



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

[REDACTED]
Teddy D.,¹
Complainant,

v.

Carlos Del Toro,
Secretary,
Department of the Navy,
Agency.

Appeal No. 2023000367

Agency No. 22-63394-01417

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated October 14, 2022, dismissing his complaint alleging 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.

BACKGROUND

During the period at issue, Complainant worked as an Agency Program Coordinator, Government Purchase Card Program, Naval Surface Warfare Center, Port Hueneme Division (NSWC PHD) in Oxnard, California.

On August 1, 2022, Complainant initiated EEO Counselor contact. Informal efforts to resolve his concerns were unsuccessful.

On September 15, 2022, Complainant filed a formal EEO complaint alleging that the Agency subjected him to discrimination on the basis of disability when:

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.

1. On or around July 20, 2022, his supervisor approved his reasonable accommodation request for 80% telework instead of 100% telework as he requested. The supervisor did not discuss his disability and potential accommodations with him, no accommodation was being offered. Complainant consider this a “de facto denial” of his request.
2. On or around July 20, 2022, his supervisor required him to sign his reasonable accommodation letter or he could be removed from the program, denying his right to file an EEO complaint.

As a remedy, Complainant requested that he be provided 100% telework as a reasonable accommodation.

On October 14, 2022, the Agency dismissed the formal complaint for failure to state a claim, pursuant to 29 C.F.R. § 1614.107(a)(1), finding that Complainant failed to allege that he was aggrieved by the above-described incidents.

The instant appeal followed. On appeal, the Agency argues that the formal complaint has been rendered moot. The Agency acknowledges that it initially granted Complainant 80% telework in June 2022. The Agency asserts, however, that on or about October 18, 2022, it informed Complainant that it had reconsidered his reasonable accommodation request and provided him with 100% telework, as he had requested. In support of its representation, the Agency submitted an appellate document, identified as “Attachment 7” which informed Complainant of the Agency’s action as discussed above.

ANALYSIS AND FINDINGS

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 the agency because of race, color, religion, sex, national origin, age or disabling condition. 29 C.F.R. §§ 1614.103, 1614.106(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). The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part that an agency shall dismiss a complaint that fails to state a claim.

Here, Complainant stated that on May 16, 2022, he requested disability accommodation for 100% telework. Complainant stated that on July 20, 2022, he received an “approved RA [reasonable accommodation]” for 80% telework, and an ergonomic desk and a chair. Complainant stated that no one discussed his disability and potential accommodations with him before making the accommodation decision. Complainant further stated that he was informed by his supervisor that if he did not sign the RA agreement for 80% telework, and instead chose to file an EEO complaint, the RA Coordinator/EEO Specialist would remove him from the RA program. As a result, Complainant stated that he signed the provided accommodation offer in order not to be removed from the program.

We first determine that the matters specifically identified in the formal complaint state a justiciable claim of a violation of the Rehabilitation Act and should not have been dismissed for failure to state a claim under 29 C.F.R. § 1614.107(a)(1).

However, for the first time on appeal, the Agency argues that the complaint should now be dismissed as moot because Agency officials reconsidered and, as of October 18, 2022, Complainant's original request for 100% telework was approved. To determine whether a complaint has been rendered moot, we must ascertain whether: (1) it can be said with assurance that there is no reasonable expectation that the alleged violation will recur; and (2) interim relief of events have completely and irrevocably eradicated the effects of the alleged discrimination. See County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979); Kuo v. Dep't of the Navy, EEOC Request No. 05970343 (July 10, 1998). When such circumstances exist, no relief is available and no need for a determination of the rights of the party is presented.

Here, we note that Complainant was not provided the 100% telework until four months after his original May 16, 2022 reasonable accommodation request. A delay in providing a reasonable accommodation can establish a violation of the Rehabilitation Act and may result in a claim for damages. See Phillis W. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120180863 (June 5, 2019) (complainant awarded damages for exacerbation of pre-existing physical conditions as a result of delay in providing reasonable accommodation). Therefore, in this case, we cannot say with any certainty that the subsequent granting of 100% telework eradicated the possible effects of the alleged discrimination here. As such, we do not find that the Agency's later approval of Complainant's request for full-time telework rendered his EEO complaint moot.

CONCLUSION

For the reasons discussed above, the Agency's dismissal of the complaint is REVERSED and the complaint is REMANDED to the Agency for further processing in accordance with the following Order.²

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.

² If, however, Complainant is now satisfied with the provision of 100% telework and does not wish to further pursue his complaint, he may enter into a written settlement agreement with the Agency withdrawing his complaint.

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

February 7, 2023

Date