



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

[REDACTED]  
Barney G.,<sup>1</sup>  
Complainant,

v.

Kilolo Kijakazi,  
Acting Commissioner,  
Social Security Administration,  
Agency.

Appeal No. 2021000802

Agency No. OCO-20-0374-SSA

**DECISION**

On November 12, 2020, 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 October 28, 2020 final decision concerning his equal employment opportunity (EEO) complaint alleging 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 the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission REVERSES the Agency's final decision, in part and REMANDS for a supplemental investigation as to damages.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as Claims Specialist, GS-0105-11, for the Agency's Payment Center 7, Division 1, Module 9, Office of Central Operations (OCO) located in Woodlawn, Maryland.

On April 23, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against him and subjected him to a hostile work environment based on his sex (male), disability (Post Traumatic Stress Disorder (PTSD), depression, anxiety, and multi-arthritis in his back and knees), and age (58) when: (1) from February 7, 2020 and ongoing, Agency management failed

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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.

to provide him a reasonable accommodation; and (2) since February 7, 2020, he was subjected to harassment regarding requests for additional medical documents, time and attendance, telework, work performance, and his not being afforded similar opportunities as other employees.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an EEOC Administrative Judge. When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). In the decision, the Agency concluded that Complainant failed to prove that he was subjected to discrimination as alleged.

### FACTUAL BACKGROUND

#### *Claim 1 – Reasonable Accommodation*

Prior to the relevant time period herein, Complainant teleworked two days per week as part of an Agency telework pilot program. The Agency canceled the telework program in or about November 2019. Thereafter, Complainant was no longer permitted to telework.<sup>2</sup>

Complainant's essential job duties are listed as follows:

(1) Assists the public by computer, phone, or mail to establish entitlement to Social Security benefits; (2) Requests, obtains, clarifies, and verifies technical data used to analyze claims and make timely benefit entitlement decisions; (3) Completes written products that follow accepted rules of style and form, are clear and concise, audience-appropriate, and accomplish the intended purpose; (4) Continues to build technical knowledge gained during an initial six to nine months of training; and (5) Independently researches, locates and correctly applies appropriate instructions, reference material, and tools available to complete work assignments.

Complainant submitted a request for reasonable accommodation (RA) through the Agency's RA wizard system on December 18, 2019. Complainant requested four days a week of telework and submitted medical documentation to support this request. Within a few days of Complainant's RA request, management and Complainant engaged in an interactive discussion. During this interactive discussion, Complainant informed management of his medical conditions and they discussed how his coworkers, the loud work environment, the commute, and unsanitary bathrooms exacerbated his anxiety. Management informed Complainant that he needed to provide documentation from a doctor on why he needed four days a week of telework. On or about January 13, 2020, Complainant submitted the requested medical documentation after this interactive discussion in the form of a letter from one of his physicians (P1) stating:

[Complainant] is a patient of mine who I am treating for anxiety and depression as well as diabetes. The majority of his anxiety stems from the environment of his

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<sup>2</sup> The record shows that in March 2020, all Agency employees (including Complainant) began teleworking full-time due to the Covid-19 pandemic.

workplace, which causes him a lot of stress. This includes the noise level of his coworkers and the cleanliness of the office. In addition, his medications have side effects which cause him to use the bathroom frequently, and the condition of the bathroom makes it unusable. Previously, he was able to work from home and this alleviated his stress and allowed him to be more efficient with his work as well as a better quality of life. I am asking that you please allow him to Telework 4 days/week for at least the next 5 years and then we can re-evaluate. Please let me know if you have any questions.

Management reviewed the medical documentation and suggested there may be other options to accommodate Complainant. Based on the medical documentation, management offered the following alternative accommodations: (a) relocation to a different workstation in a quieter area within the module in efforts to reduce some of his anxiety, and enhance his concentration so he can perform his job more effectively; (b) an ergonomic chair; (c) noise-cancelling headphones; (d) bringing in certain medical equipment or other personal items, which may be helpful for pain management or comfort while in the office; (e) use of the Employee Health Suite for medical and/or bathroom needs; (f) use of a side office during breaks to ease the pain by laying down; and (g) footrest. Management also advised Complainant at that time that his commute was not covered under the RA process.

