



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

[REDACTED]  
Marjorie F.,<sup>1</sup>  
Complainant,

v.

Denis R. McDonough,  
Secretary,  
Department of Veterans Affairs,  
Agency.

Appeal No. 2022001439

Agency No. 2004-0590-2021102023

**DECISION**

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 final December 16, 2021 final decision concerning an equal employment opportunity (EEO) complaint claiming 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 Advanced Medical Support Assistant (AMSA), GS-6, at the Agency's VA Hampton Medical Center in Hampton, Virginia.

On April 1, 2021, Complainant filed a formal EEO complaint alleging that the Agency discriminated against her and subjected her to a hostile work environment based on her disability when:

1. On October 23, 2020, Complainant asked a Human Resources Specialist for a reasonable accommodation and on January 5, 2021, Complainant's first level supervisor (S1) denied her request.

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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 January 11, 2021, S1 announced, over a speaker telephone, her intent to terminate Complainant.
3. On January 21, 2021, a co-worker stated that she would harm Complainant, and on January 22, 2021, Complainant reported this incident to S1 and S1 failed to respond.
4. On January 23, 2021, Complainant resigned in lieu of S1's threat of termination.
5. On February 3, 2021, Complainant learned that S1 had marked her as Absent Without Leave (AWOL) for 48 hours.

After its investigation into the complaint, the Agency provided Complainant with a copy of the report of investigation and notice of right to request a hearing before an EEOC Administrative Judge. Complainant requested a final decision.

On December 16, 2021, the Agency issued a final decision, pursuant 29 C.F.R. § 1614.110(b), finding no discrimination was established.

The instant appeal followed.<sup>2</sup> On appeal, Complainant, through counsel argues that the Agency: (1) failed to accommodate her disability and did not engage in the interactive process regarding her request for reasonable accommodation; (2) created and maintained a hostile work environment caused by S1 based on Complainant's disability; and (3) the Agency's actions resulted in Complainant's constructive discharge. Therefore, Complainant requests that the Commission reverse the Agency's decision, make a finding of unlawful discrimination, and remand the matter for a determination on damages.

### 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").

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<sup>2</sup> On appeal, Complainant requested an extension to file her brief, which the Commission granted.

### **Reasonable Accommodation: Claim 1**

Under the Commission's regulations, an agency is required to make reasonable accommodation to the known physical and mental limitations of a qualified individual with a disability unless the agency can show that accommodation would cause an undue hardship. 29 C.F.R. §§ 1630.2(o) and (p).

To establish that she was 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 person with a disability is an individual who can perform the essential functions of the position with or without an accommodation.

The record reflects that Complainant is a qualified individual with a disability. Complainant testified that she was diagnosed with depressive disorder in 1997, fibromyalgia in 1999, anxiety in 2013, and on January 4, 2019, she was diagnosed with PTSD (post-traumatic stress disorder), MST (military sexual trauma), and Adult ADD (attention deficit disorder). Complainant also indicated that, as a result of her medical conditions, she has occupational and social impairments with reduced reliability and productivity due to depressed mood, anxiety, mild memory loss (forgetting names, directions, or recent events), and disturbances of motivation and mood which interfere with routine activities. Despite these conditions, Complainant explained that she can effectivity work and perform the duties of her clinical AMSA position as long as she works in a quiet environment. Complainant noted that she was able work at another VA Medical Center for eight years prior to working at the Hampton VA Medical Center because the prior medical center accommodated her disabilities by assigning her a quiet workplace environment. Consequently, Complainant asserted that she could perform the essential functions of her position as long as she was accommodated with a quiet office area to work.

Complainant has alleged that the Agency failed to accommodate her or engage in the interactive process when she first requested accommodation on October 23, 2020, three days before she was scheduled to complete her rehire orientation at the Hampton VA Medical Center.

### **Delayed Processing of Accommodation Request**

An employer should respond expeditiously to a request for reasonable accommodation. Enforcement Guidance on Reasonable Accommodation at Question 10. If the employer and the individual with a disability need to engage in an interactive process, this too should proceed as quickly as possible. Id. Similarly, the employer should act promptly to provide the reasonable accommodation. Id. Unnecessary delays can result in a violation. Id. In determining whether there has been an unnecessary delay in responding to a request for reasonable accommodation, relevant factors include: (1) the reason(s) for delay, (2) the length of the delay, (3) how much the

individual with a disability and the employer each contributed to the delay, (4) what the employer was doing during the delay, and (5) whether the required accommodation was simple or complex to provide.

