



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

[REDACTED]
Tyson A.,¹
Complainant,

v.

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

Appeal No. 2021004945

Hearing No. 541-2020-00021X

Agency No. 6H-000-0004-19

DECISION

On September 8, 2021, 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 12, 2021, final decision concerning his 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

During the relevant time, Complainant worked as a Physical Security Specialist at the Agency's Western Area Building in Denver, Colorado. The record indicates that on March 30, 2017, Complainant was placed on administrative leave and sent for a fitness for duty examination on May 17, 2017. Report of Investigation (ROI) at 106. At that time, Complainant was found not fit for duty and remained in a non-duty status. Complainant indicated that he provided letters from his physician and therapist seeking a return to work.

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.

He was sent a letter stating that he would have to undergo a fitness for duty reevaluation on January 16, 2019, to see if he was fit to return to work after being off for 22 months. After undergoing a reevaluation, Complainant returned to work on February 11, 2019. Id.

On May 10, 2019, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of disability (depression, anxiety, insomnia, and posttraumatic stress disorder (PTSD)) and in reprisal for prior protected EEO activity under Section 501 of the Rehabilitation Act of 1973 when:

1. On January 16, 2019, management sent Complainant for a Fitness for Duty reevaluation, during which they also improperly disclosed his medical information without his consent; and
2. Beginning January 16, 2019, and continuing, management failed to engage in the interactive reasonable accommodation process and subsequently failed to grant Complainant's accommodation request.

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 Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing but subsequently withdrew his request. Consequently, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b).

The Agency, in its final decision, concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged. The instant appeal followed.

STANDARD OF REVIEW

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 Chap. 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”).

ANALYSIS AND FINDINGS

Claim 1

We note that claim 1 contains two separate causes of action. Complainant first alleges he was required to undergo a Fitness for Duty reevaluation in violation of the Rehabilitation Act and in reprisal for prior protected EEO activity. Complainant also claimed that the Agency violated the Rehabilitation Act when his medical information was allegedly improperly disclosed.

Medical Examination

With regard the Fitness for Duty reevaluation, we note that whether complainant is a person with a disability need not be addressed as the limitations in the Rehabilitation Act regarding disability-related inquiries and medical examinations apply to all employees. The Rehabilitation Act was amended in 1992 to apply the standards of the Americans with Disabilities Act (ADA) to complaints of discrimination by federal employees or applicants for employment. See EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (Enforcement Guidance - Disability Related Inquiries), No. 915.002 (July 26, 2000); Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities, EEOC Notice No. 915.002 (Mar. 25, 1997); and EEOC Enforcement Guidance on Preemployment Disability-Related Questions and Medical Examinations (Enforcement Guidance - Preemployment), EEOC Notice No. 915.002 (Oct. 10, 1995). Because the restrictions on employers with regard to disability-related inquiries and medical examinations apply to all employees, and not just to those with disabilities, it is not necessary to inquire whether the employee is a person with a disability. Enforcement Guidance - Disability Related Inquiries, p. 3.

The Rehabilitation Act places certain limitations on an employer's ability to make disability-related inquiries or require medical examinations of employees only if it is job-related and consistent with business necessity. 29 C.F.R. §§ 1630.13(b), .14(c). Generally, a disability-related inquiry or medical examination of an employee may be "job-related and consistent with business necessity" when an employer "has a reasonable belief, based on objective evidence, that: (1) an employee's ability to perform essential job functions will be impaired by a medical condition; or (2) an employee will pose a direct threat due to a medical condition."² Enforcement Guidance - Disability-Related Inquiries, at 15-16. 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. Id. at 15-23.

² "Direct threat" means a significant risk of substantial harm that cannot be eliminated or reduced by reasonable accommodation. 29 C.F.R. 1630.2(r).

Medical Director stated that he was the Agency official responsible for sending Complainant to the reevaluation. ROI at 132. Citing the Agency's policies for fitness for duty evaluations and requirements for reevaluation, Medical Director indicated that reevaluation was needed to determine if Complainant achieved sufficient clinical stability of risk "to safely return to work and not pose a risk to others or himself." ROI at 149-50. Medical Director indicated that in the fitness for duty evaluation from 2017 Complainant was provided a series of recommended steps and sessions that could allow Complainant to return to duty. Upon completion of the recommended treatment plan, Complainant was to provide the Agency with letters of recommendation from his treatment providers confirming that he had taken the remedial steps. Then, for Complainant to return to duty, he would be referred for a fitness for duty reevaluation in order to determine if he was in fact fit to return to full duty status. ROI at 150. Upon review, we find that the Agency's disability-related medical examination was not improper, and the Agency did not violate the Rehabilitation Act by requiring the reevaluation for Complainant.