On January 17, 2020, Complainant shared his opinion regarding his RA in an email to management. Complainant explained that his Department of Veterans' Affairs (VA) disability rating increased over the years. Due to pain and suffering from his service-connected disabilities, his disability rating changed to 100 percent in 2017. He also stated that the drive to work and the overall work conditions exacerbated his conditions and made it hard to work and concentrate on his job functions while in the Security West building five days per week. Complainant reiterated his request for four days of telework per week, as his health provider noted in her letters.

Management explained during a face-to-face conversation, that the medical documentation from the VA does not show the impact and restrictions the medical conditions impose on his essential job functions. Management also discussed the RA policy regarding his commute issue. To improve the commute and ease stress related to the commute, management suggested alternative accommodations such as public transportation, carpooling, and Mobility services. Management also reminded Complainant that he could use the flexband window, which would give him until 9:30 a.m. to report to the worksite. Lastly, management suggested using personal leave as an alternative accommodation, which Complainant acknowledged but he did not accept nor decline. On January 18, 2020, management explained to Complainant that his medical documentation needed to explain how his conditions affected his ability to perform his work-related responsibilities. In addition, management revisited the alternative accommodations offered previously. Complainant accepted the change of cubicles.

Management spoke with Complainant again on January 31, 2020, to discuss the effectiveness of the alternative accommodations offered.

To address Complainant's concentration issues, which stemmed from Complainant's PTSD and anxiety conditions, Complainant stated that management offered to move him to a new work cubicle and offered Complainant use of noise cancelling headphones. Complainant accepted the alternate accommodation of moving work cubicles. However, he stated that due to his PTSD, he cannot wear restricting things such as noise cancelling headphones for long periods of time. Complainant affirmed that he declined to use the noise cancelling headphones. To address Complainant's anxiety associated with his frequent and often urgent need to use the bathroom, management offered Complainant use of the nurse's restroom, which was supposed to be more sanitary than the bathrooms near Complainant's work area. Complainant declined to accept this alternate accommodation because the nurse's bathroom was too far away, and the Agency could not guarantee it would be available in the event Complainant needed to use it, or that it would be in a sanitary condition.

To address Complainant's difficulty in sitting for long periods of time, which stemmed from his multi-arthritis in his back and knees, Complainant stated that his supervisor (S1) offered Complainant an ergonomic chair and the use of a side office to lay and stretch. Complainant asserted that he could not find an effective ergonomic chair that would assist in easing the pain he incurred from sitting at his desk, or in the same spot for long periods of time. Complainant further stated he has more options at home, such as an inversion table, comfortable chairs, and yoga materials that assist in easing Complainant's pain throughout the day. Complainant states he declined to accept these alternate accommodations.

Complainant affirmed that on January 31, 2020, Complainant sent management an email that explained in detail why each of the alternative accommodations offered were ineffective. In this email, he stated that although moving cubicles could help in a small way, this move would ultimately be ineffective due to his multiple disabilities, the offensive odors in Security West, the well-known mice infestation, and the disgusting bathrooms. Complainant further stated that the use of the nurse's restrooms would not be an effective alternative accommodation since the prescribed medications he takes create an urgent need for Complainant to use the bathroom. Complainant further explained that use of the side offices for stretching and rest would not be an effective alternative accommodation, since rest and stretching in this manner did not ease the pain that he suffers at his workstation.

On February 7, 2020, Complainant moved to a new cubicle he selected. On that same day, management issued him an Insufficient Medical Letter with a due date of February 27, 2020 which requested additional medical information.

Complainant submitted additional medical documentation to support his RA request on February 10, 2020 in the form of a letter from P1 stating as follows:

[Complainant] is a patient of mine who I am treating for anxiety and depression as well as diabetes. He has a history of PTSD and road rage, and the long commute to work heightens his stress and triggers anxiety. In addition, his work environment also causes anxiety due to the loud noise of his coworkers. This

high level of anxiety causes him to be unproductive and on edge. He is currently being treated with Sertraline and has been advised to continue care with his Psychiatrist, [P2]. He also has a counselor [P3] who he has been working with.