Our review of the record supports a finding that the Agency unreasonably delayed the processing of Complainant's reasonable accommodation request.

The record includes a copy of an October 23, 2020 letter from Complainant addressed to the Local Reasonable Accommodations Coordinator (LRAC). In the letter, Complainant informed the LRAC, in pertinent part, "I am requesting Reasonable Accommodations for my permanent work-site, CBOC, located in Virginia Beach, VA." Complainant further identified in the letter that she had Adult ADD, military service-related disabilities including PTSD, MST, and anxiety, and she also indicated that she was receiving social security disability benefits for a muscular-skeletal condition. Complainant also indicated in the letter that having a quiet work environment allowed her to successfully perform her duties. Specifically, the letter states, in pertinent part:

My specific challenge is staying on topic, task and time while others are talking near me (related to ADD). Daily, long-term working in a noisy or/with constant work chatter, dramatically and severely increased my anxiety levels related to above disabilities.

My accommodation idea comes from my last 20 years. During that time, though rated as fully disabled, I obtained 2 BS degrees and eight years straight of successful work at VAMC-Denver, CO, doing the same job I am currently hired for here as an Advanced Medical Support Assistant (AMSA) at a CBOC located less than 2 miles from my home.

My current medical care team realized that I was a successful, respected, team-oriented ASMA because of my work environment. There, my department had limited space, so my supervisor put my work-station in a cast-room. It was very quiet, and had few visitors, or cast patients. After five years a temp joined me, so my supervisor, moved my work-station to a common physician's room allocated for radiology studying and small group meetings. Again, quiet and very little traffic expect physician and supervisor requests or questions for me. [Emphasis in original].

In contrast, Complainant also informed the LRAC that her work experience was not a productive one when she was not afforded an accommodation to work in a quiet environment. Specifically, Complainant explained the following:

On the other hand, in 2018, I tried to work at the Chesapeake Health Department. This had limited workspace, too. In-fact, I was never assigned a workstation. I worked in the middle of eight to ten staff members who were appropriately [sic], constantly talking. I lasted only 6 months.

Complainant concluded her letter to the LRAC with a specific request “to work in a predominate very quiet, one-person work-space” at her permanent work-site at CBOC. Complainant also indicated that she was “open for options” and asked that the LRAC contact her directly. Therefore, the record reflects that prior to reporting to work, Complainant made known her disabilities and Complainant made a request for accommodation based on what accommodation she had previously had.

The LRAC testified that she did not receive Complainant’s reasonable accommodation request until December 14, 2020. However, a copy of the written confirmation of request for accommodation indicates that “10/26/2020” was the date of Complainant’s request, but the date of the confirmation was “12/11/2020.” Consequently, it took approximately one month for the LRAC to even confirm Complainant’s initial request to: (1) work in a quiet environment with a window; (2) work without noises such as two or more people talking; and (3) to work in Virginia Beach.

S1 testified that Complainant did not submit her reasonable accommodation request until January 11, 2021.<sup>3</sup> However, other documentation in the record indicates that Complainant requested accommodation *as early as October 2020*. The LRAC and S1 have provided no explanation to account for the delayed processing of Complainant’s request from October 2020 to January 2021. The record indicates that S1 reviewed Complainant’s request and issued a decision on January 12, 2021, denying Complainant’s request to work alone and there is no indication that Complainant was offered an interim accommodation while her initial request was pending since October 2020.

#### Denial of Accommodation

In the January 12, 2021, determination, S1 granted Complainant’s request to work in Virginia, Beach and she granted Complainant’s request to have her workplace stationed near a window. However, S1 denied Complainant’s request to “work alone.” S1 reasoned that she denied this request because Complainant was required, as an AMSA, to “render quality customer service” which included “always being friendly and courteous to customers.”<sup>4</sup> S1 further testified that

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<sup>3</sup> Complainant further testified that she verbally informed S1 that she had disabilities and upcoming doctor appointments.

