



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

[REDACTED]  
Vicky R.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2021003873

Agency No. 20-00027-01541

**DECISION**

On June 24, 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 May 27, 2021, final decision concerning her 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 REVERSES the Agency's final decision.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Support Services Specialist, GS-0342-06, within the Wounded Warrior Battalion – East. Her duty station was located in Camp Lejeune, North Carolina. On March 10, 2020, Complainant filed a formal EEO complaint in which she alleged that the Agency subjected her to discrimination and a hostile work environment on the bases disability (major depressive disorder; general anxiety disorder; attention deficit – hyperactivity disorder) and in reprisal for prior protected EEO activity when:

1. From October 2, 2019 to February 25, 2020, Complainant's supervisor approved reasonable accommodation request was initially overturned, subsequently delayed, and logistically blocked from being executed;

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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.

2. On October 10-11, 2019, Complainant took sick leave after experiencing a depressive episode brought on by being told to move from her reasonable accommodation workplace back to her original workplace;
3. On October 15, 2019, after Complainant moved back to her cubicle, Complainant's second-level supervisor had a Marine tape "Quiet" signs around Complainant's work area. Complainant states she was humiliated and the signs seemed to trigger certain staff members to get even louder in an attempt to mock/discredit her disability and accommodation; and
4. From October 2019 through December 2019, Complainant stated she provided requested documentation in support of her reasonable accommodation request and follow up on her request but has not been included in the interactive reasonable accommodation process.

Complainant identified the following individuals as either responsible management officials (RMOs) or witnesses:

- The Supervisory Logistics Management Specialist who served as Complainant's immediate supervisor (S1 - Witness);
- The Officer-in-Charge who served as Complainant's second-level supervisor (S2 – RMO);
- The Civilian Command Advisor (RMO);
- The former Battalion Commander (RMO);
- The current Battalion Commander (Witness);
- The Battalion Sergeant Major (RMO);
- The Reasonable Accommodation Coordinator (RAC – Witness);
- The Facilities Manager for the Battalion (Witness).

At the conclusion of that investigation, the Agency provided Complainant with a copy of the investigative report (IR) and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). On March 31, 2021, Complainant notified the Agency that she was requesting a final decision without a hearing. In accordance with Complainant's request, the Agency issued its final decision pursuant to 29 C.F.R. § 1614.110(b). The Agency concluded in that decision that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

According to medical documentation provided by Complainant, she was diagnosed with major depression, anxiety, and hyperactivity in January 2019, and began treatment at that time. Her convergent conditions made it difficult for her to concentrate while sitting in a cubicle located in

the middle of a noisy, highly-trafficked work area. In addition, she stated that she was so consumed by stress that she was unable to complete routine household chores like cooking, cleaning, laundry, and spending time with her children. Instead, she would work at home after hours and on weekends, completing tasks that she could not finish during her time during her regular work hours. In a reasonable accommodation request submitted on October 2, 2019, Complainant asked that she be moved to a quiet, distraction-free workspace away from her coworkers. She emphasized that she could perform the duties of her position without limitation as long as she could work in a separate office with a door and walls that extended to the ceiling, as opposed to a cubicle. IR 180-83, 189-90, 260-61, 333-36, 456-57

On October 4, 2019, S1, with the apparent concurrence of S2 gave Complainant permission to move into an unoccupied office. The office had been a storage room for information technology and its use as an office had not been approved by the former Battalion Commander. In addition to Complainant, the Facilities Manager was also assigned to that workspace. But according to the Command Advisor, since the space was only 81 square feet, it was not large enough to accommodate them both. Four days later, on October 8, 2019, the Battalion Sergeant Major observed Complainant in the new office space and reported what he had seen to the Command Advisor. The Command Advisor, in turn, reported the move to the former Battalion Commander. On October 9, 2019, the former Battalion Commander overturned S1's decision and directed that Complainant move back to her former cubicle. Complainant returned to her previous work location on October 15, 2019. When asked to justify his decision, the Battalion Commander averred that the office in question was located in an area increasingly prone to significant distractions, that the assignment did not fully comply with space allocation guidance, and that other informal alternatives were being pursued. As further justification for the decision to move Complainant back to her former workspace, the Command Advisor affirmed that S1 and S2 had approved the move without authorization. S1 and S2 stated that, following Complainant's return to her original workspace, they offered Complainant a selection of cubicles from which to choose in lieu of an enclosed office. However, when asked whether allowing Complainant to remain in the office that S1 and S2 had originally given her would have been an undue hardship, S1, S2, and the former Battalion Commander all said that it would not. IR 262-64, 457-58, 502-03, 517, 618-19. According to S1, the RAC even recommended that Complainant stay in the office because allowing her to do so would "not create a hardship to the unit." IR 458.

