



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

[REDACTED]
Lelia D,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Appeal No. 2021003679

Agency No. 4G700008521

DECISION

Complainant timely appealed to the Equal Employment Opportunity Commission (“EEOC” or “Commission”) from the Agency’s April 29, 2021 dismissal of her complaint of unlawful 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., Section 501 of the Rehabilitation Act of 1973 (“Rehabilitation Act”), as amended, 29 U.S.C. § 791 et seq., and Title II of the Genetic Information Nondiscrimination Act of 2008 (“GINA”), 42 U.S.C. § 2000ff et seq.²

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.

² The Agency’s Final Decision does not include genetic information as a basis for discrimination, however, Complainant included it in her Formal Complaint, referencing her medical records. Title II of GINA prohibits employers from discriminating against any employee because of genetic information with respect to the employee. 29 C.F.R. § 1635.1. Genetic information means information about (i) an individual’s genetic tests; (ii) the genetic tests of that individual’s family members; and (iii) the manifestation of a disease or disorder in family members of such individual (family medical history). 29 C.F.R. § 1635.3(c). Complainant’s complaint is devoid of any allegations or facts regarding genetic tests, the genetic tests of her family members, or her family medical history. See Complainant v. United States Postal Serv., EEOC Appeal No. 0120122328 (Jun. 20, 2013). However, the contents of the confidential medical records at issue are not identified, therefore, there is insufficient evidence to support the Agency’s decision to exclude Complainant’s GINA claim from consideration.

BACKGROUND

At the time of events giving rise to this complaint, Complainant was employed by the Agency as a Part-Time Flexible Sales, Services Distribution Associate, PS-06, at the Baldwin Post Office in Baldwin, Louisiana.

On April 9, 2021, Complainant filed a Formal EEO Complaint alleging that she had been subjected to discrimination and a hostile work environment/ harassment, by the Agency, on the bases of disability (mental), genetic information, and reprisal (prior protected activity)³ when:

1. On February 25, 2021, she received correspondence from the Postmaster (“PM”) regarding her duty status, and,
2. On February 25, 2021, she became aware that PM violated the Health Insurance Portability and Accountability Act (“HIPPA”) when he viewed her medical documentation.

According to Complainant’s formal complaint, the alleged harassing actions are related to her pending EEO complaint, alleging harassment by the former postmaster (“FPM”). Among other things, FPM would regularly request medical information from Complainant, sending her correspondence similar to the correspondence referenced in Claim 1 of the instant complaint. Complainant addressed the matter through grievances and in an EEO complaint, which, at the time of filing the instant complaint, was pending a hearing before an EEOC Administrative Judge.

On February 25, 2021, Complainant called PM upon receiving correspondence he sent, notifying her that the Agency had not received documentation supporting Complainant’s medical absence since July 28, 2020. Complainant attempted to explain that she should no longer be receiving such correspondence. It was already established that she would fax all medical updates through her doctor’s office to the number listed on the Agency’s Return to Work Medical Certification Form, per FPM’s request, to be received by the Occupational Health Nurse. Complainant also identifies another Agency official as her “reporting person.”

During the phone call, PM revealed that immediately before he retired, FPM handed him a file with Complainant’s medical documentation and updated him on “the situation.” Complainant informed PM that he should not have received those documents, as they were confidential medical information, and out of date forms and medical excuses and absences.

³ Although the Agency lists “unspecified” as the underlying protected activity, Complainant’s Formal EEO Complaint references EEOC Hearing No. 460202100134X (pending hearing) (alleging that from 2018 through his retirement in or about 2020, the former PM harassed Complainant by improperly disclosing medical information to third parties, requesting that she resubmit documentation, and calling her to provoke arguments regarding her long term leave), and multiple related grievances (unspecified claims and dates).

The phone call, which lasted 43 minutes, was incredibly stressful and degrading for Complainant, as PM cut her off, told her she was rude, disrespectful, and annoying. He also made condescending comments to her about her knowledge, and told her that “the situation seemed like problems [Complainant] brought upon [her]self.” Complainant acknowledges that “tempers were high” and she and PM “began to talk at each other and not with each other.” It appeared that PM only heard FPM’s side of the story and would not listen to her. Complainant alleges that FPM gave PM her medical information as part of a “personal vendetta” against her.

Complainant asserts that the alleged harassing events “caused a mental breakdown.” She had already been taking medication to treat a mental health condition, and indicates that the alleged harassment exacerbated her condition, as currently she sees multiple medical professionals for work-related stress due to the handling of her injury.

The Agency dismissed Complainant’s complaint for failure to state a claim, pursuant to 29 C.F.R. § 1614.107(a)(1). The instant appeal followed.

ANALYSIS AND FINDINGS

Agency Improperly Relied on the Merits

Upon review, the Commission finds that the Agency’s reason for dismissing the complaint addresses the merits of the claim without a proper investigation as required by the regulations. We find that the Agency’s articulated reason for the action in dispute, i.e., “that even if true are minor nuisance claims, related to issues clearly falling within the scope of management discretion” and that they are an attempt to impose judgement “on how to run the day to day operations of the Agency” goes to the merits of Complainant’s complaint, and is irrelevant to the procedural issue of whether she has stated a viable claim under 29 C.F.R. Part 1614. See Osborne v. Department of the Treas., EEOC Request No. 05960111 (July 19, 1996).

Complainant States a Claim of Harassment

Under the regulations set forth at 29 C.F.R. Part 1614, an agency shall accept a complaint from an 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 or disabling condition. 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). If the complainant cannot establish that she is aggrieved, the agency shall dismiss a complaint for failure to state a claim. 29 C.F.R. § 1614.107(a)(1).