<sup>4</sup> The record indicates that S1 failed to check any of the boxes in section 11 on the accommodation determination to indicate a reason for the partial denial. However, S1 did provide in section 12 a detailed explanation for the denial, reasoning that the accommodation would not allow Complainant to perform the essential functions of her position. Additionally, in section 6 on the accommodation determination, S1 checked the box indicating that Complainant’s request was made to enable her to “access a benefit or privilege of employment.” Consequently, S1 did not check the box to indicate that Complainant was requesting accommodation to “perform the essential functions of [her] position” even though Complainant

Complainant's responsibilities as an AMSA included "face-to-face" interactions with patients, visitors, and co-workers, and consequently, "working alone" would not allow Complainant to execute her AMSA customer service duties. In short, S1 indicated that Complainant could not perform the essential functions of her AMSA position if she were to work alone, and in turn, would cause an operational hardship at the office.

However, in her rebuttal statement, and again on appeal, Complainant argues that S1 mischaracterized her request. Complainant testified that her request was "geared toward having individual, uninterrupted time to complete office/computer work (i.e., reports, messaging) to avoid exacerbation of [her] disabilities." Complainant further testified that at no point did she decline face-to-face interactions with her patients or colleagues. Moreover, Complainant did not request no face-to-face interactions as part of her accommodation. However, there is no evidence that either the LRAC or S1 talked to Complainant about her accommodation request to clarify what she needed.

Although protected individuals are entitled to reasonable accommodation under the Rehabilitation Act, they are not necessarily entitled to their accommodation of choice. See EEOC Notice No. 915.002, Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (October 17, 2002) ("Guidance"), Question 9. However, alternative proposed accommodations must be "effective." See U.S. Airways v. Barnett, 535 U.S. 391, 400(2002). "An ineffective 'modification' or 'adjustment' will not accommodate a disabled individual's limitations." Id. In the context of job performance, this means that a reasonable accommodation enables the individual to perform the essential functions of the position. See Guidance.

In this case, there is no indication that S1 offered Complainant an alternative accommodation regarding her workspace even though Complainant indicated in her initial October 2020 accommodation request that she was "open for options." There is no indication that S1 or the LRAC sought clarification from Complainant regarding other alternative available options to accommodate her disability.<sup>5</sup> Additionally, we note that Complainant demonstrated in her October 2020 written request that working in a quieter workspace had previously been an effective accommodation. Complainant indicated that she was able to perform the same AMSA position duties at another VA Medical Center when she was offered a quieter workplace.

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had clearly demonstrated in her October 2020 initial request that access to a quiet workspace would have allowed her to complete her AMSA duties.

<sup>5</sup> Complainant testified that S1 responded to her request for a workstation near a window by leaving a sticky note on a neighboring desk which said, "there's your window" to indicate that there was a window near Complainant. Complainant stated that she believed that the sticky note was left by S1. However, S1 denied writing the note. We note that Complainant included in her accommodation request to sit next to a window and S1 and LRAC were the main management officials aware of this request.

Consequently, Complainant demonstrated that her request in the instant complaint was effective because it allowed her to perform the essential functions of her AMSA position.

Notably, Complainant testified that there were “nearly twenty abandoned offices with computers, desks, and chairs set-up” that remained vacant the entire time she reported to the Hampton VA Medical Center. Complainant also noted that there was a position located in the back area, a quieter area, that S1 offered to a newly hired MSA but declined to be offered to Complainant, who held a more senior position as an AMSA. Complainant remained stationed in the front office area which was loud and chaotic for her even though there was available space for her to perform her duties in a quieter area. There is no indication why S1 did not consider Complainant for the back area position in light of Complainant’s accommodation request for a quieter area.<sup>6</sup>

As a direct result of working in the front office area, Complainant explained that, in December 2020, she “suddenly froze” one day in response to the “usual build-up of chaos and confusion in the AMSA front office.” Complainant explained that she experienced:

a continuous hour of being in the middle of chaos, simultaneously trying to talk to veterans, and searching through seven job computer applications; this onslaught, gives rise example of sudden exacerbation of any or all of my disability related pain.

Consequently, Complainant stated that she had to go home and the next day she “blanked out” and forgot that she needed to report to work. Complainant indicated that working in the front office had a negative impact and further exacerbated her medical conditions.

