



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

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Salvatore B.,<sup>1</sup>  
Complainant,

v.

Megan J. Brennan,  
Postmaster General,  
United States Postal Service  
(Eastern Area),  
Agency.

Appeal No. 0120180949

Agency No. 4C-450-0089-17

**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 January 3, 2018 final decision concerning an equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

**BACKGROUND**

During the period at issue, Complainant worked as a City Carrier at the Agency's South Columbus, Ohio Post Office.

On August 15, 2017, Complainant filed a formal EEO complaint alleging that the Agency discriminated against him on the bases of race (African-American), sex (male), color, disability, age, and in reprisal for prior protected EEO activity when, on July 12, 2017, management improperly discussed his medical information on a teleconference within the hearing of a coworker.

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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.

After an investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b).

In its final decision, the Agency found no discrimination. Specifically, the Agency stated:

Complainant has failed to demonstrate that management disclosed information regarding his medical condition or history. Complainant's coworker who overheard the [teleconference] on July 12, 2017, [a named Clerk], stated that questions were asked about Complainant's position as well as why a position was created for him, but that [S1] responded that she was not sure. [The named Clerk] did not indicate that management disclosed information concerning the Complainant's medical condition, history, or work restrictions. Management testified that questions were asked about why the complainant was performing collections and that it was revealed that he had a special job assignment granted through OWCP. The record is devoid of any evidence that details about the Complainant's medical condition or work restrictions were disclosed or discussed." Final Agency Decision at 15.

The instant appeal followed. Complainant did not submit a statement or brief in support of his appeal.

### 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").

Among other things, Complainant has alleged that the Agency committed a violation of the Rehabilitation Act by improperly disclosing his medical information.<sup>2</sup> The Commission's regulations implementing the Rehabilitation Act provide for the confidentiality of employee medical records. Specifically, 29 C.F.R. § 1630.14(c)(1) provides, in pertinent part, that "information obtained...regarding the medical condition or history of any employee shall...be

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<sup>2</sup> To the extent that Complainant is alleging that the Agency committed a HIPPA violation, we do not have jurisdiction over this matter.

treated as a confidential medical record.” Disclosing medical information pertaining to a complainant in a manner that does not conform to conditions prescribed in the regulations constitutes a violation of the Rehabilitation Act. See Melani F. v. Dep’t of Veteran Affairs, EEOC Appeal No. 0120142156 (June 23, 2016) (coworkers accessing the complainant’s medical record where access was neither job related nor consistent with business necessity was a violation of the Rehabilitation Act.) The Commission has noted that the Americans with Disabilities Act of 1990, as amended, prohibits the disclosure of medical information except in certain limited situations. EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA, No. 915.002 Q. 42 (rev. Oct. 17, 2002). The limited exceptions to the ADA confidentiality requirements are: 1) supervisors and managers may be told about necessary restrictions on the work or duties of the employee and about necessary accommodations; 2) first aid and safety personnel may be told if the disability might require emergency treatment; and 3) government officials investigating compliance with the ADA must be given relevant information on request. Id. at fn.111.

Here, we find the Agency violated the Rehabilitation Act when Complainant’s medical information was improperly disclosed. A preponderance of the evidence reflects that Agency management stated in front of Complainant’s co-worker, a Clerk, that Complainant had medically related work restrictions and was in his position due to a claim with the Office of Worker’s Compensation Program (OWCP). Complainant’s co-worker, a Clerk, in her affidavit asserts that she heard a conversation because the supervisor was “on speaker because our phones in the office were not working properly.” Report of Investigation (ROI) at 89. The Clerk stated that “questions were asked about [Complainant’s] position [and] why was a position created for him.” Id. at 90. The Clerk states that she does not recall the conversation verbatim. Id. at 91. However, there is sufficient evidence in the record reflecting that management discussed that Complainant had medical restrictions and was in an OWCP-related position, which was overheard by Complainant’s co-worker. The record contains an email from a Manager, Labor Relations (LR) to the EEO Investigator dated October 12, 2017. ROI at 124. Therein, LR states that, “I just spoke with [a named Manager (M1)] who conducts these meetings...On this particular day, they were talking about collection times. [M1] questioned why [the South Columbus office] numbers were off. [A supervisor, (S1)] stated that [Complainant] was working on collections. [M1] asked why because he was supposed to work Express and Collections. [S1] said because he had OWCP limitations. As she was saying this, a clerk walked by and heard this and immediately went to tell [Complainant] ...” Id.

