



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

[REDACTED]  
Alonzo N.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 0120181502

Agency No. 1K231005017

**DECISION**

On March 29, 2018, 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 February 27, 2018 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. 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 Mail Handler, M-04, at the Norfolk Processing and Distribution Center in Norfolk, Virginia. On June 12, 2017, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of disability (deaf) and reprisal (prior protected EEO activity) when: (1) on or about March 9, 2017, and May 19, 2017, he was not provided with a certified interpreter during training and safety meetings; (2) on June 8, 2017, he was not provided a certified interpreter during an emergency tour safety training; (3) on June 8, 2017, he was not provided a certified interpreter

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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.

during an emergency tour meeting; and (4) on September 14, 2017, he was not provided a certified language interpreter or video relay during an emergency hurricane meeting.

After the investigation, 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. 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). The decision concluded that Complainant failed to prove that the Agency subjected him to discrimination or reprisal as alleged.

### FACTUAL BACKGROUND<sup>2</sup>

Complainant has been deaf since birth and communicates through sign language. His condition is known to all management officials in his workplace. Mail Handlers are required to load/offload trucks, scan mail onto and off trucks, clear docks, move mail from one operation to another, forklift and tow truck operating. Complainant can perform the essential functions of the Mail Handler position without limitations. Complainant was not provided a sign language interpreter (SLI) on March 9, 2017 and May 19, 2017, during training and safety meetings. He was not provided a SLI on June 8, 2017 during an emergency tour safety training, and he was not provided a SLI on September 14, 2017 during an emergency hurricane meeting. Complainant cannot participate in these meetings without a SLI.<sup>3</sup> The record shows that Complainant and other hearing-impaired employees were provided a written copy of the safety talks and emergency meetings at issue herein.

The Agency has adopted a policy entitled Management Instruction (MI) which provides guidelines providing certain types of communication accommodations to hearing impaired employees. According to the Agency, the MI provides interpreter accommodations for Interpreter-Presumed Events. However, the Agency asserts that the safety talks/training/emergency meetings at issue herein were not considered Interpreter-Presumed Events under the MI.

While the responsible management official (AM) did not remember the specific meetings/safety talks raised by Complainant, she did explain that management is often tasked to give service safety talks at a spur of a moment<sup>4</sup> which did not give management any time to set up for VRI services. AM notes that she schedules weekly service/safety talks utilizing the VRI when required.

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<sup>2</sup> The facts set forth are not disputed unless stated otherwise.

<sup>3</sup> SLIs include live interpreting services and Video Remote Interpreting (VRI) services. A VRI is a video-telecommunication service that uses devices such as web cameras or videophones to provide sign language or spoken language interpreting services.

<sup>4</sup> AM notes that the Agency had a couple of fatalities during this time-frame and higher officials at the Agency headquarters demanded these service talks be completed by the close of business or by 12:00 p.m. on the given day.

AM states that generally the supervisor or safety captain takes notes during these meetings/safety talks so that everything that was discussed can be transcribed on Friday with the VRI interpreter when available. However, the record is devoid of evidence establishing that any of the safety talks/meetings at issue herein were, in fact, subsequently transcribed using the VRI service.

### 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”).

#### *Denial of Reasonable Accommodation*

Under the Commission’s regulations, an agency is required to make reasonable accommodation to the known physical and mental limitations of an otherwise qualified individual with a disability unless the agency can show that accommodation would cause an undue hardship. 29 C.F.R. § 1630.9. As a threshold matter in a case of disability discrimination under a failure to accommodate theory, Complainant must demonstrate that he is an “individual with a disability.” We find Complainant, who suffers from profound deafness, is substantially limited in the major life activity of hearing and is therefore an individual with a disability within the meaning of the Rehabilitation Act. 29 C.F.R. § 1630.2(g)(1).

The next question presented is whether Complainant is a “qualified” individual with a disability as defined in 29 C.F.R. § 1630.2(m). This section defines qualified individual with a disability, with respect to employment, as an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the position in question. The Agency does not dispute that Complainant is a qualified individual with a disability.

The Commission’s regulations define a reasonable accommodation to be a modification or adjustment that enables a disabled employee to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities. See 29 C.F.R. § 1630.2(o)(iii). It is unlawful for an Agency not to make reasonable accommodation for the known physical or mental limitations of an otherwise qualified disabled employee unless the agency can demonstrate that the accommodation would impose an undue hardship on the operation of its business. See 29 C.F.R. §1630.9(a).

The Commission has held that for a severely hearing impaired qualified employee with a disability who can sign, reasonable accommodation, at a minimum, requires providing an interpreter for safety talks, discussions on work procedures, policies or assignments, and for every disciplinary action so that the employee can understand what is occurring at any and every crucial time in his employment career, whether, or not, he asks for an interpreter. See Feris v. Envtl., Prot. Agency, EEOC Appeal No. 01934828 (Aug. 10, 1995), req. for recon. den'd, EEOC Request No. 05950936 (July 19, 1996). The interpreter must be "qualified," not "certified." Feris, EEOC Request No. 05950936, footnote 1; 29 C.F.R. § 1630.2(o)(2)(ii); Robert v. U.S. Postal Serv., EEOC Appeal 0120060330 (Feb. 2, 2007).