Given these circumstances of this case, we find that the record fails to support a finding that the Agency acted in good faith in processing and considering Complainant’s accommodation requests. Therefore, we find that the Agency violated the Rehabilitation Act when it unreasonably delayed processing her accommodation requests and denied her a quieter office area and failed to demonstrate that this request would not have been effective or caused an undue hardship for the Agency. We remand this claim to the Agency for further processing as indicated in our Order below.

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<sup>6</sup> The record indicates that the EEO investigator did not ask S1 questions regarding Complainant’s allegation that S1 offered a MSA employee the option to work in the back-office area.

**Disparate Treatment: Claim 5**

A claim of disparate treatment is examined under the three-part analysis first enunciated in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973). For complainant to prevail, she must first establish a prima facie of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. See McDonnell Douglas, 411 U.S. at 802; Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978). The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. See Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the agency has met its burden, the complainant bears the ultimate responsibility to persuade the fact finder by a preponderance of the evidence that the agency acted on the basis of a prohibited reason. See St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

This established order of analysis in discrimination cases, in which the first step normally consists of determining the existence of a prima facie case, need not be followed in all cases. Where the agency has articulated a legitimate, nondiscriminatory reason for the personnel action at issue, the factual inquiry can proceed directly to the third step of the McDonnell Douglas analysis, the ultimate issue of whether complainant has shown by a preponderance of the evidence that the agency's actions were motivated by discrimination. See U.S. Postal Service Board of Governors v. Aikens, 460 U.S. 711, 713-714 (1983); Hernandez v. Department of Transportation, EEOC Request No. 05900159 (June 28, 1990); Peterson v. Department of Health and Human Services, EEOC Request No. 05900467 (June 8, 1990); Washington v. Department of the Navy, EEOC Petition No. 03900056 (May 31, 1990).

As previously discussed, Complainant is a qualified individual with a disability.

The Agency articulated legitimate, non-discriminatory reasons for its actions for charging Complainant AWOL. The record reflects that S1 sent a January 25, 2021 email to Human Resources (HR) notifying HR of Complainant's January 23, 2021 written notification of her resignation. In response to this email, HR instructed, via email, that S1 put Complainant in AWOL status because "HR hasn't yet completed [Complainant's] separation coding." HR further instructed S1, "input [Complainant's] time as AWOL until she is ready to be cleared." Consequently, the record supports that Complainant was not put into AWOL status until after Complainant indicated her intent to resign from the Agency.

After careful consideration of the record, we conclude that neither during the investigation, nor on appeal, has Complainant proven, by a preponderance of the evidence, that these proffered reasons for the disputed actions were a pretext for unlawful discrimination based on Complainant's disability.



**Harassment/Hostile Work Environment: Claim 3**

To prove her discriminatory hostile environment harassment claim, Complainant must establish that she was subjected to conduct that was either so severe or so pervasive that a “reasonable person” in Complainant’s position would have found the conduct to be hostile or abusive. Complainant must also prove that the conduct was taken because of her protected basis – in this case her disability. Only if Complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993). See also, Enforcement Guidance on Harris v. Forklift Systems Inc., EEOC Notice No. 915.002 (March 8, 1994).

Here, the Nurse Manager testified that Complainant informed her in December 2020 that she felt that she and another Patient Aligned Care Team (PACT) Nurse was “picking on her” by sending Complainant Computerized Patient Record System (CPRS) alerts when Complainant was not the assigned MSA for those specific alerts. The Nurse Manager explained that she spoke with Complainant and confirmed that Complainant was not the only individual receiving the CPRS alerts, as the PACT Nurse had indicated that her Provider had instructed her to send CPRS alerts to all MSAs. Nevertheless, the Nurse Manager stated that she discussed with issue with S1, and S1 sent out message to staff that the alerts should only be sent to MSAs assigned to the PACT. Therefore, the Nurse Manager concluded that this issue had been resolved.<sup>7</sup>

However, Complainant testified that on January 21, 2021, she had an altercation with her co-worker (CW1). Complainant indicated that she received papers from a Licensed Practical Nurse (LPN) which Complainant set aside. After a few hours, Complainant discovered, after being notified by the LPN and the Registered Nurse (RN), that the action on the papers should have been completed hours before. Complainant stated that CW1 had somehow “manipulated” the situation and caused Complainant to take the fault for not timely processing the papers. When Complainant confronted CW1 about the incident, Complainant stated that CW1 began to “brow-beat [her],” dared Complainant to make another comment, pounded her fist, and promised Complainant that if she said another word CW1 would “happily beat [her].” Complainant stated that the incident left her in “shock,” and she was “unable to get out of bed for thirty days.” S1 acknowledged that Complainant informed her of this incident on January 22, 2021. S1 indicated that she requested that Complainant complete a written report which Complainant did not, and thereafter, resigned the next day on January 23, 2021.