In addition, he is taking Metformin and Empagliflozin for diabetes and the side effects include diarrhea and increased urination, and he states that the bathrooms at work are not sanitary and are unusable.

Previously, he was able to work from home and this alleviated his stress and allowed him to be more productive and efficient with his work as well as a better quality of life at home. I am asking that you please allow him to Telework 4 days/week for at least one year and then we can re-evaluate on an annual basis. 4 days of Telework will allow him to remain at home away from the stresses of the office and commuting, while still allowing him to be present in the office just 1 day per week. Please let me know if you have any questions.

On February 18, 2020, Complainant provided additional medical documentation in the form of a letter from P1 as follows.

[Complainant] is a patient of mine who I have been seeing for the past year for multiple chronic comorbidities which includes anxiety and PTSD. His anxiety is related to his travel to work and the work environment, and he is requesting to be able to work from home at least 4x/week to ease his anxiety and allow him to accomplish his work more efficiently.

[Complainant] describes his workplace as distracting and unsanitary to his level of comfort. He also expresses that his commute is stressful and makes it difficult for him to focus on his work responsibilities and it also takes him a long time at the end of the day to unwind after a stressful workday and the commute. This causes extra stress on him and stress on his family. [Complainant] also states that the sanitary conditions at work are not conducive to his needs. Some of his medications can cause him to use the restroom more frequently and urgently so this often becomes an issue. He expresses that not knowing how clean the restroom will be, along with not knowing when the [rodent] infestation in the office will come into place, make him greatly anxious. He spends significant time cleaning and wiping down his cubicle area which takes time from performing his duties at work. More specifically, due to his anxiety caused by the work environment, it makes it very difficult for him to perform some of his major job functions, including the "ability to adjudicate and authorize entitlement or disallowance of actions ... being able to examine evidence, interpret and apply complex laws and regulations, analyze and research. In dealing with coworkers and the public, he states that his level of patience is significantly restricted in addition to his ability to conduct business in a professional and respectful manner. Furthermore, the long commute and the sedentary office environment effects his

multi-arthritic condition, and the commute and anxiety exacerbates his pain and suffering. At home, he is able to work more comfortably in different chairs according to his pain level, as well as having access to home-health exercise equipment that he does not have at the office.

He confirms that he is able to do the work required of him efficiently and effectively from home, but not at the current work environment. By working 4x/week from home, he believes this would deescalate his PTSD and anxiety in the following ways: (1) Commute - Reduce road rage/aggressive driving and hence the need to calm down before and after work. (2) Access to his own bathroom and comfortable seating arrangements as his disability dictates. (3) Increase focus and concentration on work by being able to better analyze, interpret, and appropriately respond to the public and coworkers.

[Complainant] is working with me to find a treatment for anxiety and I have referred him to a Psychiatrist for further management as well. Please let me know if you have any questions.

On February 20, 2020, S1 verbally informed Complainant that she was recommending the denial of the four days a week telework due to insufficient medical documentation. S1 finalized her recommendation for denial of the four days a week telework on April 13, 2020.

### *Claim 2 – Harassment*

Complainant claimed that because he was denied telework, he was subjected to harassment regarding his time and attendance. Complainant stated that because he was denied telework, his everyday commute prevented him from earning credit hours and overtime. Complainant believed that because he accrued fewer credit hours, he was required to use more sick and annual leave for doctor's appointments. Complainant admitted he never expressly informed his supervisor or anyone else in management that the Agency's denial of his reasonable accommodation request negatively affected his use of leave and his ability to earn credit hours. Notwithstanding, Complainant believed management should have been on notice of this issue as management approved Complainant's time sheets. Complainant also contended he was subjected to harassment by the denial of his reasonable accommodation request because he was not afforded the same opportunities as other employees. Complainant believed that female employees in the office were approved to telework more readily than Complainant and another male employee.

Complainant's supervisor asserted she denied Complainant's reasonable accommodation request in accordance with the Agency policy. Complainant's supervisor stated it is Agency policy to request medical documentation to support a reasonable accommodation request. Complainant's supervisor also asserted that Complainant did not raise his concerns that his inability to telework limited his use of leave, or his ability to earn credit hours.