The Commission has held that where, as here, a complaint does not challenge an agency action or inaction regarding a specific term, condition, or privilege of employment, the claim of harassment may survive if it alleges conduct that is sufficiently severe or pervasive to alter the

conditions of the complainant's employment. See Harris v. Forklift Systems, Inc., 510 U.S. 17, 23 (1993).

In determining whether a harassment complaint states a claim, the Commission has repeatedly examined whether a complainant's harassment claims, when considered together and assumed to be true, were sufficient to state a hostile or abusive work environment claim. See Harris. However, we have repeatedly found that allegations of a few isolated incidents of alleged harassment usually are not sufficient to state a harassment claim. See Phillips v. Dep't of Veterans Affairs, EEOC Request No. 05960030 (July 12, 1996); Banks v. Dep't of Health and Human Servs., EEOC Request No. 05940481 (Feb. 16, 1995).

Similarly, as Complainant is raising a reprisal claim, the Commission has stated that adverse actions need not qualify as "ultimate employment actions" or materially affect the terms and conditions of employment to constitute retaliation. Lindsey v. United States Postal Serv., EEOC Request No. 05980410 (Nov. 4, 1999). Instead, claims based on statutory retaliation clauses are reviewed "with a broad view of coverage. Under Commission policy, a complainant is protected from any retaliatory discrimination that is reasonably likely to deter... complainant or others from engaging in protected activity." Maclin v. United States Postal Serv., EEOC Appeal No. 0120070788 (Mar. 29, 2007).

A fair reading of Complainant's Formal Complaint, provided in the form of a narrative statement, reveals additional allegations of harassment:

3. On February 25, 2021, she became aware that upon retirement, FPM personally handed PM a file containing out of date documents related to her medical absence, and updated PM on "the situation" (i.e. Complainant's personal health information, and,
4. On February 25, 2021, PM subjected Complainant to degrading and insulting language regarding her medical records, causing stress that significantly exacerbated Complainant's medical condition.

While on its face, the allegation in Claim 1, does not raise an allegation so severe or pervasive as to state a claim of harassment, when considered with these additional claims, and the alleged violation of medical confidentiality, we find it sufficient to state a claim, particularly in light of the broad coverage for harassment and retaliation claims. If true, violations of medical privacy would chill an employee's initiative to pursue the EEO process.

Complainant States a Claim Regarding Medical Confidentiality

The Agency properly notified Complainant that alleged HIPPA violations cannot be addressed in an EEO complaint as we have previously determined that matters concerning HIPAA, and the Privacy Act, are not within the regulations enforced by the Commission. See Agustin L. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120161494 (Jun. 21, 2016), citations omitted. The

Department of Health and Human Services' Office of Civil Rights enforces HIPAA, making the EEO complaint process the improper forum to raise a HIPAA violation. Id.

However, with respect to Complainant's allegation that the Agency violated her rights under HIPAA, the Commission finds that Complainant is also arguing that the Agency violated the Rehabilitation Act.

The Rehabilitation Act requires agencies, as employers, to treat all information obtained regarding the medical condition or history of an employee as confidential medical records. 29 C.F.R. § § 1630.14(c)(1), (b)(1), see also EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act (ADA), No. 915.002, (July 27, 2000) ("Guidance on Disability-Related Inquiries"). By its terms, this requirement applies to confidential medical information obtained from "any employee," and is not limited to individuals with disabilities. Id., Hampton v. United States Postal Serv., EEOC Appeal No. 01A00132 (Apr. 13, 2000). Such information includes any medical information voluntarily disclosed by an employee. Guidance on Disability-Related Inquiries.

Where the medical information concerns an employee's disability, the Rehabilitation Act places certain limitations on an employer's ability to make disability-related inquiries or require medical examinations of employees. Such inquiries and examinations are permissible only if they are job-related and consistent with business necessity. 29 C.F.R. §§ 1630.13(b), .14(c), Hamlin v. United States Postal Serv., EEOC Appeal No. 01A51911 (Apr. 22, 2005), but see, Barbie W. v. Dep't of Veteran's Affairs, Appeal No. 0120140439 (Sept. 9, 2016) (complainant's medical information not improperly disclosed, where "the record substantially supports" that only those directly involved with her request for a reasonable accommodation, saw her medical documentation, even though these individuals included her supervisors); see also Complainant v. United States Postal Serv., EEOC Appeal No. 0120132549 (November 14, 2013) (complainant's medical information not improperly disclosed, where the Agency released her medical benefit compensation records to the Department of Labor and a state agency responsible for processing claims for unemployment).

It is a *per se* violation of the Rehabilitation Act to access confidential employee medical records when the access is not shown to be job-related and consistent with business necessity. See Melanie F. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120142156 (Jun. 23, 2016), Vale v. United States Postal Serv., EEOC Request No. 05960585 (Sept. 5, 1997). It is the burden of the employer to show that its disability-related inquiries and requests for examination are job-related and consistent with business necessity. Guidance on Disability-Related Inquiries.

Based on her Formal Complaint, Complainant is alleging that the PM and FPM improperly accessed and/or shared her confidential medical records. The correspondence in Claim 1 and the phone call with PM regarding the correspondence appear to be allegations of improper disability related inquiries. Based on these allegations, Complainant successfully states a claim under the Rehabilitation Act.

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is VACATED.

The complaint is hereby REMANDED to the Agency for further processing in accordance with this Decision and the Order below.

ORDER (E0618)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, a copy of complainant's request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

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 (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 (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

October 18, 2021
Date