Complainant asserted that she had experienced severe stress between October 2019 and February 2020, which aggravated her medical conditions. IR 269-70, 444, 459, 504-05, 509-10, 694. The Facilities Manager stated that Complainant confided in her about what was going on, that Complainant cried almost every day pleading with S2 to help her, and that upper management would often talk to her out in the open about her medical conditions. IR 695-96. At the same time, there was extensive email correspondence among S1, S2, the Command Advisor, the Former Battalion Commander, the RAC, and Complainant documenting the Agency's progress, or lack thereof, on her reasonable accommodation request. IR 295-328, 446-47, 487-89. The officials in Complainant's management chain gave various reasons for the delay in processing her accommodation request. S1 averred that they did not like the prompt action he took in October 2019, after becoming aware of Complainant's need for an accommodation. IR 460.

On February 25, 2020, S1, with the concurrence of S2 and at the direction of the new Battalion Commander who had taken over on February 12, 2020, approved Complainant's reasonable accommodation request. She was provided with a private office away from her high-traffic former workspace. IR 207-08, 627. Nevertheless, Complainant maintained that she had been excluded from the reasonable accommodation process at the battalion level since November 25, 2019, when she expressed to the RAC and S1 that it was detrimental to her health to have moved back to her old workspace. She averred that she was not included in the battalion-level interactive discussions despite her repeated requests to be included in those meetings. IR 263-64, 268, 446-47. S1 averred that Complainant was involved with the RA process but, "not as involved at the battalion level as she thought she should be." IR 460. S2 maintained that Complainant was involved in the interactive process. IR 506.

### 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").

In its final decision, the Agency found that Complainant failed to establish the existence of a hostile work environment in connection with the Agency's four-month delay in processing her request for a reasonable accommodation. We believe that this approach is incorrect, however. The essence of Complainant's claim, is that by withdrawing an accommodation that it had already provided and waiting four months before granting essentially the same accommodation, the Agency demonstrated its lack of a good faith effort in processing her accommodation request. In other words, the central issue in this case is not whether the Agency's four-month delay in processing her reasonable accommodation request gave rise to a hostile work environment. Rather, it is whether the overturning of the initial accommodation and the four-month delay in approving the accommodation were themselves a violation of the Rehabilitation Act. Accordingly, we will analyze this case in terms of failure to accommodate rather than hostile work environment.

To establish that she was unlawfully denied a reasonable accommodation, Complainant must show that: (1) she is an individual with a disability, as defined by 29 C.F.R. § 1630.2(g); (2) she is a "qualified" individual with a disability pursuant to 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide her with a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (Enforcement Guidance), EEOC Notice No. 915.002 (Oct. 17, 2002). A qualified individual with a disability is an individual who can perform the essential functions of the position with or without an accommodation. Complainant is without question an individual with a disability as she was diagnosed with depression, anxiety, and hyperactivity, all of which had long-term prognoses. She

was a qualified individual with a disability in that she was able to perform all of the essential functions of her position as a Support Services Specialist as long as she could work in an area where noise and distractions were minimal.

In Susan B. v. Dep't of the Army, EEOC Appeal No. 2020001632 (June 16, 2021), the Commission found that the agency's four-month delay in processing the complainant's request for a reasonable accommodation was unreasonable and therefore a violation of the Rehabilitation Act. We noted in that decision:

The record supports that Complainant engaged in the interactive process by being responsive, cooperative, and in many cases proactive. However, the Agency consistently provided delayed responses to Complainant's emails even though Complainant had provided all documentation needed to process the request. These delays were unnecessary, violated the Agency's responsibility to expeditiously respond to a request for reasonable accommodation, and demonstrated a lack of good faith in the Agency's accommodation efforts. Although the AJ found no retaliatory animus as a contributing factor to the Agency's delay, we note that a finding of discriminatory intent is not an element of a failure to timely accommodate. Therefore, we find that the AJ correctly determined that the Agency violated the Rehabilitation Act when it unreasonably delayed processing Complainant's reasonable accommodation request by four months.

Id. On October 4, 2019, as soon as he received Complainant's reasonable accommodation request, S1 moved Complainant into a small vacant office. Four days later, S2, at the direction of the former Battalion Commander, had Complainant move back to her former workspace, a cubicle in the middle of a highly trafficked, noisy area. She remained in that area until February 25, 2020, when her reasonable accommodation request was granted by S1 at the direction of the new Battalion Commander. The former Battalion Commander and the Command Advisor justified the decision to move Complainant back to her former work area by saying that the office to which S1 had moved her was still prone to workplace distractions, that the space was too small, and that the move had not been authorized. But neither Complainant nor the Facilities Manager objected to being moved to the office and did not raise concerns about the small size of the office. The space was a private office, rather than a cubicle, which is essentially what Complainant wanted as her accommodation. On the other hand, Complainant objected vigorously to being returned to her previous workspace. For the next four months, she constantly inquired via email and telephone about the status of her reasonable accommodation request, to no avail. According to Complainant, S1, and the Facilities Manager, the stress that she experienced while being back in her original workspace had taken its toll. Like the complainant in Susan B., Complainant did her best to participate in the reasonable accommodation process and was responsive and cooperative in that process notwithstanding that she was not invited to battalion-level meetings.

