaint failed to state a claim upon which relief can be granted. We also note that the Agency erred when it stated that the AJ found no discrimination.

The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that a complaint can be dismissed if that complaint fails to state a claim. An agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that agency because of race, color, religion, sex, national origin, age, disabling condition, genetic information, or reprisal. 29 C.F.R. §§ 1614.103, .106(a). The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994).

Here, we find that the AJ erred in asserting that a claim of denial of reasonable accommodation solely involves performance of the essential functions of Complainant's job. We have posited that a claim of denial of reasonable accommodation also relates to Complainant's enjoyment of equal benefits and privileges of employment as are enjoyed by the Agency's other similarly situated employees without disabilities. See EEOC Enforcement Guidelines on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC Notice

No. 915.002, General Principles (Oct. 17, 2002). Clearly, safely being able to exit the worksite during an emergency evacuation would be a benefit/privilege of employment. Therefore, we REVERSE the AJ's decision dismissing the instant complaint for failure to state a claim.

### CONCLUSION

Accordingly, we REVERSE the Agency's final order and REMAND the matter for further processing in accordance with the Order below.

### ORDER

The Agency is directed to submit a copy of the complaint file to the EEOC Hearings Unit of the Philadelphia District Office within fifteen (15) calendar days of the date this decision becomes final. 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 AJ shall process the hearing request and hold a hearing in accordance with 29 C.F.R. § 1614.109, unless the AJ determines that a decision without a hearing is appropriate. The Agency shall then 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

June 2, 2021

Date