The supervisor affirmed that management's actions regarding the requests for leave or accommodations were not based on age or sex; they were strictly based on the medical documentation provided to support the request.

### ANALYSIS AND FINDINGS

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").

#### *Denial of Reasonable Accommodation*

Under EEOC regulations implementing the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), an individual with a disability is one who: (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment 29 C.F.R. § 1630.2(g)(1). Major life activities include, but are not limited to: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. 29 C.F.R. § 1630.2(i)(1)(i). The term "substantially limits" shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. 29 C.F.R. § 1630.2(j)(1)(i). "Substantially limits" is not meant to be a demanding standard. *Id.* An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. 29 C.F.R. § 1630.2(j)(1)(ii). An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. *Id.*

In the instant case, we find that Complainant is an individual with a disability because he has physical and mental impairments that substantially limits him in the major life activities of sitting and interaction with others, in addition to other limitations. Moreover, we note that the Agency also concludes that Complainant is an individual with a disability under the expansive definition as defined in the ADAAA, as noted above.

To establish that he was unlawfully 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 him with a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act,

EEOC Notice No. 915.002 (Oct. 17, 2002) (Enforcement Guidance on Reasonable Accommodation). An individual with a disability is “qualified” if he or she satisfies the requisite skill, experience, education, and other job-related requirements of the employment position that the 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). “Essential functions” are the fundamental job duties of the employment position that the individual holds or desires. *Id.* § 1630.2(n). Here, it is undisputed that Complainant met the requisite skill, experience, education, and other job-related requirements for his position.

A federal agency may not discriminate against a qualified individual based on disability and is required to make reasonable accommodations to the known physical and mental limitations of an otherwise qualified individual with a disability unless the Agency can show that reasonable accommodation would cause an undue hardship. *See* 29 C.F.R. § 1630.2(o), (p). The agency may choose among reasonable accommodations as long as the chosen accommodation is effective. An “effective” accommodation either removes a workplace barrier, thereby providing an individual with an equal opportunity to apply for a position, to perform the essential functions of a position, or to gain equal access to a benefit or privilege of employment. Enforcement Guidance on Reasonable Accommodation.

Contrary to the Agency’s assertions, we find that a nexus between Complainant’s disabilities and need to telework has been established by Complainant’s testimony and P1’s medical documentation, including the letter provided to the Agency on or about February 18, 2020. Complainant’s physician described various conditions associated with working at the office that created a high level of anxiety resulting in Complainant’s inability to concentrate on specific essential tasks. The record shows that these anxiety-producing conditions (workplace barriers) significantly reduce Complainant’s ability to perform the essential functions of his position. Examples of the work-place barriers identified by P1 include: (a) Complainant’s lack of control over the sanitary nature of his work environment; (b) lack of a private, sanitary bathroom in close proximity to Complainant; (c) the commute to and from work; (d) in-person interaction with coworkers and the public; and (e) general work-place noise levels.<sup>3</sup> P1 specifically concluded that four days of telework would address each of these conditions sufficiently to enable Complainant the ability to perform the essential functions of his position. The undisputed record also establishes that Complainant was able to perform the essential functions of his job when he had worked from home in the past. Accordingly, we find that Complainant established that telework provided an effective accommodation.

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<sup>3</sup> The record also shows that Complainant requires highly specialized medical equipment (i.e., inversion table) to accommodate his physical disability and reduce his daily arthritic pain to tolerable levels. While the Agency offered the alternative accommodation of an ergonomic chair, footrest and adjacent office to stretch, the more specialized equipment that Complainant uses throughout the day was not offered by the Agency.



The Agency correctly notes that Complainant is not entitled to the accommodation of his choice. However, the Commission has long held that, while individuals protected under the Rehabilitation Act are not necessarily entitled to the accommodation of their choice, they are entitled to an effective accommodation. See Castaneda v. U.S. Postal Serv., EEOC Appeal No. 01931005 (Feb. 17, 1994); U.S. Airways v. Barnett, 535 U.S. 391, 400 (2002). Contrary to the Agency's assertions, the record establishes that the alternative accommodations offered to Complainant were not effective in removing these workplace barriers. The undisputed record establishes that the Agency did not address the root cause of Complainant's anxiety which the record shows significantly reduced his ability to perform the essential functions of his position.