Our regulations make it clear that the Agency is obligated to provide Complainant with a reasonable accommodation unless it can demonstrate that doing so would impose an undue hardship upon its operations. 29 C.F.R. § 1630.9(a). As in Susan B., the four-month delay in

providing Complainant with a reasonable accommodation was unnecessary in light of the admission by S2, the Command Advisor and the former Battalion Commander that moving Complainant to the IT-area office in October 2019 would not have imposed an undue hardship. And while the Command Advisor averred that the move was an undue hardship on the Facilities Manager, the Facilities Manager herself did not say that it was and did not express desire to return to her former workspace. IR 518, 693-94. Thus, while the Agency ultimately provided Complainant with her requested accommodation on February 25, 2020, not allowing her to remain in the IT-area office while her accommodation request was pending when doing so would clearly have not imposed an undue hardship clearly demonstrated the lack of a good faith effort to accommodate on the part of the Agency. Consequently, as in Susan B, the four-month delay in providing Complainant with her requested reasonable accommodation constituted a violation of the Rehabilitation Act regardless of the existence of a discriminatory motive or whether it constituted discriminatory harassment.

When discrimination is found, an agency must provide a complainant with a remedy that constitutes full, make-whole relief to restore the complainant as nearly as possible to the position she would have occupied absent the discrimination. See, e.g., Franks v. Bowman Transp. Co., 424 U.S. 747, 764 (1976); Albemarle Paper Co. v. Moody, 422 U.S. 405, 418-19 (1975). An agency is liable for compensatory damages where it has not demonstrated a good faith effort to reasonably accommodate the complainant. Darla W. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120160042 (Dec. 12, 2017). As discussed supra, the former Battalion Commander's October 2019 decision to return Complainant to her cubicle notwithstanding his admission that moving Complainant to the office would not have constituted an undue hardship clearly demonstrates a lack of a good faith in its efforts to accommodate her. The Agency's lack of good faith is made apparent by the former Battalion Commander's decision to overturn the temporary accommodation of moving Complainant to the IT-area office despite the RAC's recommendation to the contrary. It was further compounded by the four-month delay in providing the accommodation as well as its failure to allow Complainant to participate in reasonable accommodation meetings at the battalion level. All of this had the effect of triggering Complainant's multiple conditions, causing her extensive suffering during her four-month ordeal in waiting for her accommodation request to be approved. In determining damages, the Commission applies the principle that a tortfeasor takes its victims as it finds them. Sheila O. v. Dep't of Health & Human Servs., EEOC Appeal No. 2021001250 (June 7, 2022). Therefore, to the extent that Complainant's pre-existing disabilities were aggravated by the Agency's conduct, she is entitled to be compensated for any harm resulting from the Agency's actions between October 9, 2019, the date she was told to return to her former cubicle, and February 25, 2020, the date her reasonable accommodation was granted.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, we REVERSE the Agency's final decision. The Agency is ordered to comply with the Order set forth below.

ORDER (C0618)

The Agency is ordered to take the following remedial action:

1. The Agency shall conduct and complete a supplemental investigation on the issue of Complainant's entitlement to compensatory damages and will afford her an opportunity to establish a causal relationship between the Agency's discriminatory action and her pecuniary or nonpecuniary losses, if any. Effective the date that this decision is issued, the Agency shall give Complainant notice of her 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)) in support of her claim for compensatory damages. Complainant shall have 30 days from the date Complainant receives the Agency's notice to submit her compensatory damages evidence. Complainant has a duty to cooperate in determining compensatory damages, including providing evidence/input/documents (including responding to Agency requests for documentation or completing agency forms). Within 60 days of the receipt of this decision, the Agency shall determine the appropriate amount of compensatory damages. Within 60 days of determining the amount of compensatory damages due Complainant, the Agency shall issue a final decision, with appeal rights to the Commission, on the issue of compensatory damages, and payment of any undisputed funds. 29 C.F.R. § 1614.110. The Agency shall submit a copy of the final decision to the Compliance Officer at the address set forth herein.
2. The Agency shall restore any leave used by Complainant due to the Agency's failure to provide her with an effective reasonable accommodation as of October 9, 2019 and continuing.
3. Within 90 calendar days of the date this decision is issued the Agency shall provide four hours of in-person or interactive training to the supervisors and managers within the Wounded Warrior Battalion – East, identified in this decision as the responsible management officials, regarding their responsibilities with respect to eliminating discrimination and providing reasonable accommodations in the federal workplace.
4. Within 30 calendar days of the date this decision is issued the Agency shall consider taking appropriate disciplinary action against the responsible management officials identified in this decision. The Commission does not consider training to be disciplinary. 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 responsible management officials have left the Agency's employ, the Agency shall furnish documentation of their departure date(s).

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation of the Agency's calculation of back pay and

other benefits due Complainant, including evidence that the corrective action has been implemented.

#### POSTING ORDER (G0617)

The Agency is ordered to post at the facilities of the Wounded Warrior Battalion – East 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).

#### ATTORNEY'S FEES (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she/he is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of receipt of this decision. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

#### 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

August 4, 2023

Date