We find that considering these allegations, even if true, there is inadequate evidence to establish that considerations of her disability motivated management’s actions toward Complainant.

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<sup>7</sup> The Nurse Manager noted that she offered Complainant the opportunity to submit a Disruptive Behavioral report regarding this matter, even though the Nurse Manager informed Complainant that such a report is normally not used to address the issue at hand (nurses sending alerts to staff members). Nevertheless, Complainant decided not to submit a Disruptive Behavioral report.

Moreover, in the case of co-worker harassment, as here, an agency is responsible for acts of harassment in the workplace where the agency (or its agents) knew or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action. Here, the record reflects that Complainant reported both incidents. The record reflects that the management took immediate action to stop Complainant and other MSAs from receiving alerts that alerts should only be sent to MSAs assigned to the PACT. Regarding the second incident, Complainant resigned the day after she reported the incident to S1 and there was no further correction action for the Agency to make.

**Constructive Discharge: Claims 2 and 4**

The central question in a constructive discharge case is whether the employer, through its unlawful discriminatory behavior, made the employee's working conditions so difficult that any reasonable person in the employee's position would feel compelled to resign. Carmon-Coleman v. Dep't of Def., EEOC Appeal No. 07A00003 (Apr. 17, 2002).

Here, we note that Complainant indicated in her initial October 2020 request for accommodation that she informed the LRAC that, due to her disabilities, she would not be able to perform her AMSA duties without accommodation – in particular a quiet office space. Complainant specifically indicated that she only “lasted six months” at another VA Medical Center that did not provide her a quiet work environment. In this instance, Complainant made her initial request for accommodation in October 2020, the Agency did not issue a determination until January 12, 2021, and the Agency failed to provide Complainant an interim accommodation while her request was pending.

Additionally, Complainant testified that on January 11, 2021, she and her co-workers as well as the Lead Supervisor were all convened together. Complainant stated that the Lead Supervisor called S1 on his phone and placed the conversation on speaker. Consequently, Complainant noted that the conversation between the Lead Supervisor and S1 could be heard by those present. Complainant explained that the Lead Supervisor asked S1 where she was and S1 responded by asking if Complainant was at the office. When the Lead Supervisor confirmed that Complainant was present, Complainant stated that she heard S1 state, “oh cuz I’m on my way to terminate her.”

S1 denied making this statement and denied having any communication with the Lead Supervisor regarding terminating Complainant’s employment. Despite this denial, the record includes testimony from two employees (AMSA – 1 and AMSA – 2) who confirmed that: (1) the conversation between S1 and Lead Supervisor was on speaker phone and (2) S1 stated that she intended to terminate Complainant.

We also note that this conversation occurred on the same day that S1 testified that she allegedly first received Complainant’s reasonable accommodation request. As previously discussed, S1 denied Complainant’s accommodation request for a quiet office space/area to work on January 12, 2021, which was also the day after S1 stated that she intended to terminate Complainant.

Consequently, Complainant's reasonable accommodation request was still pending at the time that S1 expressed an intent to terminate Complainant's employment. The proximity of S1's statement and Complainant's pending accommodation request reflects that discriminatory animus (based on disability) more likely than not factored into S1's decision to deny Complainant's accommodation request the day after she allegedly received it, and it more likely than not factored into S1's reasons for stating an intent to terminate Complainant's employment. Therefore, we find that the record reflects that S1's threat to terminate Complainant's employment was based on Complainant's disability as S1 made this threat while Complainant's reasonable accommodation request was still pending.

Collectively, we find that these circumstances, motivated by animus towards Complainant's disabilities, reasonably compelled Complainant to resign from the Agency. Therefore, we find that Complainant demonstrated that her working conditions were so intolerable that she was forced to resign, effective January 23, 2021.