The general unsanitary nature of the work environment is not disputed by the Agency. The record shows that due to his disabilities, Complainant was obsessed with the sanitary conditions rendering it extremely difficult to focus on anything else.<sup>4</sup> The record establishes that the Agency did nothing to change the sanitary conditions of the workplace.<sup>5</sup> In addition, the Agency did not provide Complainant with an accommodation that addressed the anxiety and emotional disturbance caused by having to commute to the office.<sup>6</sup> The record also shows that the Agency's offer to provide noise canceling headphones, would not be effective because such devices aggravate his PTSD.<sup>7</sup>

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<sup>4</sup> The record shows that Complainant spent a significant amount of time at work attempting to sanitize his work environment.

<sup>5</sup> While the Agency offered Complainant the use of the nurse's bathroom, the record is devoid of evidence to suggest that this bathroom was substantially cleaner than the bathrooms for the general population. However, even assuming this bathroom was cleaner, the longer distance from Complainant's work station to the nurse's bathroom created anxiety for Complainant because he frequently required a bathroom in very close proximity to avoid accidents and was afraid he would not make it to the nurse's bathroom in the likely event of an emergency.

<sup>6</sup> The Agency's position that it had no responsibility to address Complainant's commuting needs is without merit. Commission precedent clearly has established that a request for telecommuting or a shorter commuting time because of a disability triggers an Agency's responsibility under the Rehabilitation Act. See Jones v. Dep't of Agric., EEOC Appeal No. 0120080833 (July 18, 2012); Southerland v. U.S. Postal Serv., EEOC Appeal No. 0120091983 (June 15, 2010) Kubik v. Dep't of Transp., EEOC Appeal 01973801 (July 9, 2001); Galo v. U.S. Postal Serv., EEOC Appeal No. 01973267 (Aug. 5, 1999); Hupka v. Dep't of Def., EEOC Appeal No. 02960003 (Aug. 13, 1997).

<sup>7</sup> While Complainant accepted a new office location, the record is unclear whether a change in location significantly reduced the noise levels. We also note that Complainant testified that equipment offered by the Agency to address Complainant's arthritic pain would likely not be sufficient to reduce his pain, given the fact that Complainant uses highly specialized equipment at home that is very different than what was offered by the Agency.

The Agency asserts that there is nothing in the record to show that after Complainant was offered alternative reasonable accommodations, Complainant's medical provider re-assessed his condition and determined the alternative reasonable accommodations were not effective. This argument is not persuasive especially as it pertains to the alternative accommodations offered by the Agency to address Complainant's mental limitations since those alternative accommodations clearly fail to address the needs articulated by P1 in the first place. See Thersa E. v. U.S. Postal Serv., EEOC Appeal No. 0120182764 (June 23, 2021); Sandra A. v. Dep't of the Navy, EEOC Appeal No. 2020001588 (Sept. 16, 2021); and Beth G. v. Dep't of Veterans Affairs, EEOC Appeal No. 2019005972 (Nov. 19, 2020).

While agencies are obligated to provide accommodations to a qualified individual with disability, the Rehabilitation Act allows agencies to raise an affirmative defense that the accommodation would impose an undue hardship. Generalized conclusions will not suffice to support a claim of undue hardship. Rather, a showing of undue hardship must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense. See Julius C. v. Dep't of the Air Force, EEOC Appeal No. 0120151295 (June 16, 2017); Enforcement Guidance on Reasonable Accommodation.

The Agency herein does not raise the defense of undue burden and the record does not support such a finding. The record shows that prior to November 2019, Complainant had been teleworking two days per week. In addition, as of March 2020, Complainant had been teleworking full-time. The undisputed record establishes that Complainant was able to perform the essential functions of his position during the times he was able to telework. Accordingly, we find that the Agency has not established that permitting Complainant four days of telework creates an undue burden. Because the Agency has failed to provide Complainant with an effective accommodation or demonstrate undue hardship, we find that the denial of his accommodation request for four days of telework violated the Rehabilitation Act.