After a careful review of the record, we find that Complainant established that he was denied a reasonable accommodation with respect to the Agency's failure to provide a SLI on March 9, 2017; May 19, 2017; June 8, 2017; and September 14, 2017.<sup>5</sup> The Agency cannot avoid its obligation to provide Complainant a reasonable accommodation simply because of the difficulty scheduling the services of an SLI in a timely manner. To the contrary, as we have previously held, in the extraordinary circumstance, where the physical safety of Complainant and his co-workers in the workplace [is] the subject of discussion, it [is] uniquely pressing for Complainant to have access to the information being conveyed." See Kelly v. U.S. Postal Serv., EEOC Appeal No. 01A42499 (Aug. 30, 2004); Heffley v. U.S. Postal Serv., EEOC Appeal No.07A40138 (Mar. 17, 2005). Under these circumstances, full participation in safety meetings and training is a benefit and a privilege of employment for which a reasonable accommodation should have been provided, absent undue hardship.

The record is devoid of evidence to support a finding that the provision of interpreter services would have been unduly costly, extensive, substantial or disruptive or that it would have fundamentally altered the nature of the Agency's operation. See 29 C.F.R. § 1630.2(p). While the Agency asserts that management is often tasked to schedule safety talks and similar meetings without notice, the Agency fails to explain why the safety talks and meetings must be scheduled immediately, and why a SLI could not be obtained on shorter notice. Given the absence of this critical information, we cannot find that the Agency met its burden to show undue hardship. Accordingly, the Commission finds that the Agency discriminated against Complainant when it failed to provide him SLI during the events at issue.

In addition, the Commission finds that Complainant may be entitled to compensatory damages for the Agency's failure to accommodate him. Where a discriminatory practice involves the provision of a reasonable accommodation, damages may be awarded if the Agency fails to demonstrate that it made a good faith effort to provide the individual with a reasonable accommodation for his disability. 42 U.S.C. § 1981a(a)(3); Morris v. Dep't of Def., EEOC Appeal No. 01962984 n.3 (Oct. 1, 1998). In this case, the Agency's failure to show that it attempted to provide Complainant with interpreting services, clearly constitutes a lack of good faith. Complainant is therefore entitled to present a claim for compensatory damages. See West v. Gibson, 527 U.S. 212 (1999).

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<sup>5</sup> The record is devoid of evidence to support Complainant's claim of retaliation.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency's final decision and REMAND this case to the Agency to take remedial actions in accordance with this decision and Order below.

### ORDER (C0618)

The Agency is ordered to take the following remedial action:

1. Immediately ensure that Complainant is provided a qualified sign language interpreter when necessary to ensure that he has access to information communicated in the workplace equal to that of non-disabled employees, such as during stand-up talks, safety talks, mandatory group meetings, staff meetings regarding workplace procedures, policies or assignments, and for every disciplinary action.
2. Within 90 calendar days from the date this decision is issued, the Agency shall conduct a supplemental investigation to determine whether Complainant is entitled to compensatory damages incurred by the Agency's failure to provide him with an interpreter on March 9, 2017; May 19, 2017; June 8, 2017; and September 14, 2017. The Agency shall allow Complainant to present evidence in support of a compensatory damages claim. See Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993). Complainant shall cooperate with the Agency in this regard. The Agency shall issue a final decision addressing the issue of compensatory damages no later than 30 calendar days after the Agency's receipt of all information, with appropriate appeal rights. The Agency shall submit a copy of the final decision to the Compliance Officer at the address set forth herein.
3. Within 90 days from the date this decision is issued, the Agency shall provide the managers and supervisors at its Norfolk Processing and Distribution Center in Norfolk, Virginia facility with a minimum of eight hours of in-person or interactive training regarding their responsibilities under the Rehabilitation Act to provide reasonable accommodation to qualified agency employees with disabilities. Specific attention should be paid during this training concerning the Agency's obligation to be responsive to the work-related needs of its hearing-impaired employees.
4. The Agency shall consider taking disciplinary action against the responsible management officials identified (including, but not limited to the Acting Plant Manager). 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 any of the responsible management officials have left the Agency's employ, the Agency shall furnish documentation of their departure date(s).

5. Within 30 calendar days of the date this decision is issued, the Agency shall post of a notice, as provided in the statement entitled "Posting Order."

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 Norfolk Processing and Distribution Center in Norfolk, Virginia 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).

#### ATTORNEY'S FEES (H1016)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), 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 the date this decision was issued. 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 CFR § 1614.503(f) for enforcement by that agency.

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)

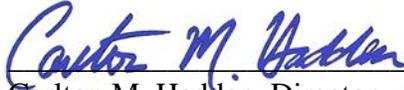
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this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

September 17, 2019

Date