



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Randy G,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Appeal No. 2022003738

Agency No. 4E-967-0010-21

DECISION

On June 18, 2022, Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's May 19, 2022 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier at the Agency's Pearl City, Hawaii Post Office.

On December 16, 2021, Complainant filed a formal complaint alleging that the Agency discriminated against him on the basis of physical disability (Back) when 1) on June 7, 2021, his request for Wounded Warrior Leave was denied.

Complainant also alleged in an amendment to his complaint that the Agency discriminated against him on the bases of race (Black), color, physical disability (Back), and reprisal (current EEO activity) when: 2) On January 24, 2022, he was given an improper job offer; and 3) On February 5, 2022, he requested to see his file, but was told he would have to wait until February

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.

7, 2022. However, pursuant to 29 C.F.R. §1614.107(a)(1), the Agency dismissed both claims for failure to state a claim. The Agency noted that concerning claim 2, since Complainant held a light duty position and “[t]o the extent that it is the determination of the OWCP [Office of Workers’ Compensation Programs] that is under attack, and the Agency acted with OWCP guidance and approval, i.e., through OWCP, there is no adverse action by the Postal Service.” Regarding claim 3, the Agency noted that Complainant failed to demonstrate how he was harmed by being required to wait two days to view his file.

We affirm the Agency’s dismissal of claim 3 but find that claim 2 states a claim. Complainant v. United States Postal Service, EEOC Appeal No. 0120140194 (May 29, 2014) (Complainant’s allegation that he was given a modified assignment job offer outside his medical restrictions stated a claim. Even if the job offer was made in conjunction with his OWCP claim, and approved by OWCP, *the duty to reasonably accommodate an employee is independent from OWCP*); Lux v. United States Postal Service, EEO Appeal No. 0120081629 (May 15, 2008) (claim that the Agency gave her a direct order to sign a modified assignment that violated her medical restrictions was not a collateral attack on the OWCP process and stated a claim. The Agency is responsible to reasonably accommodate an employee independent of any determination by OWCP). Here, Complainant noted in his appeal statement that he has been on OWCP and light duty since December 2019, and he is not complaining about OWCP coverage, but that:

USPS did not provide me with reasonable accommodation as required by law but required me to accept a change in my work schedule in violation of the law. . . . I am alleging that management did not have an interactive discussion with me when they changed my work shift and duties. The changes increased the pain and suffering I experience during my workday as it requires me to mount and dismount my truck more frequently and requires me to stop to rest more often.

Again, the duty to reasonably accommodate Complainant is independent from OWCP. Thus, contrary to the Agency’s determination, claim 2 is worthy of investigation.

At the conclusion of the investigation of claim 1, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an EEOC Administrative Judge (AJ). Because Complainant did not respond, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

In the decision, the Agency addressed claim 1 under the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Having reviewed the record, the Agency determined that management had legitimate, nondiscriminatory reasons for denying Complainant’s leave request.

Specifically, Complainant's supervisor stated that Wounded Warriors Leave is an authorized absence from the Agency to undergo medical treatment for a service-connected disability rated at 30 percent or more, and it is a separate leave category distinct from sick leave. She further stated that Complainant called in sick on June 4, 2021, and the next day he turned in a PS Form 3971 indicating Wounded Warrior Leave. She explained that she needed to receive a signed PS Form 5980 in order to approve Complainant's leave. Complainant's supervisor further explained that she attached a post-it note on Complainant's Form 5980, so Complainant could have the form corrected by a veteran doctor, not OWCP, and affirmed this was also communicated to Complainant verbally. She maintained Complainant did not have the proper form turned in, and OWCP leave was charged for June 4, 2021. The record demonstrates that Complainant's leave request was disapproved, indicating code 049 (OWCP) was used. The record further indicates that Complainant was compensated as Wounded Warrior Leave on June 2, 2021 and as OCWP on June 4, 2021. The Agency ultimately found that Complainant failed to persuasively show that his supervisor, or others, acted with discriminatory animus.

Based on the foregoing, the Agency concluded that Complainant could not prevail on his complaint. This appeal followed. The Agency did not file any contentions in opposition to Complainant's appeal.

Having reviewed the record, we find that the Agency correctly analyzed the facts and law of this case to determine that Complainant did not establish that the Agency subjected him to discrimination as alleged.

Accordingly, the Commission AFFIRMS the Agency's finding of no discrimination but reverses the Agency's dismissal of claim 2 for failure to state a claim. Therefore, claim 2 is remanded in accordance with the Order below.

ORDER (E0618)

The Agency is ordered to process the remanded claim in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to the Complainant that it has received the remanded claim **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.

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 (T0610)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

September 21, 2023

Date