Finally, where a finding of discrimination involves a failure to provide reasonable accommodation, damages may be awarded if the agency fails to demonstrate that it made a good faith effort to provide the complainant with a reasonable accommodation. 42 U.S.C. § 1981a(a)(3); see also Jones v. Dep't of Agric., EEOC Appeal No. 0120080833 (July 18, 2012); Gunn v. U.S. Postal Serv., EEOC Appeal No. 0120053293 (June 15, 2007). Here, we find that the Agency did not engage in good-faith efforts to accommodate Complainant.

### *Hostile Work Environment*

Harassment of an employee that would not occur but for the employee's race, color, sex, national origin, age, disability, or religion is unlawful, if it is sufficiently severe or pervasive. To establish a claim of harassment a complainant must show that: (1) he belongs to a statutorily protected class; (2) he was subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on his statutorily protected class; (4) the harassment affected a term or condition of employment and/or

had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982). Further, the incidents must have been “sufficiently severe or pervasive to alter the conditions of [complainant's] employment and create an abusive working environment.” Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993).

Whether the harassment is sufficiently severe to trigger a violation of Title VII must be determined by looking at the circumstances, including the frequency of the discriminatory conduct, its severity, whether it is physically threatening or humiliating, or a mere offensive utterance, and whether it unreasonably interferes with an employee's work performance. Harris 510 U.S. at 17, 23; Enforcement Guidance on Harris, at pp. 3, 6. The harassers' conduct should be evaluated from the objective viewpoint of a reasonable person in the victim's circumstances. Id. A single incident or group of isolated incidents will generally not be regarded as discriminatory harassment unless the conduct is severe. Walker v. Ford Motor Co., 684 F.2d 1355, 1358 (11th Cir. 1982).

Upon review of the record, we find that the alleged conduct was not sufficiently severe or pervasive to constitute actionable harassment. We also find insufficient evidence that the conduct was motivated by discriminatory animus. As discussed above, management's actions regarding telework and their requests for medical documentation were based on their attempts to follow Agency policy. Management further added that Complainant did not raise his concerns that his inability to telework limited his use of leave or his ability to earn credit hours. Accordingly, we conclude that Complainant has failed to prove that the Agency subjected him to a discriminatory hostile work environment as alleged.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE in part and AFFIRM in part the Agency's final decisions and REMAND the matter to the Agency for further action in accordance with the ORDER below.

### ORDER

1. To the extent that Complainant still requires it, the Agency shall immediately engage in the interactive process with Complainant and provide him with a reasonable accommodation for his disability in accordance with our decision herein.
2. Within 90 calendar days of the date this decision is issued, the Agency shall conduct a supplemental investigation to determine Complainant's entitlement to compensatory damages under the Rehabilitation Act. The Agency shall give Complainant notice of the right to submit objective evidence (pursuant to the guidance given in Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993)) and request objective evidence from

Complainant in support of her request for compensatory damages within forty-five (45) calendar days of the date Complainant receives the Agency's notice. No later than sixty (60) calendar days after the supplemental investigation is complete, the Agency shall issue a final Agency decision addressing the issue of compensatory damages and remit payment of said amount. The final decision shall contain appeal rights to the Commission.

3. Within 60 days of the date this decision is issued, the Agency shall restore any leave used by Complainant due to the Agency's failure to provide him with an effective reasonable accommodation.
4. Within 90 calendar days from the date this decision is issued, the Agency shall provide eight hours of interactive or in-person training to the responsible management officials identified by Complainant (the Module Manager and the Assistant Module Manager) regarding management's responsibilities under the Rehabilitation Act. The Agency shall provide proof of the officials' attendance, as well as the contents of the in-person training provided.
5. The Agency shall consider taking disciplinary action against the Module Manager and the Assistant Module Manager. The Commission does not consider training to be disciplinary action. The Agency shall report its decision to the Compliance Officer. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If any of the officials have left the Agency's employ, the Agency shall furnish documentation of their departure date.

#### POSTING ORDER (G0617)

The Agency is ordered to post at the Social Security Administration, Office of Central Operations in Woodlawn, Maryland 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 signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar 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).

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 (T0610)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. 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 on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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

FOR THE COMMISSION:



Carlton M. Hadden, Director  
Office of Federal Operations

September 12, 2022

Date