Because we find that Complainant was constructively discharged, we note that Complainant is entitled to back pay from the effective date of her resignation, January 23, 2021, through the date she either elects to return to the Agency or declines to accept a position at the Agency in accordance with our Order below. We further note that Complainant's entitlement to back pay overlaps the period Complainant was charged AWOL following her January 23, 2021 resignation. Nevertheless, Complainant is still entitled to back pay even for those dates at issue she was charged AWOL after she resigned.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's finding of no discrimination for Claims 3 and 5. We REVERSE the Agency's finding of no violation of the Rehabilitation Act for failure to accommodate (Claim 1), and the Agency's finding that Complainant was constructively discharged (Claims 2 and 4).

### ORDER

The Agency is ordered to take the following remedial actions:

1. **Within 90 calendar days of the date this decision is issued**, conduct an investigation to determine whether Complainant is entitled to compensatory damages and if so, the amount of damages Complainant is entitled for this violation of the Rehabilitation Act.
  - a. Notify Complainant of her right to submit objective evidence based our guidance in Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993) and request objective evidence from Complainant in support of

compensatory damages (providing an option and instructions to request an extension in the case of extenuating circumstances).

- b. Based on the results of the investigation, issue a written decision on Complainant's entitlement to an award of compensatory damages with appeal rights to this Commission.
  - c. Pay Complainant the determined amount of compensatory damages. If there is a dispute regarding the exact amount of compensatory damages, the Agency shall issue a check to the Complainant for the undisputed amount. Complainant may petition for enforcement or clarification of the amount in dispute. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."
2. **Within 90 calendar days of the date this decision is issued**, provide at least eight (8) hours of interactive in-person EEO training to S1 and the LRAC, if they are still employed by the Agency, on responsibilities under the Rehabilitation Act with special emphasis on the Agency's obligation to provide reasonable accommodations and to timely respond and process reasonable accommodation requests. The Agency may contact our Training and Outreach Division for Assistance in obtaining the necessary training via <https://www.eeoc.gov/federal-sector/federal-training-outreach>.
3. **Within 90 calendar days of the date this decision is issued**, consider taking appropriate disciplinary action against the responsible management officials, including S1 and the LRAC, who handled Complainant's reasonable accommodation request. 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 the responsible management officials have left the Agency's employ, the Agency shall furnish documentation of their departure dates.
4. **Within 60 calendar days of the date this decision is issued**, the Agency shall offer to reinstate Complainant to the position of Advanced Medical Support Assistant, GS-6, or a substantially equivalent position in Hampton, Virginia VA Medical Center or another VA facility in the nearby geographic area, retroactive to the date Complainant resigned. Complainant may decline the offered position, and her entitlement to back pay shall cease as of the date she declines the position. If Complainant accepts the Agency's offer of reinstatement, the Agency is reminded that Complainant is entitled to a reasonable accommodation for her disability.
5. **Within 90 calendar days after the date this decision is issued**, the Agency shall determine the appropriate amount of back pay, with interest, and other benefits due to Complainant, pursuant to 29 C.F.R. § 1614.501.

6. Complainant is entitled to a back pay award beginning from the effective date of her resignation and continuing until she is reinstated to a position or declines an offer of one. Complainant shall cooperate in the Agency's efforts to compute the amount of back pay and benefits due and shall provide all relevant information requested by the Agency.

If there is a dispute regarding the exact amount of back pay and/or benefits, the Agency shall issue payment to Complainant for the undisputed amount within 60 calendar days of the date the Agency determines the amount it believes to be due. Complainant may petition for enforcement or clarification of the amount in dispute regardless of whether she accepts the Agency's payment. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."

7. **Within 30 calendar days of the date this decision is issued**, the Agency shall post a notice in accordance with Paragraph (G0617) below.
8. If Complainant was represented by an attorney, the Agency shall pay reasonable attorney's fees for this complaint in accordance with Paragraph (H1019) below.<sup>8</sup>

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 its VA Medical Center Hampton facility 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).

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<sup>8</sup> Complainant may also be entitled to additional attorney's fees for legal assistance in preparing this appeal and her subsequent request for compensatory damages.

### 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

June 14, 2023

Date