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Cheryl Mabry,
Complainant,

v.

Henry M. Paulson, Jr.,
Secretary,
Department of the Treasury,
Agency.

Appeal No. 0120073947

Agency No. 060724F

DECISION

On September 5, 2007, complainant filed an appeal from the agency's August 6, 2007 final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission AFFIRMS the agency's final decision.

BACKGROUND

At the time of events giving rise to this complaint, complainant worked as a Program Analyst, GS-13 at the agency's Small Business/Self Employed unit at the agency's Lanham, Maryland facility. On March 7, 2006, complainant filed an EEO complaint alleging that she was subjected to a hostile work environment on the basis of her disability (anxiety) when:

1. on August 3, 2005, complainant requested that she be assigned to a different workspace as a reasonable accommodation, and in response to her request management used undue pressure to force her to hastily choose a seating assignment;
2. on January 11, 2006, management denied complainant's reasonable accommodation request that her workspace be relocated.

At the conclusion of the investigation, complainant was provided with a copy of the report of investigation and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). In accordance with complainant's request, the agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that complainant failed to prove that she was subjected to discrimination as alleged. Specifically, the FAD found that complainant failed to show that the agency did not provide her with a reasonable accommodation, and that complainant failed to show that she was subjected to a hostile work environment on the basis of her disability. On appeal, complainant reiterates her contention that she was subjected to unlawful disability discrimination.

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 EEOC Management Directive 110, Chapter 9, § VI.A. (November 9, 1999) (explaining that the de novo standard of review "requires that the Commission examine

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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").

Under the Commission's regulations, federal agencies may not discriminate against individuals with disabilities and are required to make reasonable accommodations for the known physical and mental limitations of qualified individuals with disabilities, unless an agency can show that reasonable accommodation would cause an undue hardship. See 29 C.F.R. §§ 1630.2(o) and (p).

To establish that complainant was improperly denied a reasonable accommodation, complainant must show that: (1) he is an individual with a disability, as defined by 29 C.F.R. § 1630.2(g); (2) he is a "qualified" individual with a disability, pursuant to 29 C.F.R. §1630.2(m); and (3) the agency failed to provide a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC No. 915.002 (October 17, 2002) ("Enforcement Guidance").

Here, we find that, assuming without finding that complainant is a qualified individual with a disability, she has not shown that the agency failed to provide her with a reasonable accommodation. The record shows that on or about June 8, 2005, complainant contacted the agency's Employee Resource Center to request a reasonable accommodation and was informed by the Reasonable Accommodation Coordinator (RAC) that she would need to provide medical documentation to support her request. (Report of Investigation, Exhibit 4). Complainant provided the agency with a letter from her physician, dated August 1, 2005, stating that she "requires a quiet sheltered work station." (R.O.I., Exhibit 5). Complainant met with her supervisor and the RAC on August 3, 2005, to discuss reassignment to a workspace commensurate with her medical documentation. (R.O.I., Exhibit 4). Complainant was out on extended sick leave during this period, however she was offered the choice of several vacant workspaces and, by email dated November 18, 2005, complainant informed her supervisor that she had selected a workspace. (R.O.I., Exhibit 36). The record contains no evidence to support complainant's contention that management used undue pressure to force her to make a hasty decision regarding her work station selection.

We also find that complainant failed to show that the agency denied her reasonable accommodation request of January 11, 2006. The record reflects that on January 6, 2006, complainant approached her supervisor to once again request that her work space be moved. (R.O.I., Exhibit 6). Complainant was again contacted by the RAC and complainant was provided with a choice of vacant workspaces, one of which she accepted. (R.O.I., Exhibit 9). The record shows that complainant was out on extended sick leave during this period as well, and returned to work at the end of February 2006. (R.O.I., Exhibit 4). Furthermore, complainant has not shown any of her work stations to which she moved per her request violated her medical restrictions. Accordingly, we find that complainant has not shown that the agency failed to meet its burden under the Rehabilitation Act to provide her with a reasonable accommodation.

Finally, to the extent complainant is alleging that the agency's actions constituted a hostile work environment, we note that harassment of an employee that would not occur but for the employee's race, color, sex, national origin, age, disability or religion is unlawful. McKinney

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v. Dole, 765 F.2d 1129, 1138-1139 (D.C. Cir. 1985). A single incident or group of isolated incidents will generally not be regarded as discriminatory harassment unless the conduct is severe. Walker v. Ford Motor Co., 684 F.2d 1355, 1358 (11th Cir. 1982). Whether the harassment is sufficiently severe to trigger a violation of Title VII must be determined by looking at all of the circumstances, including the frequency of the discriminatory conduct, its severity, whether it is physically threatening or humiliating, or a mere offensive utterance, and whether it unreasonably interferes with an employee's work performance. Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993). Here, we find that complainant has proffered no evidence to support her contention that the agency's actions at issue, i.e., assigning her certain workspaces, were sufficiently severe or pervasive to rise to the level of a hostile work environment.

CONCLUSION

The agency's final decision is AFFIRMED.

STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M1208)

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 or within twenty (20) calendar days of receipt of another party's timely request for reconsideration. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), 9-18 (November 9, 1999). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 77960, Washington, DC 20013. 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 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 (S0408)

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. 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

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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 (Z1008)

If you decide to file a civil action, and if you do not have or cannot afford the services of an attorney, you may request from the Court that the Court appoint an attorney to represent you and that the Court also permit you to file the action without payment of fees, costs, or other security. See Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791, 794(c). The grant or denial of the request is within the sole discretion of the Court. Filing a request for an attorney with the Court does not extend your time in which to file a civil action. Both the request and the civil action must be filed within the time limits as stated in the paragraph above ("Right to File A Civil Action").

FOR THE COMMISSION:

Carlton M. Hadden, Director
Office of Federal Operations

March 18, 2010

Date

1 In her complaint, complainant also alleged that she was subjected to unlawful disability discrimination when: (1) on an unspecified date(s), management changed complainant's work assignments without notice; (2) on an unspecified date(s), complainant's manager (M1) had another employee prepare complainant's 2004 performance appraisal, refused to include self-assessment for the 2005 rating period, and recertified an evaluation that did not accurately reflect the complainant's responsibilities and accomplishments for the 2005 rating period; and (3) in June 2004, on June 3, 2005, and on September 9, 2005, complainant was asked to evaluate CTRS training for course development, but management did not allow her to participate in implementing the training video for managers. By letter dated September 5, 2006, the agency dismissed these claims for untimeliness. As complainant does not raise the issue of the dismissal on appeal, we shall not address it in the instant decision.

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