The record also contains affidavits from S1 and M1 acknowledging that a clerk overheard the teleconference in which S1 stated that Complainant had medical restrictions and was in an OWCP-related position. M1, in his affidavit, states that “[t]he only thing discussed by me and [S1] was that [Complainant] had limitations and was on OWCP.” ROI at 66. In response to being asked by the EEO Investigator how Complainant became aware of this conversation if he was not a participant at the teleconference, M1 stated “[a]ccording to [S1], a clerk was walking by and heard part of the [teleconference].” Id.

The record also contains an affidavit from S1. Therein, she acknowledges that she stated that Complainant was in a special job assignment and granted OWCP. Id. at 79-80. S1 states that a clerk overhead the questions and her response and relayed the conversation to Complainant. Id.

Based on the foregoing, we find that Agency violated the Rehabilitation Act when management disclosed to Complainant's co-worker that he had medical restrictions and was performing in a particular position because of his worker's compensation claim. EEOC Enforcement Guidance provides, in pertinent part that: "[m]edical information regarding an applicant's or employee's occupational injury or workers' compensation claim must be collected and maintained on separate forms and kept in a separate medical file along with other information required to be kept confidential under the [Americans with Disabilities Act]." EEOC Enforcement Guidance: Workers' Compensation and the ADA, No. 915.002 (Sept. 1996) at Question 10. Based on the foregoing, we find that the Agency violated the Rehabilitation Act when it disclosed Complainant's OWCP status/position to his co-worker who did not have a need to know this information.<sup>3</sup>

Accordingly, we REVERSE the Agency's final decision finding no discrimination and we REMAND this matter to the Agency in order to take the following corrective action as set forth in the Order below.

### ORDER

The Agency is ordered to take the following corrective action:

1. The Agency shall complete a supplemental investigation to determine Complainant's entitlement to compensatory damages. The Agency shall give Complainant notice of his right to submit objective evidence (pursuant to the 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 his request for compensatory damages. No later than ninety (90) calendar days from the date this decision is issued, the Agency shall issue a final decision addressing the issue of compensatory damages. The final decision shall contain appeal rights to the Commission. The Agency shall then pay Complainant the amount of compensatory damages within thirty (30) days from its determination/final decision.
2. Within ninety (90) days from the date this decision is issued, the Agency shall provide at least two (2) hours of in-person EEO training regarding rights and responsibilities under the Rehabilitation Act to the officials responsible for improperly disclosing Complainant's medical information.

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<sup>3</sup> We find no evidence that the disclosure was motivated by Complainant's race, sex, color, age or prior EEO activity.

3. Within sixty (60) days from the date this decision is issued, the Agency shall consider taking disciplinary action against officials found to have improperly disclosed Complainant's medical information. The Commission does not consider training to constitute disciplinary actions. The Agency shall report its decision. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline.
4. Within thirty (30) days from the date this decision is issued, the Agency shall post a notice in accordance with the paragraph below entitled "Posting Order."

#### POSTING ORDER (G0617)

The Agency is ordered to post at its South Columbus, Ohio Post Office 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).

#### IMPLEMENTATION OF THE COMMISSION'S DECISION (K0618)

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.

### STATEMENT OF RIGHTS - ON APPEAL

#### RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which 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 to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in 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). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your 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)

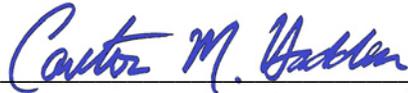
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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 13, 2019

Date