To the extent Complainant argues that the Fitness for Duty reevaluation constituted reprisal, we find, for the reasons outlined above, that the Agency provided legitimate, nondiscriminatory reasons for its decision to require Complainant to undergo a fitness for duty re-evaluation. To ultimately prevail, Complainant must prove, by a preponderance of the evidence, that the Agency's legitimate, nondiscriminatory explanations for its actions are a pretext for discrimination. Reeves v. Sanderson Plumbing Prod., Inc., 530 U.S. 133 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993); Tex. Dep't of Cmty. Aff. v. Burdine, 450 U.S. 248, 256 (1981). We find that Complainant has not done so here. Rather, he relies upon his own assumptions and inferences as evidence that he was the object of disparate treatment.

A complainant's generalized testimony alleging a subjective belief that a particular action was motivated by discrimination is insufficient to show pretext. See Perry v. Dep't of Hous. and Urban Dev., EEOC Appeal No. 01A54957 (Jan. 4, 2006). Mere assertions or conjecture that an agency's explanation is a pretext for intentional discrimination is insufficient because subjective belief, however genuine, does not constitute evidence of pretext. The focus of pretext inquiry is whether an agency's actions were motivated by discriminatory animus. Further, at all times the ultimate burden of persuasion remains with Complainant to demonstrate by a preponderance of the evidence that the Agency was motivated by prohibited discrimination." Alameda B. v. Dep't of the Treasury, EEOC Appeal No. 0120181968 (Sept. 24, 2019). The record is devoid of such evidence in this case.

Medical Disclosure

Concerning the issue of disclosure of confidential medical information, as outlined in claim 1, section 102(d) of the Americans with Disabilities Act, and by extension Section 501(g) the Rehabilitation Act, specifically prohibits the disclosure of medical information, except in certain limited situations. See Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC Notice No. 915.002, (Oct. 17, 2002) (describing the limited exceptions to the medical confidentiality requirements); Titus v. Dep't of Homeland Sec., EEOC Appeal No. 0120102384 (Apr. 17, 2013).

In this situation, Complainant signed a release of his medical records concerning information related to Complainant's "medical absence and recent recommendation to return to work." ROI at 31. This release was signed on September 7, 2018 and was valid for one year. ROI at 31. It is not disputed that Complainant signed such a medical release. Rather, Complainant asserted that this requested information had nothing to do with his return-to-work request. ROI at 108. Based upon the evidence of record, we disagree with Complainant's assertion. Medical Director requested the information of his treating physician with respect to determining Complainant's fitness to return to work. ROI at 150-51. The title of the memorandum from his treating physician to Medical Director is entitled "Responses to letter '[Complainant's] return to work clearance.'" ROI at 131. Complainant has not identified information which was requested that was not relevant to his return to work. ROI at 108. As the Agency was in possession of a signed release of medical information related to the memorandum from the physician, and no specifically requested information has been identified outside of that request, the Commission finds that the Agency did not violate the Rehabilitation Act.

Claim 2

Concerning claim 2, an agency must make reasonable accommodation for the known physical and mental limitations of a qualified individual with a disability unless it can show that accommodation would cause an undue hardship. 29 C.F.R. §§ 1630.2(o), 1630.2(p).

In the instant case, Complainant has not demonstrated that he required a reasonable accommodation. While Complainant's treating provider released him to return to work on August 23, 2018, with a list of restrictions; on August 27, 2018, four days later, the same treating provider opined Complainant had met "'maximum medical improvement' and can now return to full duty...August 31, 2018. He is cleared to return to duty without any restrictions." ROI at 36. Complainant, himself, acknowledged that he had no work-related restrictions and that he can perform his job-related duties "with or without a reasonable accommodation." ROI at 109, 117. As Complainant has not demonstrated that he has a need for a reasonable accommodation, the Agency did not violate the Rehabilitation Act by failing to participate in the interactive process to provide a reasonable accommodation that he did not need. See U.S. Airways, Inc. v. Barnett, 535 U.S. 391 (2002).

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we find that the final decision correctly determined that the preponderance of the evidence did not establish that Complainant was discriminated against by the Agency as alleged. Accordingly, we AFFIRM the Agency's final decision finding no discrimination.

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).

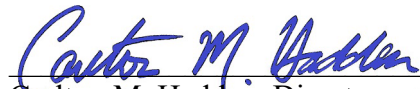
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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:



Carlton M. Hadden, Director
Office of Federal Operations

November 7, 2022
Date